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IN THE MATTER OF  
MURRAY B. LEPIE DOING BUSINESS AS KENMORE  
OPTICAL COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 7952. Complaint, June 16, 1960—Decision, Sept. 14, 1960*

Consent order requiring a Boston, Mass., manufacturer of corneal contact lenses to cease representing falsely in advertising that all persons could successfully wear his "Circle-Aire" contact lenses, that the lenses would correct all defects in vision, and that eyeglasses could be discarded upon purchase thereof.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Murray B. Lepie, individually and trading and doing business as Kenmore Optical Company, has violated the provisions of the Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Murray B. Lepie is an individual trading and doing business under the name of Kenmore Optical Company with his principal place of business located at 491 Commonwealth Avenue, Boston, Mass.

PAR. 2. Respondent is now and for some years last past has been engaged in the manufacture and sale of corneal contact lenses, certain of said corneal contact lenses being sold under the name of "Circle-Aire" contact lenses. Corneal contact lenses are devices designed to correct errors and deficiencies in the vision of the wearer, and are devices as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his aforesaid business respondent has disseminated, and has caused the dissemination of, advertisements concerning his said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers of general circulation, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices; and respondent has also disseminated, and caused dissemination of, advertisements concerning his said devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

You can wear "Circle-Aire" Contact Lenses . . . yes, no matter what your present vision problems.

\* \* \*

A brighter outlook when you change to CIRCLE-AIRE CONTACT LENSES  
. . . A whole brighter outlook, new living, new freedom from eyeglasses.

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PAR. 4. By and through the statements made in said advertisements disseminated and caused to be disseminated, as aforesaid, respondent represented directly or by implication that:

1. All persons in need of visual correction can successfully wear respondent's contact lenses;
2. Said lenses will correct all defects in vision;
3. Eyeglasses can be discarded upon the purchase of respondent's contact lenses.

PAR. 5. The advertisements containing the aforesaid statements and representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondent's contact lenses;
2. Said lenses will not correct all defects in vision;
3. Eyeglasses cannot always be discarded upon the purchase of respondent's contact lenses.

PAR. 6. The dissemination by the respondent, as aforesaid, of said false advertisements constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Garland S. Ferguson* supporting the complaint.

Respondent, *pro se*.

#### INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 16, 1960, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising certain contact lenses manufactured and sold by him. After being served with said complaint, respondent appeared and entered into an agreement dated July 15, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent and by counsel supporting the complaint, and approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been

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duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Murray B. Lepie is an individual trading and doing business as Kenmore Optical Company, with his principal place of business located at 491 Commonwealth Avenue, Boston, Mass.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondent Murray B. Lepie, individually and trading and doing business as Kenmore Optical Company, or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale of contact lenses known as "Circle-Aire" or any other contact lens of substantially the same construction, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce,

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as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That all persons in need of visual correction can successfully wear their contact lenses.

(b) That said contact lenses will correct all defects in vision.

(c) That eyeglasses can be discarded upon the purchase of said lenses.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 above.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of September 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.