

mission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as modified.

Commissioner Tait concurring in the result.

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IN THE MATTER OF  
HIT-RECORD DISTRIBUTING COMPANY  
OF CINCINNATI ET AL.

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

*Docket 7897. Complaint, May 20, 1960—Decision, Sept. 28, 1960*

Consent order requiring a distributor of phonograph records in Cincinnati, Ohio, to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

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 Hit-Record Distributing Company of Cincinnati, a corporation, and Isadore Nathan, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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. Respondent Hit-Record Distributing Company of Cincinnati is a corporation organized, existing and doing business

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under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3414 Colerain Avenue, in the city of Cincinnati, State of Ohio.

Respondent Isadore Nathan is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from one State of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts

have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in

commerce within the intent and meaning of the Federal Trade Commission Act.

*Mr. Harold A. Kennedy* and *Mr. Arthur Wolter, Jr.*, for the Commission.

*Mr. Earl J. Goldsmith, Jr.*, of Cincinnati, Ohio, for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola", i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motive the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Hit-Record Distributing Company of Cincinnati is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 3414 Cole-rain Avenue, Cincinnati, Ohio; and that respondent Isadore Nathan is an officer of said corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent, his address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the

manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive 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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

*It is ordered*, That respondents Hit-Record Distributing Company of Cincinnati, a corporation, and its officers, and Isadore Nathan, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in considera-

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tion for compensation of some nature, directly or indirectly received by him or his employer.

## 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 28th day of September 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Hit-Record Distributing Company of Cincinnati, a corporation, and Isadore Nathan, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## IN THE MATTER OF

MERLE SCHNEIDER ET AL. DOING BUSINESS AS  
S AND S DISTRIBUTING COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 7899. Complaint, May 20, 1960—Decision, Sept. 28, 1960*

Consent order requiring distributors of phonograph records in Detroit, Mich., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

## 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 Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing Company, hereinafter referred to as respondents, have violated the provisions of said 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. Individual responding Merle Schneider and John Shepherd are copartners, trading and doing business as S and S Distributing Company, with their office and principal place of busi-

ness located at 3957 Woodward Avenue, in the city of Detroit, State of Michigan.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale, of phonograph records to various retail outlets, and jukebox operators.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold to be shipped from one state of the United States to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across State lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hinder, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

*Mr. Harold A. Kennedy* and *Mr. Arthur Wolter, Jr.*, for the Commission.

*Mr. Everett M. Behrendt*, of Detroit, Mich., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets and jukebox operators, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for the disbursed "payola", i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that individual respondents Merle Schneider and John Shepherd are copartners, trading and doing business as S and S Distributing Company, with their office and principal place of business located at 3957 Woodward Avenue, Detroit, Mich.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and herein-

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after included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive 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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The hearing examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

*It is ordered*, That respondents Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing Company, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such records are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

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## 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 28th day of September 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S AND S Distributing Company, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## IN THE MATTER OF

## NOEL C. GENEVAY, JR., TRADING AS CONTACT LENS SPECIALISTS

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

*Docket 7957. Complaint, June 16, 1960—Decision, Sept. 28, 1960*

Consent order requiring a retail seller of "Air Comfort" contact lenses in New Orleans, La., to cease advertising falsely in newspapers, circulars, etc., that all persons could successfully wear his said contact lenses, and with complete comfort; that the lenses were unbreakable, protected the entire eye, and would correct all defects in vision including all cases requiring bifocals.

## 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 Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, hereinafter referred to as the respondent, has violated the provisions of said 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. Respondent Noel C. Genevay, Jr. is an individual, trading as Contact Lens Specialists, with an office located at 146 Carondelet Street, in the city of New Orleans, State of Louisiana.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the sale to the public of corneal contact lenses

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known as "Air Comfort". Contact lenses are 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 and by means of circulars and pamphlets, for the purpose of inducing, and which were likely to induce, the purchase of the said devices; and the respondent has also disseminated, and caused the dissemination of, advertisements concerning his said products by various means, including but not restricted to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the statements contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Through new design, persons whose imperfect vision calls for the frequent wearing of glasses can wear these tiny air comfort ventilated contact lenses easily and comfortably . . .

. . . wear contact lenses with confidence and assurance . . . from the time they get up until retiring, . . . and without discomfort under any and all conditions.

. . . wear contact lenses with complete freedom, comfort, and safety.

Now available in bifocals . . . as well as single vision.

. . . These fluidless lenses actually become a protective covering for the eye.

. . . nor need you fear breakage.

PAR. 4. By and through the statements made in said advertisements, and others of similar impact not specifically set out herein, respondent represents, and has represented, directly and by implication, that:

1. All persons in need of visual correction can successfully wear his contact lenses.

2. His contact lenses will correct all defects of vision.

3. There is no discomfort in wearing his contact lenses.

4. Said contact lenses can be worn all day in complete comfort.

5. Said contact lenses will correct defects in vision in all cases requiring bifocal lenses.

6. Said contact lenses protect the eye.

7. Said contact lenses are unbreakable.

PAR. 5. The advertisements containing the aforesaid statements are misleading in material respects and constitute "false advertise-

ment", as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons in need of visual correction cannot successfully wear respondent's contact lenses.
2. Respondent's contact lenses will not correct all defects of vision.
3. Practically all persons will experience some discomfort when first wearing respondent's lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.
4. Many persons cannot wear respondent's contact lenses all day without discomfort and no person can wear said lenses all day in complete comfort until he or she becomes fully adjusted thereto.
5. Said lenses will not correct defects in vision in all cases requiring bifocal lenses.
6. Said lenses protect only the small portion of the eye that is covered by them.
7. Said lenses are breakable.

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

*Mr. Frederick McManus* for the Commission.

*Phelps, Dunbar, Marks, Claverie & Sims*, by *Mr. Peter G. Burke*, of New Orleans, La., for respondent.

#### INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 16, 1960, charging Respondent with violation of the Federal Trade Commission Act by the dissemination of false advertisements with respect to his corneal contact lenses, known as "Air Comfort".

Thereafter, on August 1, 1960, Respondent, his counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on August 10, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Noel C. Genevay, Jr. as an individual, trading as Contact Lens Specialists, with an office located at 146 Carondelet Street, New Orleans, La.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and 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 the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the 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.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondent and over his acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

*It is ordered*, That the respondent, Noel C. Genevay, Jr., trading under the name of Contact Lens Specialists, or any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, 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, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that:

- (a) All persons can successfully wear his contact lenses;
- (b) His contact lenses will correct all defects of vision;
- (c) There is no discomfort in wearing his contact lenses;
- (d) All persons can wear respondent's contact lenses all day without discomfort; or that any person can wear said contact lenses all day without discomfort except after that person has become fully adjusted thereto;

(e) Said contact lenses are an adequate substitute for bi-focal eyeglasses for all persons;

(f) Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby;

(g) Said contact lenses are unbreakable;

2. Disseminating, or causing to be disseminated, 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 28th day of September 1960, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondent Noel C. Genevay, Jr., an individual, trading under the name of Contact Lens Specialists, 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.

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