

Complaint

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IN THE MATTER OF

CONTACT LENS SPECIALISTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7948. Complaint, June 16, 1960—Decision, Oct. 12, 1960*

Consent order requiring Boston sellers to cease representing falsely in advertising that all persons could wear their contact lenses and without discomfort; that eyeglasses could be discarded; that the lenses would correct all defects in vision; and that they differed from other lenses.

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 Contact Lens Specialists, Inc., a corporation, and Leonard G. Wolfson, 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 Contact Lens Specialists, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 77 Summer Street, Boston, Massachusetts. Individual respondent Leonard G. Wolfson is an officer of said corporation. He formulates, directs and controls the policies of the corporate respondent. His address is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for some years last past have been, engaged in the advertising, offering for sale, and sale of corneal contact lenses. 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 their aforesaid business, respondents have disseminated, and have caused the dissemination of, advertisements concerning the said devices 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 and by means of circulars and pamphlets, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of

said devices; and have disseminated, and caused the dissemination of, advertisements concerning their 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 said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

"I wish I could see without glasses." She *can* see without glasses—and see *better*! So can you—and you—and you! Thousands of contact lens wearers enjoy better vision—without glasses—thanks to the amazing Ever-Flo Process.

EVER-FLO PROCESS—makes contacts "as comfortable as all outdoors."

EVER-FLO PROCESS—A must for eye comfort and health.

Hey! you with the eyeglasses! See better with complete comfort—and safety—without glasses!

EVER-FLO PROCESS makes all day wearing of Contact Lenses the usual thing. Not a contact lens but an exclusive registered process for fitting our vented—circle grooved—contoured—all types of contact lenses.

The EVER-FLO PROCESS modifies and individualizes the contact lens * * * eliminates all interference by the lens with normal eye functions. Eyelid and Tear action continue normally as nature intended. The only way to be sure is to have us fit you with vented, * * * or circle-grooved—or contoured contact lenses by the EVER-FLO PROCESS.

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

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

2. There is no discomfort from wearing respondents' contact lenses.

3. Eyeglasses can be discarded upon the purchase of respondents' contact lenses.

4. Respondents' contact lenses will correct all defects in vision.

5. Respondents' contact lenses are different than other contact lenses in that they permit tears to bathe the cornea of the eye.

PAR. 5. The advertisements containing the aforesaid statements were, and are, misleading in material respects and constituted, and now 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 respondents' contact lenses.

2. Practically all persons will experience some discomfort after starting to wear respondents' contact lenses. In a significant num-

ber of cases discomfort will be prolonged and in some cases will never be overcome.

3. Eyeglasses cannot always be discarded upon the purchase of respondents' contact lenses.

4. Respondents' contact lenses will not correct all defects in vision.

5. Contact lenses other than respondents' permit tears to bathe the cornea of the eye.

PAR. 6. Respondents state in their advertising matter, as aforesaid, that there is no discomfort in wearing their contact lenses. In addition, they state—"EVER-FLO PROCESS makes all day wearing of Contact Lenses the usual thing." Said advertisements are misleading in a material respect in that they fail to reveal facts material in the light of such representations, that is, that no person can wear their said lenses all day without discomfort until he or she has become fully adjusted thereto.

PAR. 7. The dissemination by the respondents of the false advertisements, as aforesaid, constituted 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.

Miller & Miller, of Boston, Mass., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 16, 1960, charging them 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 them. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated August 12, 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 respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Acting Associate Director and Acting 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.

Respondents, pursuant to the aforesaid agreement, have 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 made in accordance with such allegations. Said agreement

further provides that 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 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 respondents that they have violated the law as alleged in the complaint.

The order which has been agreed upon provides that the complaint shall be dismissed as to respondent Leonard G. Wolfson as an officer of the corporate respondent. The basis for such a disposition as to said respondent is set forth in an affidavit by him which has been submitted together with, and as part of, the above-mentioned agreement containing consent order. Said affidavit, which was subscribed and sworn to on August 2, 1960, recites that respondent Leonard G. Wolfson severed all connection as an officer and director of the corporate respondent on January 19, 1960, and has completely divorced himself from the direct or indirect control of the business and advertising of said respondent, to the extent he ever had any connection therewith.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, together with the affidavit of Leonard G. Wolfson which has been made a part of said agreement, 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. Corporate respondent Contact Lens Specialists, Inc., is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 77 Summer Street, Boston, Massachusetts. Leonard G. Wolfson, an individual, was formerly an officer of the corporate respondent, and was so named in the com-

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plaint. His address is now 54 Amherst Road, Newton, Massachusetts.

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

ORDER

It is ordered, That respondents Contact Lens Specialists, Inc., a corporation, and its officers, and Leonard G. Wolfson, individually and as a former officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their contact lenses, do forthwith cease and desist, directly or indirectly, from:

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 in need of visual correction can successfully wear respondents' contact lenses.

(b) There is no discomfort from wearing respondents' contact lenses.

(c) A person can wear said contact lenses all day without discomfort unless it is clearly revealed that this is possible only after such person has become fully adjusted thereto.

(d) Eyeglasses can always be discarded upon the purchase of respondents' contact lenses.

(e) Respondents' contact lenses will correct all defects in vision.

(f) Respondents' contact lenses are different than other contact lenses in that they permit tears to bathe the cornea of the eye of the wearer; or are different in any other respect, unless such is the fact.

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, or which fails to reveal the facts set out in paragraph 1(c) above.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Leonard G. Wolfson as an officer of said corporation.

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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 12th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Contact Lens Specialists, Inc., a corporation and Leonard G. Wolfson, individually, 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