

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 and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

ELLIOTT KAPCHAN DOING BUSINESS AS
DR. E. KAPCHAN & ASSOCIATES, OPTOMETRISTS, ETC.

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

Docket 7953. Complaint, June 16, 1960—Decision, Oct. 12, 1960

Consent order requiring sellers of corneal contact lenses in Alameda, Calif., to cease representing falsely in advertising that their lenses could be worn successfully by all persons, and worn all day without discomfort; that the lenses would stay in place under all conditions; and that upon purchase thereof, eyeglasses could be discarded.

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 Elliott Kapchan, individually and trading and doing business as Dr. E. Kapchan and Dr. J. Jackson, Optometrists, 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. Elliott Kapchan is an individual trading and doing business under the name of Dr. E. Kapchan and Dr. J. Jackson, Optometrists, with his office and principal place of business located at 2331 Santa Clara Avenue, Alameda, California.

PAR. 2. Respondent is now and for some time last past has been engaged in, the advertising, offering for sale and sale of corneal contact lenses. Corneal contact lenses are devices designed to correct

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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 the said devices by the United States mails and by various other 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 has disseminated, and caused the 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 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:

Now enjoy all-day wear with Comfort Improved Vision Invisibility. You'll get so much more out of life without glasses! The safety The comfort, the new freedom you enjoy with Contacts—will convince you never to wear glasses again.

* * * * *

Our Guaranteed Trial Wearing Program Insures: Comfort, Improved vision, Invisibility through All-Day WEAR. * * * *

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Now all day comfort!

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No tiring weight, no glass to break, no falling off.

Contact lenses small as a cigarette tip—wear them all day. Now available in single lens or bifocals. Everything's better WITHOUT GLASSES! Reading, Sports, Dancing, Working.

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. There is no discomfort in wearing respondent's contact lenses.
3. Respondent's contact lenses can be worn all day with complete comfort.
4. Eye glasses can be discarded upon the purchase of respondent's contact lenses.
5. That respondent's contact lenses will stay in place under all conditions.

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. Practically all persons will experience some discomfort when first wearing respondent's contact lenses. In a significant number of cases such discomfort will be prolonged and in some cases will never be overcome.

3. Many persons cannot wear respondent's contact lenses all day with complete comfort until he or she has become fully adjusted thereto.

4. Eyeglasses can not always be discarded upon the purchase of respondent's contact lenses.

5. Respondent's contact lenses will not stay in place under certain conditions.

PAR. 6. The dissemination by respondent of the aforesaid 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 for the Commission.

Mr. Albert E. Levy, of San Francisco, Calif., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, on June 16, 1960, charging the above-named respondent with having violated the provisions of the Federal Trade Commission Act in certain procedures.

On August 12, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent and counsel supporting the complaint, under date of August 7, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Elliott Kapchan is an individual presently trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates. He has also traded and done business as Dr. E. Kapchan and Dr. J. Jackson, Optometrists, and was so named in the complaint. His office and principal place of business is located at 2331 Santa Clara Avenue, Alameda, California.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the parties hereto; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, both generally

and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondent Elliott Kapchan, an individual trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates, or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the sale 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 in need of visual correction can successfully wear respondent's contact lenses;

(b) There is no discomfort in wearing respondent's contact lenses;

(c) All persons can wear respondent's contact lenses all day without discomfort; or that any person can wear respondent's contact lenses all day without discomfort except after that person has become fully adjusted thereto;

(d) Eyeglasses can always be discarded upon the purchase of respondent's contact lenses;

(e) That respondent's contact lenses will stay in place under all conditions.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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 Elliott Kapchan, an individual trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates, shall, within

