

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

It is ordered, That respondents Nu-Vision Optical Studios, Inc., a corporation, and Eli Shapiro and Arthur Shapiro, individually and as officers 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
LEO BIGLAISER

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

Docket 7951. Complaint, June 16, 1960—Decision, Oct. 19, 1960

Consent order requiring a seller of corneal contact lenses in Phoenix, Ariz., to cease advertising falsely that all persons could successfully wear his contact lenses and without discomfort, that the lenses corrected all defects in vision, protected the eye, and could be worn a lifetime without change of prescription.

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 Leo Biglaiser, 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 Leo Biglaiser is an individual with his place of business located at 146 West Adams Street, Phoenix, Arizona.

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

disseminated, and caused the dissemination of, advertisements concerning his said contact lenses 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 circulated in newspapers 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 respondent has also 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 his said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical, but not all inclusive, of the statements contained in advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

You too, can wear the New Fluidless Contact Lenses.

Practical for all men and women.

It's a joy to see clearly and comfortably without the weight of having glasses on my nose.

I wear my invisible contact lenses all day long.

They are comfortable to wear and provide a protective covering to the eye.

* * * need no changing.

PAR. 5. By and through the statements made in said advertisements disseminated, and caused to be disseminated as aforesaid, and others of similar import not specifically set out herein, respondent represented, directly and by implication that:

1. All persons in need of visual correction can successfully wear respondent's contact lenses.
2. There is no discomfort from wearing said lenses.
3. Said lenses will correct all defects in vision.
4. Persons purchasing said lenses can discard their eyeglasses.
5. Said lenses protect the eye.
6. Said lenses may be worn a life time without change of prescription.

PAR. 6. 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 after starting to wear said lenses. In a significant number of cases dis-

comfort will be prolonged and in some cases will never be overcome.

3. Said lenses will not correct all defects in vision.

4. Eyeglasses cannot always be discarded upon the purchase of respondent's lenses.

5. Said lenses will protect only a small portion of the eye.

6. In the case of some individuals, prescriptions for contact lenses must be changed during their life-time.

PAR. 7. Respondent's aforesaid advertising matter contains such statements as "I wear my invisible contact lenses all day long" and "They are comfortable to wear," and other statements of the same import. Said advertisements are misleading in material respects and constitute false advertisements in that they fail to reveal facts material in the light of such representations, that is, that a person can wear respondent's lenses all day long without discomfort only after he or she has become fully adjusted thereto.

PAR. 8. The dissemination by respondent 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. Frederick McManus for the Commission.

Riggs, Moore & Jacobowitz, by *Mr. Henry Jacobowitz*, of Phoenix, Ariz., for respondent.

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 particulars.

On August 30, 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 the attorneys for both parties, under date of August 29, 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. Respondent, Leo Biglaiser, is an individual with his office and principal place of business located at 146 West Adams Street, in the City of Phoenix, State of Arizona.

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 he 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 Leo Biglaiser, 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 advertisements represent, directly or by implication, that:

- a. All persons can successfully wear his contact lenses;
- b. There is no discomfort in wearing his contact lenses;
- c. His contact lenses will correct all defects of vision;
- d. Eyeglasses can always be discarded upon the purchase of his contact lenses;
- e. Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby;
- f. Said contact lenses may be worn a lifetime without change of prescription; or misrepresent the time that they may be worn;
- g. Said contact lenses can be worn all day without discomfort unless it is clearly revealed that this is possible only after the wearer has become fully adjusted thereto.

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 required by paragraph 1(g).

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 19th day of October 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent Leo Biglaiser 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.

Complaint

57 F.T.C.

IN THE MATTER OF

ANNISTON FOUNDRY COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (d) OF THE CLAYTON ACT

Docket 8031. Complaint, June 30, 1960—Decision, Oct. 19, 1960

Consent order requiring a manufacturer of cast iron soil pipe and fittings in Anniston, Ala., to cease discriminating among its customers in violation of Sec. 2(d) of the Clayton Act by making payments to some customers for promoting its products but not to all their competitors on proportionally equal terms, such as sums amounting to \$3,300 paid to the American Radiator and Standard Sanitary Corp. for promoting the sale of its products through television programs sponsored by the company in the trading areas of New Orleans, Pittsburgh, and elsewhere.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Anniston Foundry Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at Anniston, Alabama.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of cast iron soil pipe and fittings.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use or resale therein. Respondent's sales of its products are substantial, exceeding \$10,000,000 annually.

PAR. 3. Respondent, in the course and conduct of its business, as aforesaid, has caused and now causes its said products to be shipped and transported from the state or states of location of its various manufacturing plants, warehouses and places of business, to purchasers thereof located in states other than the state or states wherein said shipment or transaction originated. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 4. In the course and conduct of its business in commerce since January 1, 1957, respondent has paid or contracted for the payment of something of value to or for the benefit of certain of