
IN THE MATTER OF
GORDON-MASLING OPTICAL COMPANY, INC., ET AL.

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

Docket 7955. Complaint, June 16, 1960—Decision, Nov. 16, 1960

Consent order requiring sellers of optical goods in Rochester, N.Y., to cease advertising falsely that all persons could successfully wear their contact

Complaint

57 F.T.C.

lenses and could wear them all day without discomfort; that their lenses would correct all defects in vision; and that purchasers could discard their eyeglasses.

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 Gordon-Masling Optical Company, Inc., a corporation, trading under the name of Optical Associates of Rochester, and Bernard Masling and Stanley Gordon, individually and as officers 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 Gordon-Masling Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 353 East Main Street, Rochester, New York. Said corporation trades under the name of Optical Associates of Rochester.

Individual respondents Bernard Masling and Stanley Gordon are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 sale of contact lenses to the purchasing public. 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 their aforesaid business respondents have disseminated, and caused the dissemination of, advertisements concerning their 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 in newspapers and by means of circulars and pamphlets, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices; and respondents 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 and are likely to induce, directly or indirectly, the

1133

Complaint

purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

I would recommend Contact Lenses to any person who is now wearing glasses.

See for yourself how comfortable really invisible contact lenses are.

* * * Wear our contact lenses all day long * * *

Learn how easy it is for you to do as hundreds of other Rochesterians have done * * * getting rid of their hateful, annoying glasses and getting the benefits of more natural and comfortable vision.

PAR. 5. By and through the statements in said advertisements disseminated and caused to be disseminated, as aforesaid, respondents represent and have represented, directly and by implication:

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. There is no discomfort in wearing their contact lenses.
3. Said contact lenses can be worn all day without discomfort.
4. Their contact lenses will correct all defects in vision.
5. Eyeglasses may be discarded upon the purchase of their contact lenses.

PAR. 6. The advertisements containing the aforesaid statements and representations are misleading in material respects and constitute "false advertisements", as the 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 respondents' contact lenses.
2. Practically all persons will experience some discomfort when first wearing respondents' contact lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.
3. Many persons cannot wear respondents' contact lenses all day without discomfort and no person can wear said lenses all day without discomfort until he or she has become fully adjusted thereto.
4. Respondents' contact lenses will not correct all defects in vision.
5. Eyeglasses can not always be discarded upon the purchase of respondents' contact lenses.

PAR. 7. The dissemination by the respondents, 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. Frederick McManus supporting the complaint.

Cucci, Welch & Boehm, of Rochester, N.Y., 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 September 8, 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 Acting 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.

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 duly 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.

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 Sections 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:

1133

Order

1. Respondent Gordon-Masling Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 353 East Main Street, Rochester, New York. Said corporation trades under the name of Optical Associates of Rochester.

Individual respondents Bernard Masling and Stanley Gordon are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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 Gordon-Masling Optical Company, Inc., a corporation, and its officers, and Bernard Masling and Stanley Gordon, individually and as officers of said corporation, respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

A. 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:

(1) All persons in need of visual correction can successfully wear their contact lenses.

(2) There is no discomfort in wearing their contact lenses.

(3) All persons can wear respondents' lenses all day without discomfort; or that any person can wear respondents' lenses all day without discomfort except after that person has become fully adjusted thereto.

(4) Their lenses will correct all defects in vision.

(5) Eyeglasses can always be discarded upon the purchase of their lenses.

B. 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 A, 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 16th day