

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 17th day of March, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

UNITED CONTACT LENS CORPORATION ET AL.

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

Docket 8165. Complaint, Nov. 8, 1960—Decision, Mar. 17, 1961

Consent order requiring New York City distributors of contact lenses to opticians for resale to the public, to cease representing falsely in advertising brochures and otherwise that their contact lenses would correct all defects in vision and could be worn successfully by all in need of visual correction, that the lenses protected the eye, and that they were unbreakable.

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 United Contact Lens Corporation, a corporation, and Martin Weinberger, individually and as an officer of said corporation, and Roland Hirsch and Jack Krakower, individually, 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. United Contact Lens Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 76 Madison Avenue, New York, New York. Martin Weinberger is an officer of said corporation. He presently formulates, directs and controls the policies of the corporate respondent. His address is the same as the corporate respondent.

Ronald Hirsch and Jack Krakower were formerly officers of the corporate respondent, at which time they cooperated in formulating, directing and controlling the policies of said corporation in connection with the acts and practices set forth herein. Their address is 7 West 44th Street, New York, New York.

PAR. 2. Corporate respondent United Contact Lens Corporation and Martin Weinberger, an officer of said corporation, are engaged in the sale of corneal contact lenses to opticians who sell them to the public. Respondents Ronald Hirsch and Jack Krakower, formerly officers of the corporate respondent, have in the past engaged in the business described herein and have participated in the acts and practices herein described.

The corporate respondent also sells and distributes, and has sold and distributed, to sellers of corneal lenses, various types of advertising literature and brochures designed to assist in the sale of their said lenses. Corneal 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. Respondents cause, and have caused, their said contact lenses, when sold, to be transported from their place of business in New York, New York, to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said contact lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and have 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 advertising brochures, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their said devices, 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 the advertisements disseminated and caused to be disseminated are the following:

Contact lenses actually afford protection to the eye.

Anyone who wears glasses no matter how slight the correction can wear contact lenses.

* * * They are unbreakable.

Many people wear their contact lenses all day with no thought or concern about them.

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

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. Respondents' lenses will correct all defects in vision.
3. Many persons wear said lenses all day.
4. Said lenses afford protection to the eye of the wearer.
5. Said lenses are unbreakable.

PAR. 6. The advertisements containing the aforesaid statements and representations 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 in need of visual correction cannot successfully wear respondents' contact lenses.
2. Said lenses will not correct all defects in vision.
3. Persons cannot wear respondents' lenses all day until they have become fully adjusted thereto because of the discomfort that exists.
4. Respondents' contact lenses cover only a small portion of the eye and afford protection only to the portion of the eye that is covered.
5. Said lenses are breakable.

PAR. 7. The dissemination by 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.
Bernstein and Steyer by *Mr. Murray Steyer*, of New York, N.Y.,
for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 8, 1960. The complaint charged respondents with falsely advertising the effectiveness of contact lenses. The Commission also charged that said advertisements constituted unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

On January 12, 1961, counsel submitted to the undersigned hearing examiner an agreement dated January 6, 1961 among respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record of which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

(2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said agreement is for

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settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Corporate respondent United Contact Lens Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 76 Madison Avenue, New York, New York. Individual respondent Martin Weinberger is an officer of said corporation. He formulates, directs and controls the practices of the corporate respondent. Individual respondents Ronald Hirsch and Jack Krakower were formerly officers of the corporate respondent, at which time they cooperated in formulating, directing and controlling the policies of said corporation in connection with the acts and practices as set forth in the complaint.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents United Contact Lens Corporation, a corporation, and its officers, and Martin Weinberger, individually and as an officer of said corporation, and Ronald Hirsch and Jack Krakower, individually, and their 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, indirectly or by implication, that:

(a) All persons in need of visual correction can successfully wear respondents' contact lenses.

(b) Said lenses will correct all defects in vision.

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(c) A person can wear said lenses all day unless it is clearly disclosed that this is possible only after such person has been fully adjusted thereto.

(d) Said contact lenses afford protection to the eye of the wearer, unless limited to the small portion covered thereby.

(e) 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 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 17th day of March, 1961, become the decision of the Commission; and, accordingly:

It is ordered. That the respondents herein 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

CONSOLIDATED FELT COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 8174. Complaint, Nov. 14, 1960—Decision, Mar. 17, 1961

Consent order requiring two affiliated manufacturing concerns in Kearny, N.J., and their common officer to cease violating the Wool Products Labeling Act by labeling wool batting as "80% reused wool, 20% undetermined fibers" and labeling quilted interlining material as "80% reused wool, 20% other fibers" when both products contained substantially less than 80% reused wool.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Consolidated Felt Company, Inc., a

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corporation, and Zenith Quilting Corporation, a corporation, and Peter Miller, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the Wool Products Labeling 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 Consolidated Felt Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Zenith Quilting Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Peter Miller is president and secretary of both corporate respondents. Said individual respondent formulates, directs and controls, the acts, practices and policies of said corporate respondents. Respondents' office and principal place of business is located at 1342 Inwood Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since April of 1959, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, or offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR.3. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products was wool batting labeled or tagged by respondent Consolidated Felt Company, Inc., as consisting of "80% reused wool, 20% undetermined fibers" and quilted interlining material labeled or tagged by respondent Zenith Quilting Corporation as consisting of "80% reused wool, 20% other fibers", whereas in truth and in fact, said products contained substantially less reused wool than was indicated by the foregoing labels or tags affixed thereto.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a) (2) of the Wool

Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Respondents in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including wool batting and quilting interlining material.

PAR. 6. The aforesaid acts and practices of the respondents were in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael P. Hughes supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 14, 1960, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated January 16, 1961, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the 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 have 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 said agreement. It has been

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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 aforesaid 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 of 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:

1. Respondents Consolidated Felt Company, Inc. and Zenith Quilting Corporation are corporations existing and doing business under and by virtue of the laws of the State of New York. Formerly the principal place of business was 1342 Inwood Avenue, in the City of New York, State of New York; at present the principal place of business is 60 Passaic Avenue, Kearny, New Jersey.

Individual respondent Peter Miller is president and secretary of both corporate respondents. His office is the same as the corporate respondents.

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 Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Consolidated Felt Company, Inc., a corporation, and its officers, and Zenith Quilting Corporation, a corporation, and its officers, and Peter Miller, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool batting or interlining material, or other wool products, as such

products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein.

2. Failing to affix labels to such products showing such elements of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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 17th day of March 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.