

Complaint

58 F.T.C.

IN THE MATTER OF

BERNARD M. HAMBERG DOING BUSINESS AS
TRU-SITE OPTICAL COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8166. Complaint, Nov. 8, 1960—Decision, Apr. 13, 1961*

Consent order requiring a Philadelphia seller of contact lenses to cease representing falsely in advertising that his contact lenses could be worn successfully all day without discomfort by all persons, that they would correct all defects in vision, afford protection to the eye, and 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 Bernard M. Hamberg, individually and trading and doing business as Tru-Site Optical Company, hereinafter referred to as 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 Bernard M. Hamberg is an individual trading and doing business as Tru-Site Optical Company, with his office and principal place of business located at 107 North 9th Street, Philadelphia, Pennsylvania. He also trades and does business under the name of Tru-Site Optical Company at the following addresses: 4615 Frankfurt Avenue and 67 West Cheltenham Avenue, in Philadelphia, Pennsylvania; 509 Market Street, Chester, Pennsylvania; and 28 North Main Street, Souderton, Pennsylvania.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the advertising, offering for sale and sale to the public of, among other things, corneal contact 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. Respondent causes said contact lenses, when sold, to be transported from his places of business in Philadelphia, Pennsylvania, to purchasers thereof located in various other states of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said contact lenses in

commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business respondent has disseminated, and has caused the dissemination of, advertisements concerning his 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 brochures, for the purpose of inducing, and which are 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 the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his 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 by respondent are the following:

My Glasses Are Invisible . . . I'm Wearing Tru-Tact Contact Lenses! You too, can read, work, dance, swim, play: do whatever you like without a thought about how you see! Your contact lenses are invisible, absolutely undetectable, supremely comfortable! You'll look better, see better, feel better with contact lenses!

The finest way to better vision.

Enjoy your vacation with contact lenses fitted by TRU-SITE. Wear Now Pay Later Invisible, Comfortable, All day wearing.

Contact lenses actually afford protection to the eye.

. . . they are unbreakable.

PAR. 5. By and through the statements 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. Respondent's contact lenses will correct all defects in vision.

3. There is no discomfort in wearing respondent's contact lenses.

4. Respondent's contact lenses can be worn all day in complete comfort.

5. Respondent's contact lenses afford protection to the eye of the wearer.

6. Respondent's contact 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 people in need of visual correction cannot successfully wear respondent's contact lenses.
2. Respondent's lenses will not correct all defects in vision.
3. Practically all persons will experience some discomfort when first wearing respondent's lenses. In a significant number of cases discomfort will be prolonged.
4. Many persons cannot wear respondent's contact lenses all day without discomfort and no person can wear said lenses all day without discomfort until such person has become fully adjusted thereto.
5. Respondent's contact lenses cover only a small portion of the eye and afford protection only to the portion of the eye that is covered.
6. Respondent's contact lenses are breakable.

PAR. 7. The dissemination by the 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. Garland S. Ferguson supporting the complaint.

Balka and Balka by *Mr. Henry W. Balka* of Philadelphia, Pa., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Commission issued its complaint November 8, 1960 against respondent charging him with disseminating false advertisements concerning contact lenses. The complaint further charged that the dissemination of such advertisements constituted unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Council presented to the undersigned hearing examiner on February 8, 1961 an agreement dated February 1, 1961, among respondent, Bernard M. Hamberg, his counsel, and counsel supporting the complaint providing for the entry without further notice of a cease and desist order. Said agreement has been 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 respondent of all jurisdictional facts alleged in the complaint.

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 on 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 respondent 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 settlement purposes only and does not constitute an admission by respondent that he has 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. Bernard M. Hamberg is an individual trading and doing business as Tru-Site Optical Company, with his principal place of business located at 107 North 9th Street, Philadelphia, Pennsylvania. He also trades and does business under the name of Tru-Site Optical Company at other addresses in the State of Pennsylvania, as set forth in the complaint.

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

ORDER

It is ordered, That respondent Bernard M. Hamberg, individually and trading and doing business as Tru-Site Optical Company, or trading under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of his 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 respondent's contact lenses.

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

(c) There is no discomfort in wearing respondent's lenses.

(d) 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.

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

(f) Said contact lenses are unbreakable.

2. Disseminating, or causing the dissemination of 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 13th day of April 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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.

IN THE MATTER OF

EUROPE CRAFT IMPORTS, INC., ET AL.

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

Docket 8211. Complaint, Dec. 7, 1960—Decision, Apr. 13, 1961

Consent order requiring New York City importers of wool products from Holland to cease violating the Wool Products Labeling Act by labeling as "55% Wool 45% Helanca", ladies' and men's ski pants which contained substantially less woolen fibers than thus represented, by rendering inconspicuous the required information as to fiber content on labels by reason of insufficient background contrast, and by using the term "Helanca" instead of the common generic name of the fiber; and to cease representing falsely, by use in advertising matter and on labels of two ski sticks inserted in a snow-covered slope and the words "Piz Palu" (a Swiss mountain) and "St. Moritz" (a Swiss village), that their said ski pants were manufactured in Switzerland.

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 Europe Craft Imports, Inc. a corporation, and Herman Feigenheimer and Gerda Feigenheimer, individually and as officers of said corporation, 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 Europe Craft Imports, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Herman Feigenheimer and Gerda Feigenheimer are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 488 7th Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1959 respondents have imported from Holland, introduced into commerce, offered