

It is, therefore, ordered, That the complaint be, and the same hereby is, dismissed without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner on the 27th day of April 1961, become the decision of the Commission.

IN THE MATTER OF DUNSHAW, INC., ET AL.

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

Docket 8158. Complaint, Oct. 28, 1960—Decision, Apr. 27, 1961

Consent order requiring New York City retailers of contact lenses to cease misrepresenting in advertising the effectiveness, comfort, and safety of the contact lenses as in the order below set forth.

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 Dunshaw, Inc., a corporation, and A. R. Dunlavy and F. A. Dunlavy, 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 Dunshaw, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its main office and principal place of business located at 130 West 42nd Street, New York, New York.

Respondents A. R. Dunlavy and F. A. Dunlavy 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.

Complaint

58 F.T.C.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of contact lenses at retail to the consuming public.

Contact lenses are devices designed to correct the vision of the wearer and are "devices," as the term "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their said business respondents have disseminated, and caused the dissemination of, certain advertisements concerning their 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, newspapers, circulars and other advertising matter, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said contact lenses; and have disseminated and caused the dissemination of, advertisements concerning said preparation 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 preparation 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 said advertisements disseminated as hereinabove set forth are the following:

Today if the patient has motivation and an earnest desire to wear them, in the hands of a good fitter, there should be no reason for not being able to do so. See in comfort and safety all day long.

It is safer to wear contact lenses than regular spectacle lenses because the plastic lens acts as a protective covering of the eye.

Yes. Contacts are invisible—yet they actually give you better eyesight than ordinary spectacles—better side vision, no steaming, no cleaning, no breaking.

PAR. 5. Through the use of the statements in the aforesaid advertisements, and others of similar import not specifically set out herein, respondents represented, directly or by implication, that:

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. There is no discomfort in wearing respondents' lenses.
3. All persons can wear respondents' lenses all day without discomfort.
4. Said lenses act as a protective covering for the eye.
5. Said lenses will correct all defects in vision.
6. Said lenses are unbreakable.

PAR. 6. The said advertisements were misleading in material respects and constituted "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. Practically all persons will experience some discomfort when first wearing respondents' contact lenses. In a significant number of cases discomfort will be prolonged.

3. Many persons cannot wear respondents' contact lenses all day without discomfort and no person can wear said lenses all day with comfort until such person has become fully adjusted thereto.

4. Said lenses afford protection only to the small portion of the eye that is covered by them.

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

6. Said lenses are not unbreakable.

PAR. 7. The dissemination by the 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. Frederick McManus for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 28, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On February 10, 1961, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only, does not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby

Order

58 F.T.C.

accepted and it is ordered that 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. The following jurisdictional findings are made and the following order issued.

1. Respondent Dunshaw, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its main office and principal place of business located at 130 West 42nd Street, in the City of New York, State of New York.

Respondents A. R. Dunlavy and F. A. Dunlavy 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 and the proceeding is in the public interest.

ORDER

It is ordered, That Dunshaw, Inc., a corporation, and its officers, and A. R. Dunlavy and F. A. Dunlavy, individually and as officers of said corporation, and respondents' 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 advertisement represents, directly or by implication that:

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

b. There is no discomfort in wearing respondents' lenses.

c. Respondents' 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.

d. Respondents' lenses protect the eye unless limited to the portion of the eye that is covered thereby.

e. Respondents' lenses will correct all defects in vision.

f. Said 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 of said products in commerce, as "commerce" is defined in the Federal Trade Commis-

DORCHESTER WOOLEN COMPANY

641

637

Complaint

sion Act, which advertisement contains any representation prohibited in paragraph 1 above, or which fails to reveal the facts required by paragraph 1 (c) thereof.

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 27th day of