

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner as to respondent Philip de Journo (named in the complaint as Philip De Jorno) shall, on the 3rd day of June, 1961, become the decision of the Commission.

IN THE MATTER OF

R. O. DAVIS ET AL. TRADING AS
CONTACT LENS CENTER

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

Docket 7950. Complaint, June 16, 1960—Decision, June 6, 1961

Consent order requiring sellers in Seattle, Wash., to cease making such false claims in advertising in newspapers, circulars, etc., as that their "Star-Vault" contact lenses could be worn all day with complete comfort by all persons in need of visual correction; and would correct all defects in vision, protect the eye from dust and foreign objects, and replace eyeglasses, among other things, as in the order below specified.

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 R. O.

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Davis and N. D. Whipple, individually and as copartners trading and doing business as Contact Lens Center, have violated the provisions of the 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. R. O. Davis and N. D. Whipple are individuals and copartners trading and doing business under the name of Contact Lens Center, with their principal place of business located at Joshua Green Building, 4th and Pike Streets, Seattle, Washington.

PAR. 2. Respondents are now, and for some years last past have been, engaged in the advertising, offering for sale and sale of corneal contact lenses. Certain of said contact lenses are sold under the name of "Star-Vault" contact lenses. 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 their aforesaid 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 advertisements inserted in newspapers of general circulation, 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 have disseminated, and have 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 are 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 advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

You too can take off your glasses and see with invisible contact lenses. Sooner than you think you'll thrill to the enjoyment of seeing perfectly without glasses.

* * *

See Better, Look Better without Glasses. Think of the enjoyment of seeing naturally without glasses.

* * *

The older types of contact lenses couldn't be worn more than a few hours, but Star-Vault 5-Vent lenses, can be worn all day.

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Q. Are Star-Vault contact lenses painful?

A. Absolutely not.

Is there a difference in contact lenses?

There certainly is . . . the Star-Vault lens utilizes a natural law to provide all day comfort. A thin layer of lacrimal fluid (tears) is always present on the surface of the human eye. The newly perfected designs of 5 vents combined with a central vault allows the normal circulation of tears and oxygen to provide comfort, safety and sharp vision throughout the day.

* * *

Perfect vision without glasses sounds like an impossible dream but that dream can become a reality when you change to Star Vault Contact Lenses.

* * *

Both medical and optical authorities on contact lenses say that all day wear, comfort, safety and natural vision are offered by the use of the new invisible contact lenses.

* * *

As pioneers and researchers in contact lenses we supply both the public and eye profession with the Star-Vault grooved contact lens.

* * *

. . . provides a covering for the eye . . . protect the eye from dust and foreign objects.

PAR. 4. By and through the statements made in said advertisements disseminated and caused to be disseminated as aforesaid, respondents represented directly or by implication that:

1. All persons in need of visual correction can successfully wear their contact lenses.
2. There is no irritation or discomfort in wearing their contact lenses.
3. Said contact lenses can be worn all day by all persons with complete comfort.
4. Eyeglasses can be discarded upon the purchase of said contact lenses.
5. Their contact lenses will correct all defects in vision.
6. Their contact lenses differ from other contact lenses in that they permit air and tears to bathe the cornea.
7. Respondents are pioneers and researchers in the contact lens field.
8. Their contact lenses provide a covering for the eye and protect the eye from dust and foreign objects.

PAR. 5. 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 respondents' contact lenses.

2. Practically all persons will experience some irritation and discomfort when first wearing respondents' contact lenses. In a significant number of cases irritation and 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 in complete comfort until he or she has become fully adjusted thereto.

4. Eyeglasses cannot always be discarded upon the purchase of respondents' contact lenses.

5. Respondents' contact lenses will not correct all defects in vision.

6. Many competitive contact lenses permit air and tears to bathe the cornea.

7. Respondents are neither pioneers nor researchers in the contact lense field. They purchase their contact lenses from others.

8. Respondents' contact lenses provide a covering and protection for only the cornea which is a small portion of the eye.

PAR. 6. The dissemination by 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. John J. McNally and Mr. Garland S. Ferguson for the Commission.

Respondent R. O. Davis, for himself.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission), on June 18, 1960, issued its complaint herein, charging the respondents R. O. Davis and N. D. Whipple, individually and as copartners trading and doing business as Contact Lens Center, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On February 20, 1961, 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 R. O. Davis and the attorney supporting the complaint, under date of January 28, 1961, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

After due consideration, 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 signatory thereto have specifically agreed to the following matters, as to respondent R. O. Davis:

1. Respondent R. O. Davis is an individual trading and doing business as Contact Lens Center, with his office and principal place of business located at Joshua Green Building, Fourth and Pike Streets, Seattle, Washington.

2. Respondent R. O. Davis admits all of 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 respondent R. O. Davis. The remaining respondent, N. D. Whipple, will be dealt with by further proceedings.

4. Respondent R. O. Davis 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.

With respect to the remaining respondent, N. D. Whipple, whose full name is Neal Dow Whipple, a hearing was held in Seattle, Washington, on March 8, 1961, at which respondent R. O. Davis (full name Ronald O. Davis), having been duly sworn, testified that

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respondent N. D. Whipple was only an employee from December, 1958, to and including July, 1959; that he went to Bradentown, Florida, and never had and does not now have any interest in the business of Contact Lens Center. Counsel supporting the complaint, upon this evidence, moved for a dismissal of the complaint herein as to respondent N. D. Whipple. Said motion was granted by the hearing examiner on the record, and is hereby taken into account in this initial decision, pursuant to §3.8(e), as amended, of the Commission's Rules of Practice for Adjudicative Proceedings.

Upon due consideration of said complaint and agreement as to respondent R. O. Davis, and of the record herein as to respondent N. D. Whipple, the hearing examiner approves and accepts the said "Agreement Containing Consent Order To Cease And Desist"; finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against respondent R. O. Davis, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the following order to cease and desist, as proposed in said agreement, is appropriate for the just disposition of all the issues in this proceeding as to said respondent R. O. Davis, as is the dismissal of the complaint herein with respect to respondent N. D. Whipple. Therefore,

It is ordered, That R. O. Davis, individually, or trading as Contact Lens Center, or under any other name or names; his 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:

I. 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 said contact lenses;

(b) There is no irritation or discomfort in wearing said contact lenses;

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

(d) Eyeglasses can be discarded upon the purchase of said contact lenses;

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- (e) Said contact lenses will correct all defects in vision;
- (f) Said contact lenses differ from other contact lenses in that they permit air and tears to bathe the cornea;
- (g) He is a pioneer and researcher in the contact lens field;
- (h) Said contact lenses provide a covering for the eye from dust and foreign objects;

II. 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 I hereof.

It is further ordered, That the complaint herein, insofar as it concerns respondent N. D. Whipple, be, and the same hereby is, dismissed.

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 6th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent R. O. Davis, individually and trading and doing business as Contact Lens Center, 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.