

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 June 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

AMERICAN CONTACT LENS LABORATORIES, INC., ET AL.

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

Docket 7954. Complaint, June 16, 1960—Decision, June 14, 1961

Consent order requiring sellers of contact lenses in Detroit, Mich., to cease representing falsely in advertising in newspapers, by television, and otherwise, that their contact lenses could be worn all day without discomfort by anyone needing visual correction, that they would correct all defects of vision, and that eyeglasses could be discarded upon their purchase.

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 American Contact Lens Laboratories, Inc., a corporation, and Eli Shapiro, Earl W. Bartlett, Philip Nolish, and Arthur Shapiro, individually and as officers of said corporation, hereinafter referred to as respondents, are in violation 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 American Contact Lens Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its main office and principal place of business located at 1710 Book Building, Washington Boulevard at Grand River in the City of Detroit, State of Michigan.

Complaint

58 F.T.C.

Eli Shapiro, Earl W. Bartlett, Philip Nolish and Arthur Shapiro are officers of the corporate respondent. These individuals direct, formulate and control the acts, practices and policies of the corporate respondent. Their business address is the same as that of of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising and in the sale to the public of corneal contact lenses known as "Natura" contact lenses. 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. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, advertisements concerning their said device, by the United States mail 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 and by means of circulars and pamphlets and television broadcasts, for the purpose of inducing, and which were likely to induce, the purchase of the said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their products by various means, including but not restricted to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly and indirectly, the purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the statements contained in advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Ideal For All Age Groups.

The answer for active youngsters, athletes and people on the go who have to tolerate the burden or the unsightliness of thick heavy lenses. Wonderful for older folks who require bi-focals.

At last a contact lens has been perfected with you in mind. It's invisible comfortable * * *

All day comfort and an exciting new life for you without glasses.

* * * Cancel out of your life all of the discomforts, embarrassments, and inconveniences of wearing glasses. * * * Broken or lost glasses right at the time when you need them most.

PAR. 4. By and through the statements made in said advertisements, and others of a similar import not specifically set out herein, respondents represent and have represented, directly and by implication, that:

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

2. Their contact lenses will correct all defects of vision, including those which require the use of bifocal lenses.

3. There is no discomfort in wearing their contact lenses.

4. Said contact lenses can be worn all day without discomfort.

5. Eyeglasses can be discarded upon the purchase of their contact lenses.

PAR. 5. The statements contained in the aforesaid advertisements 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. Respondents' contact lenses will not correct all defects in vision.

3. Respondents' contact lenses will not correct defects in vision in all cases requiring bifocal lenses.

4. 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.

5. 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.

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

PAR. 6. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, 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.

Mr. Frank M. Polasky, of Saginaw, Mich., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued June 16, 1960, charged the respondents, American Contact Lens Laboratories, Inc., a corporation located at 1710 Book Building, Washington Boulevard at Grand River, Detroit, Michigan, and Earl W. Bartlett, Philip Nolish, Eli Shapiro and Arthur Shapiro, individually and as officers of said corporation, with disseminating and causing to be disseminated in commerce misleading and false advertisements as to

the uses, performance, effects and benefits of, by, and to be derived from, corneal contact lenses sold by them in commerce, all in contravention of the Federal Trade Commission Act. Earl W. Bartlett's business address is the same as that of the corporate respondent, but Philip Nolish is now located at 116 South Washington Avenue, in Saginaw, Michigan, and Eli Shapiro and Arthur Shapiro are now located at 118 Kearsley Street, Flint, Michigan.

After the issuance of the complaint, respondents (with the advice of their attorney) and counsel in support of the complaint entered into an agreement containing a consent order to cease and desist, disposing of all the issues as to all parties in this proceeding. It appears from said agreement and from papers submitted therewith, that respondents Philip Nolish, Eli Shapiro and Arthur Shapiro are no longer officers or stockholders of the corporate respondent, they having severed their connections therewith and sold all their stock therein to Earl W. Bartlett on or about August 5, 1959. It appears also from said agreement that Eli Shapiro and Arthur Shapiro are the same persons as are named in a cease and desist order heretofore issued against them in a prior case before the Commission, which order prohibits all the practices set forth in the complaint herein except those for which provision is made against them in the consent order herein. The agreement provides, therefore, that the complaint be dismissed as to Philip Nolish, Eli Shapiro, and Arthur Shapiro as officers of the corporate respondent and as to Eli Shapiro and Arthur Shapiro as to all parts thereof except that for which such provision is made in the said consent order.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted, and, upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents American Contact Lens Laboratories, Inc., a corporation, and its officers, and Earl W. Bartlett, individually and as an officer of said corporation, and Philip Nolish, individually, and said 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) Their contact lenses will correct all defects in vision.

(c) Their contact lenses will correct defects in vision in all cases which require bifocal lenses.

(d) There is no discomfort in wearing said lenses.

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

(f) Eyeglasses can always be discarded upon the purchase of respondents' lenses.

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 Commission Act, which advertisement contains any representation prohibited in Paragraph 1 above.

It is further ordered, That respondents Eli Shapiro and Arthur Shapiro, individually, and their 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 their contact lenses will correct defects in vision in all cases which require bifocal lenses.

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 Commission Act, which advertisement contains the representation prohibited in Paragraph 1 above.

It is further ordered, That the complaint, except as to Paragraph Four 2, as it relates to respondents Eli Shapiro and Arthur Shapiro, individually and as officers of the corporate respondent and as to Paragraph Four 2, as officers of the corporate respondent, be and the same hereby is, dismissed and that the complaint insofar as it relates to respondent Philip Nolish as an officer of the corporate respondent, 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 14th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That 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

MONTGOMERY WARD & CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8200. Complaint, Dec. 6, 1960—Decision, June 14, 1961*

Consent order requiring a large Chicago mail order retailer, to cease making deceptive price and savings claims for its automobile tires, parts, and accessories, through such practices as setting out as "list prices" in newspaper advertisements, amounts substantially in excess of actual retail prices, and representing the difference between such "list" prices and the advertised sale prices as savings for the buyer.

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 Montgomery Ward & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing 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 Montgomery Ward & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the advertising, offering for sale and sale of many articles of merchandise, including automobile tires.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, said merchandise, including its automobile tires, when sold, to be shipped from its place of business in Chicago, Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent also maintains retail stores in various States of the United States, including the States of Maryland and Virginia. Respondent in some instances causes said automobile tires to be shipped from the manufacturer thereof to these retail stores, while in other instances respondent causes said tires to be shipped from its warehouses located in various states to said retail stores located in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said tires in com-