

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
HERNIA CONTROL, INC., ET AL.

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

Docket 8261. Complaint, Dec. 30, 1960—Decision, July 25, 1961

Consent order requiring Boston, Mass., distributors to cease misrepresenting the effectiveness of their "Muscle-Spension" devices in the control of ruptures and hernias, and their time in business, in advertisements in newspapers and by means of brochures, circulars, match covers, and other media.

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 Hernia Control, Inc., a corporation, and Robert A. Sykes and Ann H. Sykes, individually and as officers of said corporation, hereinafter referred

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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 Hernia Control, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at 145 Tremont Street, Boston, Massachusetts. Said corporation does business under the name of Sykes Center.

Respondents Robert A. Sykes and Ann H. Sykes 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.

PAR. 2. Respondents are now, and for some years last past have been, engaged in the business of selling and distributing devices as "device" is defined in the Federal Trade Commission Act. Said devices are designated as "Muscle-Spension" and are offered for sale to persons having ruptures or hernias.

PAR. 3. Respondents have caused and now cause, their said devices, when sold, to be transported from their place of business in the State of Massachusetts to purchasers thereof located in various other states of the United States, and at all times mentioned herein have maintained a course of trade in said devices in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce is and has been substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, advertisements concerning 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 various newspapers, and by means of brochures, circulars and match covers and other advertising media for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said devices, and respondents have disseminated, and caused the dissemination of, advertisements concerning said devices, including but not limited to, the media referred to above, 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.

PAR. 5. Among and typical of the statements contained in said advertisements, disseminated, and caused to be disseminated, by the respondents are the following:

To those who have endured the torment of trusses. To those who fear to work and play normally because of the threat of hernia, to those who have found surgery unsuccessful Muscle-Spension offers a whole new world.

Much as the dentist might fill the cavity in a tooth, the Muscle-Spension technician measures and fits the length, depth and width of this area. The resulting prosthesis or muscular substitute suspends the weakened muscles to prevent their sagging and so prevents the development of the hernia.

But the most important fact of all is that whether or not the muscular tone is revived, the control with Muscle-Spension can free its wearer of the problems of reducible hernia promptly and permanently, through its proper use.

Those victims of hernia who have had the experience of the results of Muscle-Spension as developed at Sykes Center know that it proved a practical answer to the age old problem of finding an orthotic remedy for them.

The future of Muscle-Spension then must lay largely in the hands of its present owners. These people had the experience needed to tear down the stone wall of skepticism built by disillusioned truss wearers and by the medical profession against the possibility that an acceptable remedy without surgery is available.

Serving since 1916.

PAR. 6. Through the use of the statements and representations contained in the advertisements set out in Paragraph Five, and others of similar import not specifically set out herein, respondents represented, directly and by implication that:

- (a) Their said devices are not trusses.
- (b) The use of their said devices will cure ruptures or hernias.
- (c) That the use of their said devices will prevent the development, that is, the enlargement of ruptures or hernias.
- (d) Said devices will retain or hold all ruptures or hernias.
- (e) The use of their said devices will free the wearer of the problems of reducible ruptures or hernia.
- (f) Their said devices will retain ruptures or hernias under all conditions of activity or strain.
- (g) Their said devices provide a remedy for ruptures or hernia without surgery.
- (h) The respondents have been in the business of rupture control since 1916.

PAR. 7. The aforesaid statements were and 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:

- (a) Respondents devices are trusses.
- (b) The use of said devices will not cure ruptures or hernias.

(c) The use of said devices will not prevent the development or enlargement of ruptures or hernias.

(d) Said devices will not be of value in retaining or holding ruptures or hernias except those that are reducible.

(e) The use of said devices will not free the wearer of the problems of reducible rupture or hernia.

(f) Said devices will not retain ruptures or hernia under all conditions of activity or strain.

(g) The use of said devices will not provide a remedy for ruptures or hernia without surgery.

(h) Respondents have not been in the business of rupture control since 1916 but for a considerably lesser period of time.

PAR. 8. 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 supporting the complaint.

Respondents, *pro se*.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 30, 1960, charging them with violation of the Federal Trade Commission Act in connection with the sale and distribution of their devices, designated as "Muscle-Spension".

On April 20, 1961, there was submitted to the hearing examiner an agreement between the respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the 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 and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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.

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The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement 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. Respondent Hernia Control, Inc., is a Massachusetts corporation with its principal office and place of business located at 145 Tremont Street, Boston, Massachusetts. Said corporation does business under the name of Sykes Center.

Individual respondents Robert A. Sykes and Ann H. Sykes are officers of the corporate respondent and formulate, direct and control the acts and practices of said 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 the respondents Hernia Control, Inc., a corporation, and its officers, and Robert A. Sykes and Ann H. Sykes, 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 devices known as "Muscle-Spension", or any device of substantially similar construction or design, whether sold under said name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication that:

- (a) Said devices are not trusses;
- (b) Said devices will cure ruptures or hernias;
- (c) Said devices will prevent the development or enlargement of ruptures or hernias;
- (d) Said devices will be of value in holding or retaining a rupture or hernia unless limited to reducible ruptures or hernias;
- (e) Said devices will free the wearer thereof of the problems of reducible rupture or hernia;
- (f) Said devices will retain ruptures under all conditions of activity or strain;

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(g) The use of said devices will provide an adequate remedy for ruptures or hernia without surgery;

(h) Respondents, or any of them, have been in the business of rupture control since 1916, or misrepresenting the period of time that they, or any of them, have been in such business.

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 devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited by Paragraph 1 of this order.

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 25th day of July 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