

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
SURGICAL APPLIANCE INDUSTRIES, INC., ET AL.

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

Docket 8407. Complaint, June 1, 1961—Decision, Oct. 5, 1961

Consent order requiring Cincinnati, Ohio, distributors of women's nylon elastic hosiery to retailers, to cease representing falsely in catalogs, in advertising mats supplied to customers, on boxes in which the hose was sold, and on folders enclosed therein, that the hosiery was "70 gauge", when it was substantially less than 70 gauge.

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 Surgical Appliance Industries, Inc., a corporation, and William A. Pease, Isaac M. Pease and Walter J. Gruber, 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 Surgical Appliance Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Erie Avenue at Pennsylvania Railroad, in the City of Cincinnati, State of Ohio.

Respondents William A. Pease, Isaac M. Pease and Walter J. Gruber 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 time last past have been, engaged in the advertising, offering for sale, sale and distribution of women's nylon elastic hosiery to retailers for resale to the public. They advertise and sell said product under the trade name OTC and Ohio Truss Company.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their elastic hosiery, respondents have stated in catalogs, in advertising mats supplied to customers, on the boxes in which said hose is sold and the folders enclosed therein that said hosiery is "70 gauge".

PAR. 5. Respondents' hosiery is manufactured on a circular knitting machine. The term "gauge" as applied to respondents' circular knit hosiery means the number of needles employed per $1\frac{1}{2}$ inches of the needle circle of said knitting machine.

PAR. 6. Said statement referred to in Paragraph Four was false misleading and deceptive. In truth and in fact said hosiery was substantially less than 70 gauge.

PAR. 7. By the aforesaid practices referred to in Paragraph Four respondent places in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the gauge of respondents' hosiery.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce,

769

Decision

with corporations, firms and individuals in the sale of hosiery of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statement, representation and practice has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statement and representation was and is true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles W. O'Connell for the Commission;

Wood, Herron & Evans, by *Mr. Truman A. Herron*, Cincinnati, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on June 1, 1961, charging Respondents with violation of the Federal Trade Commission Act by disseminating, in catalogs, advertising mats and folders, and on boxes, a false, misleading and deceptive statement of the gauge of the women's nylon elastic hosiery sold and distributed by them.

Thereafter, on August 4, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Chief, Division of General Advertising, and the Director of the Commission's Bureau of Deceptive Practices, and thereafter, on August 11, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Surgical Appliance Industries, Inc., as an Ohio corporation, with its office and principal place of business located at Erie Avenue at Pennsylvania Railroad, Cincinnati, Ohio; Respondents William A. Pease and Isaac M. Pease as officers of the corporate Respondent, and Respondent Walter J. Gruber as a former officer thereof, their address being the same as that of the corporate Respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of juris-

dictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

The agreement contains a recommendation that the complaint be dismissed as to Respondent Walter J. Gruber as an officer of the corporate Respondent for the reason that he is no longer an officer of the corporation, as more fully set forth in the affidavit attached to and made a part of the agreement.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Surgical Appliance Industries, Inc., a corporation, and its officers, and Respondents William A. Pease and Isaac M. Pease, individually and as officers of said corporation, and Walter J. Gruber, individually, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of elastic hosiery, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or indirectly, the gauge of said hosiery;
2. Representing directly or indirectly that hosiery knit on a circular knitting machine is of a stated gauge unless the term "gauge" denotes the number of needles employed per $1\frac{1}{2}$ inches of the knitting circle of said machine;

3. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner or as to the things hereinabove inhibited.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Respondent Walter J. Gruber as an officer of Respondent corporation.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 5th day of October 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Surgical Appliance Industries, Inc., a corporation, William A. Pease and Isaac M. Pease, individually and as officers of said corporation; and Walter J. Gruber, individually, 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.
