

effective July 21, 1961, the initial decision of the hearing examiner shall, on the 17th day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) 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
THE PLASTIC CONTACT LENS COMPANY ET AL.

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

Docket 8159. Complaint, Oct. 28, 1960—Decision, Jan. 17, 1962

Consent order requiring Chicago distributors of contact lenses to optometrists for resale to cease representing falsely in pamphlets and other advertising media that anyone could wear their contact lenses successfully, wear them all day without discomfort, and discard eyeglasses; and that the lenses provided a protective covering for the eye.

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 The Plastic Contact Lens Company, a corporation, and George N. Jessen, Newton K. Wesley and Joseph Cinefro, 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 The Plastic Contact Lens Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its main office and principal place of business located at 59 East Madison Avenue, Chicago 3, Ill.

Respondents George N. Jessen, Newton K. Wesley and Joseph Cinefro 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 contact lenses to optometrists for resale to the purchasing public.

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

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused to be disseminated, certain advertisements concerning their said 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 pamphlets and other advertising media, 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 to be disseminated, advertisements concerning such contact lenses 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 contact lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive of the statements and representations contained in the advertisements, disseminated as hereinabove set forth, are the following:

Complaint

60 F.T.C.

Are most people able to wear contact lenses?

If there is a definite need for them and the patient has a desire to wear them, there is no reason why contact lenses cannot be worn providing that one is fitted properly.

They are comfortable to wear and provide a protective covering to the eye.

And today, you have the Wesley-Jessen contact lens that is wearable all day.

Eliminate your spectacles * * * acquire that chic look. Call your contact lens specialist. He will be glad to advise you about the Wesley Jessen Contact Lenses.

You no longer need to wear eyeglasses.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented, and now represent, 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 said lenses all day without discomfort.
4. Said lenses provide a protective covering for the eye.
5. Respondents' lenses can replace eyeglasses to the extent that eyeglasses can be discarded.

PAR. 7. The said advertisements were, and are, misleading in material respects and constituted, and now 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 in need of visual correction cannot successfully wear respondents' contact lenses.
2. Practically all persons will experience some discomfort when first wearing respondents' lenses. In a significant number of cases discomfort will be prolonged.
3. Many persons cannot wear respondents' lenses all day without discomfort and no person can wear said lenses all day without discomfort until such person has become fully adjusted thereto.
4. Said lenses afford protection only to the small portion of the eye covered by them.
5. Said lenses cannot replace eyeglasses for all purposes for all persons. Some persons cannot discard their eyeglasses upon the purchase of respondents' lenses but must continue to use them for substantial periods 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 for the Commission.

Mr. W. M. Van Sciver, of Chicago, Ill., for respondents.

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

The Federal Trade Commission on October 28, 1960, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act, by making false statement concerning their products, to wit, (1) that all persons in need of visual correction can successfully wear respondents' contact lenses; (2) that there is no discomfort in wearing respondents' lenses; (3) that all persons can wear said lenses all day without discomfort; (4) that said lenses provide a protective covering for the eye; and (5) that respondents' lenses can replace eyeglasses to the extent that eyeglasses can be discarded. Respondents appeared and entered into an agreement dated October 30, 1961, containing a consent order to cease and desist, disposing of the issues in this proceeding without further hearings, which agreement has been duly approved by the Chief, Division of Food and Drug Advertising, and the Director of the Commission's Bureau of Deceptive Practices. Said agreement has been submitted to the undersigned, heretofore duly designed to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner and the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said 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, that said order to cease and desist 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, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order,

and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner, accordingly makes the following findings, for jurisdictional purposes, and issues the following order:

1. Respondent, The Plastic Contact Lens Company, is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its main office and principal place of business located at 59 East Madison Avenue, in the city of Chicago, State of Illinois.

2. Respondents George N. Jessen, Newton K. Wesley and Joseph Cinefro are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

It is ordered, That the Plastic Contact Lens Company, a corporation, and its officers, and George N. Jessen, Newton K. Wesley and Joseph Cinefro, 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 unless it is clearly revealed that practically all persons will experience some discomfort when first wearing respondents' lenses, and in a significant number of cases discomfort will be prolonged.

(c) Respondents' contact lenses can be worn all day 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 can replace eyeglasses to the extent that eyeglasses can be discarded by all persons.

2. Disseminating, or causing to be disseminated by any means, any advertisement for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said product, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 above, or which fails to comply with the affirmative requirements of paragraphs 1(b) and 1(c) above.

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 17th day of January 1962, 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