

Commissioner Kern not participating and Commissioner MacIntyre dissenting in H. P. Hood & Sons, Inc., docket 6425, not participating in the other cases.

IN THE MATTER OF

R. C. MYRICK ET AL. TRADING AS CAREY SURGICAL
APPLIANCE CO., ETC.

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

Docket 7806. Complaint, Mar. 3, 1960—Decision, May 24, 1962

Order requiring an individual with offices in Los Angeles and San Francisco, Calif., engaged in selling hernia trusses both in his offices and on the road, to cease making a variety of false claims for his said devices in advertising in newspapers, as in the order below set forth.

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. C. Myrick, an individual trading as Carey Surgical Appliance Co. and Allied Surgical Appliance Co., and Dorothy M. Myrick, an individual, 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

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent R. C. Myrick is an individual trading as Carey Surgical Appliance Co. and Allied Surgical Appliance Co., his Post Office address being Box 846, Camden, N.J. Respondent Dorothy M. Myrick, an individual, participates in the acts and practices herein-after set forth. Her address is also Post Office Box 846, Camden, N.J.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of a device, as "device" is defined in the Federal Trade Commission Act.

Said device is designated as "Hernia Guard", "Vacumatic Hernia Guard", "Vacuum Pad" and "Pneumatic Pad". The device is a hernia truss consisting of two semi-pneumatic rubber pads mounted on metal bases attached to the ends of a plastic covered steel spring rod shaped in a semicircle to fit around the body of the wearer. One of the pads has a rounded elevation in the center designed to plug a hernial opening. The other pad is flat and is intended to rest on the back of the wearer. The pads, which tilt up or down, are held in position by tension of the steel spring rod.

PAR. 3. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said device 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 and other advertising media; and have disseminated and caused the dissemination of, advertisements concerning said device 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 device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

RUPTURED

A FREE demonstration will be given by a certified Hernia Technologist direct from the factory of the NEW NO BELT, NO STRAP, NO BULB VACUMATIC PAD for men, women and children, AT OUR OFFICE . . .

This is the finest appliance ever offered. NO BELT to cut off circulation. NO STRAP to chafe. NO BULB to spread the opening. It helps nature correct the defect. You are protected all the time. AS THE VACUMATIC PAD IS WATERPROOF AND RUST-PROOF it is worn in the bath and swimming. Many have gotten relief and comfort they never dreamed possible. It's so

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light and easy to wear. This ad is worth a dollar on a NEW VACUUM PAD these dates only!

. . . CAREY SURGICAL APPLIANCE CO.

. . . 54 West Randolph St., Rm. 907,

Woods Bldg. Chicago

RUPTURED

(Picture showing two hands holding a round pad)

This Vacumatic Pad is the Secret to the Success of the HERNIA GUARD for proper RUPTURE CONTROL!

NO BELTS

NO STRAPS

NO HARNESS

Leading physicians and thousands of wearers endorse the Hernia Guard as the most revolutionary and satisfactory hernia-control since the invention of the truss. SWIM IN IT. BATHE IN IT. It offers almost unbelievable security and comfort and a new way to a more active and pleasant life for men, women and children. It helps nature to correct the defect in many cases.

PAR. 5. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. Through the use of the expression "Certified Hernia Technologist", that respondent R. C. Myrick and his salesmen and fitters are medically trained and expert in the field of hernias.

2. That said device is new in principle and revolutionary in character and provides benefits not afforded by other trusses.

3. That it controls all hernias.

4. That the device has no bulb in the sense in which bulbs are used in trusses.

5. Through the use of the name Vacumatic, as a part of the name of the device, that it operates on the principle of a vacuum and for this reason is beneficial for hernias.

6. That it helps nature correct hernias.

7. That it protects wearers by retaining hernias at all times.

8. That it give extraordinary relief and comfort, and is easier to wear than other trusses generally.

9. Through the use of the name "Vacumatic" and the picture of the so-called vacumatic pad and the statements, "no belts", "no straps" and "no harness", that the entire device consists of the pad.

10. That leading physicians have endorsed the device as the most revolutionary and satisfactory hernia control since the invention of the truss.

PAR. 6. The said advertisements were, and are, misleading in material respects and constituted, and now constitute, "false advertise-

ments" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. Neither respondent R. C. Myrick nor his salesmen or fitters are medically trained or experts in the field of hernias.
2. Respondents' device is not new in principle or revolutionary in character as it is not essentially different from other spring-type trusses. It will not provide benefits beyond those of other spring-type trusses.
3. Respondents' device will not control hernias other than reducible hernias.
4. The pressure pad on respondents' device is not essentially different and serves the same function as the bulb or pad on other trusses.
5. The pad on respondents' device does not operate on the vacuum principle. If it did, such action would be more harmful than beneficial to persons suffering from hernias.
6. Respondents' device will not help nature correct a hernia or have any effect upon a hernia other than to prevent its protrusion.
7. Respondents' device will not protect the wearer at all times as it will not hold a hernia under all conditions of activity and strain.
8. Respondents' device affords no greater relief than other trusses which retain a hernia that would otherwise protrude, nor is it easier to wear than many other trusses.
9. Respondents' device consists of more than a pad as set out in paragraph 2 hereof.
10. Respondents' device has not been endorsed by leading physicians as the most revolutionary and satisfactory hernia control since the invention of the truss.

PAR. 7. 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. Charles W. O'Connell supporting the complaint.

Mr. Raymond R. Dickey, Mr. Marshal Miller and Mr. Robert F. Rolnick of Danzansky & Dickey of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges R. C. Myrick, an individual trading as Carey Surgical Appliance Co. and Allied Surgical Appliance Co., and Dorothy M. Myrick, an individual, with false advertising in violation of the Federal Trade Commission Act. The

individual respondent R. C. Myrick, through counsel, answered and denied in substantial part, the allegations in the complaint. After several hearings, counsel for the Commission completed the presentation of evidence in support of the allegations of the complaint. Thereafter, before offering any evidence on behalf of respondent Myrick, counsel for respondent Myrick moved for leave to withdraw as his counsel by reason of respondent Myrick's failure to cooperate with his counsel, such as failing to advance necessary costs for investigation preparatory for hearing, reimburse counsel for certain expenses incurred by counsel on behalf of respondent Myrick and failure to pay attorneys' fees which the respondent Myrick had previously agreed to do. Upon the basis of these representations, the hearing examiner announced that said counsel would be permitted to withdraw. Thereafter, a further hearing was scheduled for January 16, 1962, in Washington, D.C., to afford respondent Myrick an opportunity to employ other counsel, and to present evidence and testimony in his own behalf, should he so desire. A notice of said scheduled hearing was mailed to Mr. Myrick at his last known address in Los Angeles and San Francisco, California. However, Mr. Myrick did not appear at said hearing nor did anyone appear in his behalf. Accordingly, the respondent R. C. Myrick will be considered in default for failure to appear at said hearing and offer evidence and testimony in his own behalf. Proposed findings of fact, conclusions of law and order have been filed by counsel supporting the complaint. Upon the basis of the entire record the undersigned hearing examiner makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The individual respondent R. C. Myrick, for approximately two years prior to October, 1958, traded as Carey Surgical Appliance Co., Woods Building, 54 West Randolph Street, Chicago, Ill., with a branch office in the Maison Blanche Building, 930 Canal Street, New Orleans, La. In October, 1958, the individual respondent R. C. Myrick sold all of his interest in Carey Surgical Appliance Co. to one J. J. Todd. At the time of the hearing held in this proceeding on June 21, 1960, the Carey Surgical Appliance Co. was no longer in business.

2. The individual respondent, Dorothy M. Myrick, formerly the wife of respondent R. C. Myrick, was only an employee of Carey Surgical Appliance Co. as a receptionist, and never owned an interest therein. She and the respondent R. C. Myrick are now divorced.

3. Subsequent to October, 1958 and prior to the issuance of the complaint herein on March 3, 1960, the individual respondent R. C. Myrick began doing business under the trade name of Allied Surgical Appliance Co., with an office located at 55 West 42d Street, New York, N.Y. On June 21, 1960, the residence address of respondent R. C. Myrick was 116 West 45th Street, New York, N.Y. Subsequent to Mr. Myrick's divorce from Dorothy M. Myrick, he was married to another woman.

4. At some time subsequent to the date of the initial hearing held in Washington, D.C., on June 21, 1960, the individual respondent R. C. Myrick moved to the State of California and is now doing business under the trade name of Abbot Surgical Appliance Co., Suite 815, 542 South Broadway, Los Angeles, Calif., with another office located in Room 215, 516 Sutter Street, San Francisco, Calif.

5. The respondent R. C. Myrick is now, and has been for more than one year last past, engaged in the sale and distribution of a device, as "device" is defined in the Federal Trade Commission Act. Said device is a hernia truss. The truss is sold both in the office and on the road by the respondent R. C. Myrick and his employees. Advertisements are placed in newspapers for the purpose of inducing the sale of said trusses in commerce, as "commerce" is defined in the Federal Trade Commission Act. When trusses are sold on the road the respondent Myrick places advertisements in local newspapers advertising the trusses and announcing that he or his salesmen representative will be at a specified hotel in a specified city at a specified time for the purpose of demonstrating, fitting and selling said trusses. CX-10 is one of the types of trusses sold by the respondent R. C. Myrick. Other trusses sold by Mr. Myrick are of the same general construction as CX-10 except for some variance in the gauge of steel in the torsion bar which surrounds one side of the body of the wearer or a variance in the size and circumference of the pads attached to the ends of the torsion bar.

6. Some of the advertisements which the respondent R. C. Myrick inserted in newspapers are the following:

RUPTURED

(Picture showing two hands holding a round pad)

This Vacumatic Pad is the Secret to the Success of the **HERNIA GUARD** for proper **RUPTURE CONTROL!**

NO BELTS

NO STRAPS

NO HARNESS

Leading physicians and thousands of wearers endorse the Hernia Guard as the most revolutionary and satisfactory hernia-control since the invention of the truss. SWIM IN IT. BATHE IN IT. It offers almost unbelievable security and comfort and a new way to a more active and pleasant life for men, women and children. Helps nature to correct the defect in many cases. Carey Surgical Appliance Co., 54 W. Randolph, Woods Bldg., Suite 907.

The above advertisement appeared in the *Chicago Daily Tribune* on Monday, August 26, 1957, and was received in evidence as CX-1. A similar advertisement appeared in the *Chicago Daily Tribune* on Tuesday, September 3, 1957. This advertisement, CX-2, contained the same language as that quoted in CX-1 above.

7. Another newspaper advertisement inserted by the respondent R. C. Myrick in the *Chicago Daily Tribune* on Monday, September 9, 1957, was CX-3. This advertisement is as follows:

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A FREE demonstration will be given by a Certified Hernia Technologist direct from the factory of the NEW NO BELT, NO STRAP, NO BULB VACUMATIC PAD for men, women and children, AT OUR OFFICE . . .

This is the finest appliance ever offered. NO BELT to cut off circulation. NO STRAP to chafe. NO BULB to spread the opening. It helps nature correct the defect. You are protected all the time. AS THE VACUMATIC PAD IS WATERPROOF AND RUST-PROOF it is worn in the bath and swimming. Many have gotten relief and comfort they never dreamed possible. It's so light and easy to wear. This ad is worth a dollar on a NEW VACUUM PAD these dates only! . . . CAREY SURGICAL APPLIANCE CO. . . . 54 West Randolph St., Rm. 907, Woods Bldg. Chicago

8. CX-5 is an advertisement placed by the respondent R. C. Myrick in the *Chicago Daily News*, of June 14, 1958, similar to CX-3 quoted above. CX-8 is an advertisement which Mr. Myrick placed in *The Times-Picayune*, New Orleans, Louisiana, on Monday, June 30, 1958. The wording in this advertisement is the same as in CX-3 except that in CX-8, the office listed was 921 Canal Street, Room 1024, Maison Blanche Bldg., New Orleans, Louisiana, instead of Woods Bldg., Chicago, Illinois.

9. Through the use of said advertisements, the respondent R. C. Myrick represented directly and by implication:

(1) By using the term "Certified Hernia Technologist", that he and his salesmen fitters are medically trained and experts in the field of hernias, whereas neither he nor his salesmen fitters are medically trained or experts in the field of hernias;

(2) That said device is new in principle and revolutionary in character and provides benefits not afforded by other trusses, whereas said device is not new in principle or revolutionary in character since it

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is not essentially different from other spring-type trusses. It will not provide benefits beyond those of other spring-type trusses.

(3) That it controls all hernias, whereas said truss will not control hernias other than reducible hernias.

(4) That the device has no bulb in the sense in which bulbs are used in trusses, whereas the pressure pad on the respondent Myrick's truss is not essentially different and serves the same function as the bulb or pad on other trusses.

(5) By using the word "Vacumatic," that the truss operates on the principle of a vacuum and for this reason is beneficial for hernias, whereas the pad on the respondent's truss does not operate on the vacuum principle.

(6) That it helps nature correct hernias, whereas said truss will not help nature correct hernias or have any effect upon a hernia other than to prevent its protrusion.

(7) That it protects the wearer by retaining hernias at all times, whereas said truss will not protect the wearer at all times as it will not stay in place and prevent a hernia from protruding under all conditions of activity and body movement.

(8) By using the name "Vacumatic" and the picture of the so-called vacumatic pad and the statements, "no belts", "no straps", and "no harness", that the entire device consists of the pad, whereas the truss consists of more than a pad.

(9) That leading physicians have endorsed the device as the most revolutionary and satisfactory hernia control since the invention of the truss, whereas said device has not been endorsed by leading physicians as the most revolutionary and satisfactory hernia control since the invention of the truss.

(10) The said advertisements were and are misleading in material respects and constitute "false advertisements", as that term is defined in the Federal Trade Commission Act.

CONCLUSION

The dissemination by the respondent R. C. Myrick of the false advertisements, as found herein, constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent R. C. Myrick, an individual trading under his own name or as Carey Surgical Appliance Co., Allied Surgical Appliance Co., or under any other name or trade designation,

and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a device designated as Hernia Guard, Vacuum Pad and Vacuum Pad, or any product or device of substantially similar construction or design, whether sold under the same names or any other name, do forthwith cease from directly or indirectly:

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

a. Which represents directly or by implication:

(1) That respondent's device operates upon a principle which is new, revolutionary or different from that employed by other trusses in common use.

(2) That respondent's device provides any benefits other than retaining a hernia, or affords benefits beyond those afforded by other trusses in common use.

(3) That respondent's device controls hernias unless expressly limited to reducible inguinal hernias.

(4) That said device is not equipped with a bulb in the sense in which bulbs are used in trusses.

(5) That the use of said device will help nature correct a hernia or have any beneficial effect on a hernia other than to prevent its protrusion.

(6) That said device will retain a hernia at all times and under all circumstances.

(7) That it will give greater relief than other trusses or is easier or more comfortable to wear than trusses in general use.

(8) That respondent's device consists of only a pad.

(9) That respondent's device has been endorsed by physicians as the most revolutionary or satisfactory hernia control, or misrepresenting in any manner the nature or extent of any endorsement of said device.

b. Which uses the words "vacuum" or "vacumatic" or any other word or term of similar import in connection with said device, or represents in any other manner that said device operates on the vacuum principle.

c. Which uses the expression "Certified Hernia Technologist" or any other words or expression of similar import, in reference to respondent, his agents, representatives or employees, or representing in any other manner that respondent, his agents, representatives or

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employees are medically trained or qualified to properly diagnose and treat hernias.

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 device in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1, hereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Dorothy M. Myrick.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall, on the 24th day of May 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondent R. C. Myrick, an individual trading under his own name or as Carey Surgical Appliance Co., Allied Surgical Appliance Co., or under any other name or trade designation, 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.
