

IN THE MATTER OF  
SPENCER GIFTS, INC., ET AL.

*Docket 8281. Complaint, Jan. 27, 1961—Decision, Nov. 13, 1962*

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

Order requiring mail order merchandisers in Atlantic City, N.J., to cease making such false claims in advertising as that their "Reduce-Eze" girdles would "Slim 4 Inches Without Diet", etc.

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 Spencer Gifts, Inc., a corporation, and Max Adler and Harry Adler, individually and as

officers of the 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 Spencer Gifts, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. Its office and principal place of business is located at 1601 Albany Avenue Boulevard, Atlantic City, N.J.

Respondents Max Adler and Harry Adler are the officers and principal stockholders of the corporate respondent. They formulate, direct and control its acts and practices including those hereinafter set forth. The address of the individual respondents is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising and retail sale of various kinds of merchandise, including a device, as "device" is defined in the Federal Trade Commission Act, by and through the medium of the United States mails. Such device is a girdle sold under the brand name of "Reduce-Eze".

Respondents cause their said merchandise, including the "Reduce-Eze" girdles to be shipped from their place of business in Atlantic City, New Jersey, to the purchasers thereof located in various states of the United States and maintain, and have maintained, a substantial course of trade in said merchandise and devices, in commerce, as "commerce" 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, 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, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondents have disseminated, and caused the dissemination of advertisements concerning said device by various means 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.

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

Slim 4 Inches Without Diet  
Slims You 2 Sizes

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Trims 4 Inches Off Your Figure  
To Reduce 4 Inches Without Diet

PAR. 4. Through the use of said advertisements and others of the same import but not specifically set out herein, respondents represented directly or by implication that the wearing of their girdles will reduce body weight without the necessity of dieting.

PAR. 5. The advertisements containing the aforesaid representations were and are misleading in a material respect and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the wearing of respondents' girdle will not reduce body weight.

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. Ames W. Williams* for the Commission.

*Mr. Saul W. Arkus* of *Arkus & Cooper*, of Atlantic City, N.J., for respondents.

## INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding issued January 27, 1961, charges respondents, Spencer Gifts, Inc., a corporation and Max Adler and Harry Adler individually and as officers of said corporation with violating the provisions of the Federal Trade Commission Act by using false, misleading and deceptive statements and representations in advertisements of a device sold under the brand name of "Reduce-Eze" girdle. The complaint was duly served upon respondents, who filed answers thereto. Hearings were held in Atlantic City, New Jersey and New York City, New York. Respondents' counsel requested additional hearings in Washington, D.C., but after the matter was set, declined to produce any additional evidence and requested that the record be closed for the purpose of taking testimony. Proposed findings of fact and conclusions of law were filed by the parties. The examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions of law proposed by the parties not hereinafter found or concluded are herewith rejected. Based upon the entire record, the undersigned examiner makes the following findings of fact, conclusions of law and order.

## FINDINGS OF FACT

1. Respondent, Spencer Gifts, Inc., is a corporation, organized and existing under and by virtue of the laws of the state of New Jersey

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with its office and principal place of business located at 1601 Albany Avenue, Atlantic City, New Jersey. Respondent, Max Adler is the principal officer and stockholder of the corporate respondent and formulates, directs and controls its acts and practices including the practices set forth in the complaint.

2. Respondents are now, and for some time last past have been, engaged in the advertising and retail sale of various kinds of merchandise, including devices as "devices" are defined in the Federal Trade Commission Act, by and through the medium of the United States mails. One of such devices is a girdle sold under the brand name of "Reduce-Eze". Respondents cause their said merchandise including the "Reduce-Eze" girdles to be shipped from their place of business in Atlantic City, New Jersey to purchasers thereof throughout the various states of the United States.

3. In the course and conduct of their business, respondents have disseminated and have caused dissemination of certain advertisements concerning their said devices by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly the purchase of said devices and respondents have also disseminated and have caused the dissemination of advertisements concerning their said devices, for the purpose of inducing or were likely to induce directly or indirectly the purchase of their said devices in interstate commerce.

Among and typical of the representations and statements in such advertisements are the following:

Slim 4 Inches Without Diet  
Slims You 2 Sizes  
Trims 4 Inches Off Your Figure  
To Reduce 4 Inches Without Diet

In addition to the girdle referred to as "Reduce-Eze", the respondents also advertised and sold girdles called "Deduce-Eze" and "Hip-Eze" which according to the testimony of Dr. Coyne, a witness for the Commission, are for all practical purposes one and the same type device as the girdle referred to as "Reduce-Eze". The uncontradicted testimony of Dr. Coyne, a specialist in physical medicine, was that there are only two ways (in the absence of pathological conditions) to reduce weight, (a) by increasing daily activity to burn up more fuel than you take in; and (b) to decrease the dietary intake each day so that less than the amount of energy required for daily activity is taken. Dr. Coyne stated that the respondents' girdles will not alter caloric intake or increase energy output. The only effect of the wearing of a girdle is

to change the configuration of the body by moving soft tissues up or down.

4. Through the use of said advertisements and others of the same import, respondents represented directly or by implication that the wearing of their girdles will reduce body weight without the necessity of dieting when such is not the fact.

5. The advertisements containing the representations and statements referred to in Finding Number 3 were and are misleading in a material respect and therefore, constitute "false advertising" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the wearing of respondents' girdles will not reduce body weight.

6. Respondent Harry Adler by affidavit states that he sold his capital stock in the respondent corporation on June 18, 1960, and that his relationship with the corporate respondent was terminated on that date. Furthermore that his former duties were limited to the supervision of personnel and that he did not participate in the formulation of policy or exercise direction or control over corporate activities, including advertising. Counsel supporting the complaint has no objection to the dismissal of the complaint as to Harry Adler.

#### CONCLUSION

The dissemination by the respondents of the false advertisements as herein found, constituted and now 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 Spencer Gifts, Inc., a corporation, and its officers and respondent Max Adler individually and as an officer of the 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 designated as "Reduce-Eze", "Deduce-Eze" or "Hip-Eze" girdles, or any other device of similar design, nature, purpose or operation, whether sold under the same name or any other name, do forthwith cease and desist from:

(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 the wearing of a girdle will cause any reduction in body weight.

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(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 devices 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 be, and the same is hereby dismissed as to the respondent, Harry Adler.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT  
OF COMPLIANCE

This matter having been heard by the Commission on the respondents' exceptions to the hearing examiner's initial decision; and

The Commission having considered the entire record, including the briefs and oral arguments of counsel for respondents and counsel in support of the complaint, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

*It is ordered*, That respondents' exceptions be, and they hereby are, denied.

*It is further ordered*, That the hearing examiner's initial decision, filed May 1, 1962, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That the respondents, Spencer Gifts, Inc., a corporation, and Max Adler, individually and as an officer of said corporation, 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.

By the Commission, Commissioner Higginbotham not participating.

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IN THE MATTER OF

J. A. FOLGER & COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE  
CLAYTON ACT