plainly distinguishable on its facts, and is not controlling here. Accordingly,

It is ordered, That respondent's petition for reconsideration be, and it hereby is, denied.

Commissioner Dixon not participating.

STAUFFER LABORATORIES, INC., ET AL.

Docket 7841. Order and Opinion, Feb. 21, 1963

Order vacating and remanding to the hearing examiner, because of inadequacy of the findings, order requiring a Los Angeles concern to cease making allegedly false weight reduction and muscle-firming claims for its electric "Magic Couch" or "Posture Rest" device.

Order Vacating Initial Decision and Remanding Case to Hearing Examiner

This matter having come on to be heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined that the initial decision should be vacated and set aside and the matter remanded to the hearing examiner for the preparation of a new initial decision for the reasons given in the accompanying opinion:

It is ordered, That the initial decision in this proceeding be, and it hereby is, vacated and set aside.

It is further ordered, That this matter be, and it hereby is, remanded to the hearing examiner for his further consideration in light of the Commission's views expressed in the accompanying opinion and for the preparation and filing of a new initial decision in accordance with the provisions of § 4.19(b) of the Commission's Rules of Practice on or before May 1, 1963.

Commissioner MacIntyre not concurring.

OPINION OF THE COMMISSION

BY ANDERSON, *Commissioner:*

The complaint charges respondents with dissemination of false and misleading advertisements promoting the sale of its "Posture Rest" device, alleging that the device has no value in reducing overall weight or particular areas of the body and that use of the device will neither tone nor firm sagging muscles as represented in respondents' advertisements. The hearing examiner found that the evidence sustained the charges and issued an order to cease and desist. Respondents appeal, chiefly contending that the hearing examiner failed to consider fairly the whole record and that his decision is not supported by substantial evidence.

The record as to the issue of the effectiveness of respondents' device covers in comprehensive detail the medical aspects of weight reduction and muscle toning. The parties submitted elaborate proposed findings with reference to evidence in the record, including the testimony of fourteen witnesses presented as experts. However, the review and analysis of this evidence in the initial decision is covered in three short paragraphs which are little more than an outline of the types of evidence presented. In the circumstances, the findings in the initial decision are inadequate.

It is well established that the Commission in deciding its cases must appraise the credibility of witnesses, weigh the evidence and draw inferences therefrom. If there is expert testimony, the Commission makes evaluations as to any conflicts which appear. *Carter Products, Inc.* v. *Federal Trade Commission*, 268 F. 2d 461, 487, 492–493, 496–497 (9th Cir. 1959) [6 S.&D. 598], *cert. denied* 361 U.S. 884; *Erickson* v. *Federal Trade Commission*, 272 F. 2d 318. 321 (7th Cir. 1959) [6 S.&D. 697], *cert. denied* 362 U.S. 940.

As an integral part of the administrative law process, the hearing examiner has specific functions and duties set forth in the Administrative Procedure Act. Section 8(b) of the Act provides that the initial decision of the hearing examiner shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record, and an appropriate order. In a discussion of this provision, the Attorney General's Manual states that decisions must indicate findings on material issues of fact, law or discretion with such specificity as to advise the parties and reviewing courts of the record and legal basis of the decisions.[1] Section 4.19(b) of the Commis-

[1] Attorney General's Manual on the Administrative Procedure Act (1947), pp. 85–87.

sion's Rules of Practice corresponds to Section 8(b) of the Administrative Procedure Act.[2]

The record basis for the broad conclusions by the hearing examiner in the instant matter is not clear due to the sketchy analysis in the initial decision of the relevant evidence. There should have been a more detailed treatment, particularly in light of the large amount of expert testimony from witnesses with varying qualifications, some of whom differed on certain issues. We do not believe that the hearing examiner in his findings complied with the requirements of the Administrative Procedure Act and the Commission's Rules of Practice. Accordingly, the initial decision will be vacated and set aside and the matter will be remanded to the examiner for the preparation of a new initial decision containing adequate findings.

Commissioner MacIntyre did not concur in the decision in this matter.