

Complaint

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IN THE MATTER OF
LIBBEY-OWENS-FORD GLASS COMPANY
AND
GENERAL MOTORS CORPORATION

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

Docket 7643. Complaint, Oct. 30, 1959—Decision, Sept. 20, 1963

Order requiring a Detroit manufacturer of glass products for the automotive industry and a leading manufacturer of motor vehicles, to cease representing falsely that the safety plate glass used in the side windows of General Motors automobiles was of the same grade and quality as that in the windshields, while the safety sheet glass used in competitors' cars was the same as sheet glass in home windows; and falsely comparing the grade and quality of their automobile safety plate glass with the safety glass of their competitors by such practices as using deceptive photographic techniques in television depictions which exaggerated the distortion inherent in the safety sheet glass used in competitors' automobiles and minimized the distortion inherent in the safety plate glass used in General Motors Cars.

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 Libbey-Owens-Ford Glass Company, a corporation and General Motors Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Libbey-Owens-Ford Glass Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 608 Madison Avenue, Toledo, Ohio.

Respondent General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its main office and place of business at 3044 Grand Boulevard, Detroit, Michigan.

PAR. 2. Respondent Libbey-Owens-Ford Glass Company is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of glass products to the automotive industry for installation in automobiles, and to wholesalers, distributors and retailers for resale to the public.

Respondent General Motors Corporation is now, and for some time last past, has been engaged in the manufacture, advertising, and offering for sale, sale and distribution of motor vehicles and automotive parts to distributors for resale to the public.

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

PAR. 4. Respondent Libbey-Owens-Ford Glass Company, at all times mentioned herein has been, and is now, in substantial competition, in commerce, with individuals, firms and corporations in the sale and distribution of glass products, including those used by the automotive industry for installation in automobiles and respondent General Motors Corporation, at all times mentioned herein has been, and is now, in substantial competition, in commerce, with individuals, firms and corporations in the sale and distribution of automobiles.

PAR. 5. In the course and conduct of its business respondent Libbey-Owens-Ford Glass Company, for the purpose of inducing the purchase of its glass products and particularly its automobile safety plate glass, and respondent General Motors Corporation, for the purpose of inducing the sale of its motor vehicles in which said safety plate glass is installed, have advertised their products by means of advertisements in magazines of national circulation and radio and television commercials, broadcast over nation-wide networks. The television commercials, which are accompanied by audible statements, are pictures of various scenes, taken from within automobiles, and in studio demonstrations, for the purpose of comparing views as seen through automobile safety plate glass produced by respondent Libbey-Owens-Ford Glass Company and used in the automobiles produced by respondent General Motors Corporation with automobile safety sheet glass produced by competitors of respondent Libbey-Owens-Ford Glass Company and used in automobiles produced by competitors of respondent General Motors Corporation.

PAR. 6. Respondents by means of the aforesaid advertisements have represented directly or by implication that:

1. The said automobile safety plate glass, used in the side windows of General Motors automobiles, is the same grade and quality as that used in the windshields of General Motors automobiles.

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2. The said automobile safety plate glass, (as produced by the respondent Libbey-Owens-Ford Glass Company) used in the side windows of General Motors automobiles, is free from all optical distortion.

3. The automobile safety sheet glass, used in the side windows of automobiles, other than General Motors automobiles, has a high degree of perceptible optical distortion, when properly installed and under ordinary conditions of use.

4. The automobile safety sheet glass, used in the side windows of automobiles, other than General Motors automobiles, is of the same grade and quality as the sheet glass used in home windows.

5. The pictures, used in connection with said advertising matter are accurate demonstrations of the perceptible disparity between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use.

PAR. 7. In truth and fact, the aforesaid representations and statements are false, misleading and deceptive in that:

1. The automobile safety plate glass, used in the side windows of General Motors automobiles is of a lower grade and quality than that used in its windshields.

2. The automobile safety plate glass, as produced by Libbey-Owens-Ford Glass Company, and used in the side windows of General Motors automobiles, is not free from all optical distortion.

3. The automobile safety sheet glass, used in automobiles, other than General Motors automobiles, under ordinary conditions of use does not have the excessively high degree of perceptible distortion, as represented by respondents.

4. The automobile safety sheet glass, used in the side windows of automobiles, other than General Motors automobiles, is of a higher grade and quality than the sheet glass, used in home windows.

5. The pictures and depictions, displayed in the aforesaid representations, are not accurate demonstrations of perceptible disparity, between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use, because the photographic techniques and devices, used in making such pictures were designed to exaggerate the distortion inherent in automobile safety sheet glass and minimize the distortion inherent in automobile safety plate glass. As for example, in one sequence of pictures, represented as showing the disparity between the optical distortion of safety sheet glass and safety plate glass, different camera lenses were used, resulting in an inaccurate demonstration of such comparative distortion and in another sequence of pictures, the

picture, purportedly taken through an automobile safety plate glass window, was actually taken through an open window, i.e., with the automobile window rolled down.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive representations and statements has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondents' products, because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury thereby has been done to competition in commerce.

PAR. 9. 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. Edward F. Downs and *Mr. Anthony J. Kennedy, Jr.*, for the Commission.

Mr. Aloysius F. Power, *Mr. William Simon* and *Mr. John Bodner, Jr.*, for respondent General Motors Corporation, with *Mr. Frazer F. Hilder*, Detroit, Mich., and *Howrey, Simon, Baker and Murchison*, Washington, D. C., of counsel.

Mr. Joseph J. Smith, Jr., and *Mr. George W. Wise*, Washington, D. C., and *Mr. Julian M. Kaplin*, Toledo, Ohio, for respondent Libbey-Owens-Ford Glass Company.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

JULY 17, 1962

This proceeding is brought under Section 5 of the Federal Trade Commission Act, charging that the two respondents (hereinafter referred to as LOF and GM) violated that law by advertising the following allegedly false and deceptive statements and representations: (1) That the safety plate glass used in the side windows of GM automobiles was the same grade and quality as that used in windshields of GM automobiles; (2) That the safety plate glass used in the side windows of GM automobiles is free from all optical distortion; (3) That the safety sheet glass used in the side windows of automobiles other than GM automobiles has a high degree of perceptible optical

distortion when properly installed and under ordinary conditions of use; (4) That the safety sheet glass used in the side windows of automobiles other than GM automobiles is of the same grade and quality as the sheet glass used in home windows; and (5) That the pictures used in connection with the said advertising matter are accurate demonstrations of the perceptible disparity between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use.

Counsel supporting the complaint defined certain of the terms used therein for the purposes of this proceeding, including the following: (1) Distortion: a distorting; a twisting motion or twisted or misshapen condition; (2) Optical distortion: a twisting motion or misshapen condition relating to the optics or vision of which a viewer may or may not be consciously aware; (3) Perceptible optical distortion: a twisting motion or misshapen condition relating to the optics or vision which is perceived or discerned by the viewer; and (4) Perceptible distortion: the same as "perceptible optical distortion."

Extensive evidence was presented in this proceeding by counsel in support of the complaint and the two respondents. Much of this evidence is technical and complex, relating to the qualities and manufacturing techniques in glass and photographic procedures involved in television. Hearings were held in many cities over an extended period of time. Proposed findings and briefs have been submitted by all parties. To the extent that such proposed findings are inconsistent with the findings made herein, they are deemed rejected.

FINDINGS OF FACT

1. Respondent Libbey-Owens-Ford Glass Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 608 Madison Avenue, Toledo, Ohio.

2. Respondent General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its main office and place of business located at 3044 Grand Boulevard, Detroit Michigan.

3. Respondent Libbey-Owens-Ford Glass Company is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale, and distribution of glass products to the automotive industry for installation in automobiles, and to wholesalers and distributors for resale to the public.

4. Respondent General Motors Corporation is now, and for some time last past has been, engaged in the manufacture, advertising, and

offering for sale, sale, and distribution of motor vehicles and automotive parts to distributors for resale to the public.

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

6. Respondent Libbey-Owens-Ford Glass Company at all times mentioned herein has been, and is now, in substantial competition in commerce with individuals, firms and corporations in the sale and distribution of glass products, including those used by the automotive industry for installation in automobiles. Respondent General Motors Corporation at all times mentioned herein has been, and is now, in substantial competition in commerce with individuals, firms and corporations in the sale and distribution of automobiles.

7. The complaint and evidence in this proceeding relate to certain advertising of LOF and GM involving safety plate glass which was disseminated in 1957 and 1958.

Libbey-Owens-Ford Glass Company Advertising

8. For many years, including 1957 and 1958, GM has purchased its requirements of automobile glass from LOF. Since before 1957, GM has used safety plate glass in every window of every GM passenger car made in the United States.

9. Because safety plate glass is more expensive than safety sheet glass, GM has from time to time considered a change in its policy of using safety plate glass in every window of every automobile. In 1957 it came to the attention of LOF that GM was contemplating a change from safety plate to safety sheet glass for its 1958 model automobiles. It was estimated that GM would save approximately \$3.3 million for its 1958 model cars by such substitution.

10. In June 1957, LOF informed GM that it was willing to invest some \$3.3 million in a safety plate glass advertising campaign, approved by GM, if GM's car divisions would gear their own advertising to the same objective. This advertising campaign was intended to promote the continued use of safety plate glass by GM as well as by other automobile manufacturers.

11. Thereafter, on June 12, 1957, GM decided to continue the use of safety plate glass in its 1958 cars in consideration of LOF's offer

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to spend \$3.3 million in advertising the advantages of safety plate glass. There was, however, no formal contractual arrangement or other agreement obligating LOF to advertise if GM bought its glass, nor obligating GM to buy the glass if LOF advertised. LOF's promise to advertise, however, was one of the factors considered by GM in continuing to use safety plate glass.

12. In September 1957, LOF notified GM that it had gone ahead with the advertising program. At that time it noted "the enthusiastic approval of the GM divisions." This, however, was explained to mean that GM seemed to be pleased with the program. There is nothing in the record to indicate that LOF's decision to advertise, or not to advertise, depended upon GM. On the contrary, both respondents denied such obligation. On the other hand, it is clear that, without the cooperation of GM, LOF would not have embarked upon this program, since it originally considered the cost of the program much too expensive and went ahead only after it had secured GM's approval.

13. The LOF advertising program consisted primarily of 22 television commercials broadcast in 1957 and 1958. In general, these commercials dealt with the advantages of safety plate glass over safety sheet glass with respect to visibility.

14. The commercials began and terminated with "billboards" which orally and pictorially stated that LOF was the sponsor of the programs. In the commercials themselves, however, there were numerous shots of GM automobiles. In the audio portion of the commercials, GM was the only corporation mentioned in connection with the use of safety plate glass in its car windows.

15. In these LOF commercials, the GM cars used in the so-called "beauty scenes" (attractive picturizations) were obtained from GM. It is customary practice to borrow products for background use in making television commercials, and for manufacturers to lend their products to commercial makers, such behavior being considered good business advertising.

16. LOF and GM agreed that the principals of the television show were to use GM cars only. GM gave permission for the use of its name and supplied pictures of its cars for use in the advertisements. When the 1958 model cars came out, 1958 pictures were substituted for the 1957 pictures.

17. In addition, LOF prepared and GM approved certain "sales aids" for general distribution. These sales aids were small brochures, or cards, which advertised the TV programs referred to above.

18. Storyboards for the TV advertising program containing slides and crayon drawings, but none of the photographs or films which

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were actually used in the program, were shown to the GM officials before the public showing of the TV programs.

19. When the Chrysler Corporation questioned LOF about the accuracy of the advertising, the LOF official went to GM where he conferred with some GM officials. At this conference the president of GM inquired whether GM's divisions were "cooperating effectively with this splendid campaign."

20. In March 1958, the president of LOF wrote GM that LOF had accomplished

* * * what with the approval and endorsement of General Motor's principal officers, we aimed to do. You will recall it was our joint purpose to make your investment in plate glass a more effective sales tool than it has been in years past.

Nevertheless, LOF's purpose in advertising was to sell more safety plate glass for use in all automobiles; GM's objective with the same advertising was to sell more GM cars.

21. The LOF television commercials were broadcast by the National Broadcasting Company in conjunction with the NCAA football television programs, sponsored in part by LOF, beginning September 21, 1957, and ending December 31, 1957; and by the Columbia Broadcasting System with the Perry Mason television shows, sponsored in part by LOF from September 28, 1957, to June 21, 1958. These television commercials consisted of short motion picture films which contained both visual and oral representations. There were a total of 22 separate commercials in all, varying in length from a half minute to a minute and a half. Four or five of these commercials were shown on each of the nine football games broadcast, and two or three of the commercials were shown on each of the 20 Perry Mason shows.

22. The material portions of several typical LOF television commercials were as follows:

A.

ACTION

SOUND

1. Two pieces of glass which are cut identically in the shape of an automobile sidelight are set up side by side, with the announcer standing between them.
2. A close-up of the two pieces of glass.
3. Two children seated in the back seat of a moving car.

Announcer: Two pieces of safety glass for the windows of a car. They look alike

but they don't "see through" alike and you should know about the difference.

Especially if children ride in your car.

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ACTION—Continued

4. Scenery along the road side and a sign "Entering Fairlawn" which show perceptible distortion are seen through the side window of a moving car and the words "ORDINARY SAFETY GLASS" are superimposed on the screen.
5. Scenery along the road side and a sign "Entering Fairlawn" which show no perceptible distortion are seen through the side window of a moving car and an LOF etch mark "SAFETY LOF PLATE" is superimposed on the screen.
6. A view of a car moving down a road.
7. Different views of passing scenery seen from interior of a moving car.
8. Close-up of exterior of moving car with two children in the back seat.
9. Close-up of the corner of a side window with an LOF etch mark

"SAFETY LOF PLATE"

visible in the corner. The word "PLATE" zooms up to full screen size and then shrinks back to its place in the etch mark.
10. A boy and a girl seated in the back seat of a moving car. The words

"FOR GOOD LOOKING"

are superimposed in full screen size.
11. Same as No. 10, above, except that the additional words and the LOF etch mark

"LOOK THROUGH—
SAFETY LOF PLATE"

are superimposed in full screen size.

SOUND—Continued

This is ordinary safety glass made of window glass. It puts a wiggle in the things you watch.

This is safety plate glass. It takes the wiggle out of what you watch.

Because it gives the driver better vision, laminated safety plate glass is required by law in windshields but only cars with Body by Fisher use safety plate glass in every window of every car as standard equipment. It doesn't cost you a cent extra.

At first glance your family may not notice the difference, but their eyes will.

Make sure the word "Plate" is etched on every window of the next car you buy.

For good looking * * *

look through safety plate
* * *

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ACTION—Continued

12. Same as No. 11 above, except that the superimposed words and etch mark have been changed to read:

"SAFETY LOF PLATE
in
CHEVROLET"

END

B.

ACTION

1. A television screen showing a picture of a boy and girl seated in the back seat of a moving car.
2. Man and woman seated in living room watching the television program.

3. Announcer on TV screen holds up card with an LOF etch mark

"SAFETY LOF PLATE"

on it.

4. Close-up of man and woman watching TV set.
5. Announcer with two pieces of glass which are cut identically in the shape of an automobile side-light. The pieces of glass are mounted on each side of the announcer and in front of zebra boards, i.e., square boards with parallel black and white lines running diagonally across the surface of the boards.
6. Close-up of the glass on the announcer's right as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through the glass show perceptible distortion.
7. The announcer rotates the glass on his right back to its original position.

SOUND—Continued

in Chevrolet.

SOUND

Announcer: If children ride in the back seat of your car, here's something important you should know about the quality of glass used in car windows.

Man Watching TV: Commercials! Everybody knows all cars use safety glass today.

Announcer: But they don't all use safety plate glass.

Man Watching TV: Ah, what's the difference?

Announcer: There's a big difference.

Watch the lines wiggle through ordinary safety glass * * *

Distortion. That means tired eyes.

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ACTION—Continued

8. Close-up of the glass on the announcer's left as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through the glass show no perceptible distortion.
9. The announcer rotates the glass on his left back to its original position.
10. Scenery and a billboard which show perceptible distortion are seen through the side window of a moving car.
11. Scenery and a billboard which show no perceptible distortion are seen through the side window of a moving car and an LOF etch mark

"SAFETY LOF PLATE"

is superimposed on the scene in large letters.

12. Flag poles which show perceptible distortion are seen through the side window of a moving car.
13. Flag poles which show no perceptible distortion are seen through the side window of a moving car.
14. Close-up of exterior of a moving car with girl in the back seat.
15. Head-on view of an approaching car.
16. Side view of a moving car.
17. An LOF etch mark

"SAFETY LOF PLATE"

is superimposed in full screen size on Number 16 above.

18. Same as No. 17 above, with the addition of a line circling the car windows.

SOUND—Continued

Safety plate glass takes the wiggle out of watching.

Lets you ride relaxed.

Just watch this billboard through ordinary safety glass made of window glass. It shimmies and wavers

but through safety plate glass you get clear vision.

Flag poles?

Well, now they are.

It's easy to get used to distortion. That's why you may not notice the difference but your family's eyes do.

Because it gives the driver better vision, laminated safety plate glass is required by law in windshields,

but General Motors is the only manufacturer

to give you safety plate glass

in every window

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ACTION—Continued

SOUND—Continued

19. The superimposed etch mark and line circling the car windows vanish.

of every car as standard equipment. It doesn't cost you a cent extra.

20. Close-up of a side window with an LOF etch mark

If the word "Plate" isn't etched on every window of your car, make sure it is on every window of the next car you buy.

"SAFETY LOF PLATE"

visible and with the word "PLATE" zooming up to full screen size and shrinking back to its place in the etch.

21. A boy and girl seated in the back seat of a moving car. The words "FOR GOOD LOOKING" are superimposed in full screen size.

For good looking * * *

22. Same as No. 17 above, except that the additional words and the LOF etch mark

look through safety plate * * *

"LOOK THROUGH—
SAFETY LOF PLATE"

are superimposed in full screen size.

23. Same as No. 17 above, except that the superimposed words and etch mark have been changed to read:

in Buick.

"SAFETY LOF PLATE
in
BUICK"

END

C. Although most of the commercials in the sound portions thereof stated "laminated safety plate glass is required by law in windshields but only General Motors cars use safety plate glass in the windows all the way around," some of the commercials used this language:

Because it gives so much better vision, the law requires laminated safety plate glass for all windshields. But as I said, only General Motors puts *it* in every window of every car they make. (Emphasis added.)

To give me better vision when I drive, the law says safety plate glass has to be put in the windshield * * * They're [GM] the only car manufacturer to use that *same* safety plate glass in every window of every car they make * * *. (Emphasis added.)

23. In all the LOF advertisements, the visual demonstrations consisted of still and motion pictures of zebra boards or eye charts taken

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through pieces of glass cut in the shape of automobile side lights. The comparison also was accomplished in part by pictures of scenery taken from the side windows of moving cars. Such demonstrations show no perceptible distortion when the objects are viewed through safety plate glass and show perceptible distortion when the objects are viewed through safety sheet glass. In addition, there are written or oral statements which represent that no perceptible distortion is seen through safety plate glass, but that safety sheet glass shows perceptible distortion in automotive use. Typical of such statements are:

Through ordinary safety glass made of window glass everything begins to wiggle. Safety plate glass takes the wiggle out of watching.

Through safety plate glass you get clear vision.

Only plate glass gives clear, undistorted vision.

24. Although most of the commercials and advertising referred to above simply make it quite clear to the observer that the GM cars have windows made of safety plate which makes them free from perceptible distortion, some of the television commercials could and would lead some observers into thinking that the identical glass was used for the side windows and for the windshields. Thus, in the two illustrations quoted above, reference was made to laminated safety plate glass in the windshields, followed by the statement that *it* was used in every window. Similarly, another commercial stated that the *same* safety plate glass found in the windshield was used in every window.

25. Only laminated plate glass is used in the windshields of American automobiles. Laminated plate glass consists of two lights of glass held together by an interlayer of transparent plastic. The side windows, which must be safety glass, may be made of laminated glass or of tempered glass. In practice, however, these side windows are usually made of tempered glass. Tempered glass is glass which has been treated to give it greater breakage resistance. This type of safety glass, however, has a greater tendency to splinter and is not permitted in car windshields. There is some difference of opinion as to whether tempered glass is as safe as laminated glass. Industry usage and standards clearly allow both types of glass to be represented as safety glass, although one type might be considered safer for certain accidents than the other. Windows made of tempered plate glass are very much unlike laminated plate glass in breakage potentials and characteristics.

26. Industry specifications permit lower quality grades of plate glass in the side windows than in the windshields, and such lower

grades are so generally used. The flaws rendering such glass inferior in grade do not necessarily affect the visibility of such glass and are not usually detectable except by experts.

27. Sheet glass is made from molten glass which has been drawn into a ribbon and allowed to cool. Inherent in the process is the creation of waves or irregularities in the surface of the glass. Plate glass, however, is made from blanks which have been ground and polished so as to have removed, for all practical purposes, the surface irregularities characteristic of sheet glass. In the sizes used for automotive purposes, flat plate glass provides an undistorted view. In larger sizes, however, such as store windows, plate glass made in the conventional manner, which involves the grinding and polishing of each surface separately, may, and often does, have some perceptible distortion.

28. In a film called "The Perfect Parallel," produced and distributed by LOF, store windows of conventionally-made plate glass were shown to have perceptible optical distortion when the camera making the view through the glass was positioned some twenty feet from the glass. The distortion, however, became imperceptible, and for all practical purposes vanished, when the camera made the same view through the glass from a distance of some three feet. In automobiles, the passenger is usually but a few feet from the window through which he looks. Under such circumstances the optical distortion perceptible in plate glass will not manifest itself.

29. Plate glass may be subject to optical deviation or double vision caused by nonparallel surfaces of glass. When that condition exists, two images of an object will be seen through the glass instead of one image. The deviated or secondary image is not twisted or misshapen, but is true as to form and very dim, being usually observable only at night. Optical deviation is not synonymous with or included in the definition of optical distortion.

30. Sheet glass which is characterized by the presence of surface waves may have such waves running with, perpendicularly to or diagonally to, the draw. During the time period here involved, safety sheet glass was not necessarily cut so that the predominant wave would be horizontal. A Commission witness testifying contrarily was convincingly contradicted by the introduction into evidence of a light of glass made by his company having waves in both directions, with the vertical wave more dominant than the horizontal wave.

31. Although some of the Commission witnesses testified that some of LOF's advertisements used sheet glass with the predominant wave in a vertical position, thus exaggerating the distortion present, this

evidence was not persuasive. In one instance the witness made no attempt to examine the glass, but only a photograph of it. In the other instance the witness also failed to examine the glass itself and moreover had but limited experience in this scientific area.

32. LOF's advertisements showing perceptible distortion in safety sheet glass were made by cameras positioned within the car at a point where a passenger seated in the rear seat of that car, on the right side thereof, would look through the right front window glass. This position was approximately 38 inches from the glass, at an angle of not more than 20 degrees.

33. The degree of perceptible distortion in sheet glass increases as the angle of view becomes more acute. Thus, more distortion is apparent in sheet glass having waviness when the view is at 20 degrees than at 40 degrees.

34. Automobile passengers seated in the front seat of a car generally look through the side windows of the front doors where the angle of view would be approximately 90 degrees. Passengers in the rear seat of the car will usually look through the rear windows of a car where the angle will be about 45 degrees. If the view is through the front window only, a passenger in the right rear would have a 20 degree angle of view, as would the passenger in the left rear looking through the left front window. In a test ride taken by the examiner, however, the view through the front window was seldom used by him as he sat in the right rear seat, due to the presence of various obstructions, such as the door post and the ventilator window frames.

35. The LOF commercials showing the distorted view through sheet glass at an angle of 20 degrees, was not the usual experience of a car passenger but an unusual one, and to that extent, exaggerated the experience of a passenger with respect to perceptible optical distortion.

36. Sheet glass is commercially referred to and known as window glass. The terms are synonymous and used interchangeably in the industry. In common use, however, among the less informed, as well as the general public, window glass is often taken to mean home window glass. Although home window glass and glass used to make automotive safety sheet glass are manufactured by the same processes and cut from the same ribbon, automotive sheet glass is of a superior grade and quality with respect to distortion. Both types of glass may have distortion perceptible at angles of view less than 45 degrees, but automotive sheet glass, unlike home window glass, must not have perceptible distortion at 45 to 90 degrees.

37. In some of the scenes photographed, the plate glass scene was photographed through a normal camera lens. The safety sheet glass

scene was photographed through a telephoto lens which had the effect of showing less of the view but in larger image size. In this process of magnification the perceptible distortion was magnified, as was everything else shown. Although the degree of distortion remained unchanged with either lens, the effect of the magnification made the comparison unfair and improper.

38. In five of the comparison sequences of the television commercials, the safety plate glass scenes were photographed through an open window instead of through safety plate glass. The photographer did this to save time, confident that the end result was the same in either event, *i.e.*, that the scene through the open window was identical with the scene that would have been shown through the plate glass. No one, not even the glass or camera experts, was able, by looking at the scene, to detect in which instances the scenes were shot through the open window rather than through the plate glass.

39. In one of the zebra board comparison shots, the safety sheet glass was turned to a sharper angle than was the safety plate glass. Since distortion is more apparent in sheet glass as the angle of view becomes more acute, an unfair and improper comparison was thus made between the two lights of glass.

40. In one comparison sequence, the safety sheet glass scene was photographed through the right front window and the safety plate glass scene through the right rear window. Here, too, the effect was to create a sharper angle of view for the sheet glass which could have the result of making the distortion more perceptible. The comparison was therefore unfair and improper.

41. All of the LOF advertisements in question were prepared by the LOF advertising agency, Fuller & Smith & Ross (hereinafter referred to as FS&R). FS&R arranged for LOF's sponsorship of the 1957 NCAA football game of the week and the Perry Mason show, and LOF approved the TV schedules. FS&R had the responsibility for preparing the television commercials which it usually submitted to LOF for review in storyboard form. LOF gave detailed instructions to FS&R with respect to the production of the comparison scenes in the television commercials, including instructions as to obtaining cars from rental agencies, placing the camera in the approximate position of a passenger seated in the right rear seat, making comparable photographs through safety plate glass and safety sheet glass, and employing no trickery in the photographs. FS&R, in turn, passed these instructions along to Television Graphics, a New York firm engaged in the production of films for television which FS&R employed to make motion pictures for the LOF commercials.

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42. Television Graphics made the motion picture films used in the LOF TV commercials. It procured the GM and non-GM cars used and, together with FS&R, edited the films.

43. The advertising campaign ended in June of 1958. Prior thereto LOF had decided to discontinue the comparison advertising with respect to plate versus sheet glass. This type of advertising has not been resumed to date.

General Motors Advertising

44. From September 1957 to May 1958, GM sponsored a national television network series called "Wide Wide World." There were approximately thirty separate commercials for the entire series and some of the individual commercials were shown two, three or four times during the series.

45. Of the thirty commercials for the series, one involved glass. This was a 2½-minute commercial and was used twice during the series. The pertinent video and audio portions were as follows:

VIDEO	AUDIO
9. DROP IN WINDSHIELD HEAVILY OUTLINED	every automobile has safety plate glass in the windshield.
10. DROP IN OTHER WINDOWS	But only General Motors has gone to the extra care and trouble of protecting your vision by putting safety plate glass all the way around in all its cars. Windshield * * * doors * * * and in the rear.
11. HORIZONTAL ANIMATION VERY TIGHT CU OF PROFILE OF ORDINARY WINDOW GLASS SHOWING IMPERFECTIONS AND MARKED "Ordinary Glass"	What's the difference? Ordinary window glass has small bubbles and imperfections that mar your vision.
12. MOVE UP AND DISSOLVE IN PLATE GLASS SHOWING FLAT PLANES AND MARKED "PLATE"	But plate glass is ground and polished on both sides with jeweler's rouge to give you the safest, most restful viewing glass known.
13. WIDE SHOT OF WINDOW	Try this test in your own house. Look through a pane of window glass at the extreme edge, move your head back and forth a few inches.
14. CU SHOWING DISTORTION	And this is the kind of distortion you'll see. Straight lines become curved, distances distorted.

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15. REPLACE WITH CLEAR SCENE

But with plate glass, this is what you see—everything sharp and clear.

16. REPEAT #10

That's why General Motors feels it's important to give you this sharper, clearer vision in every window of your automobile.

46. GM employed the advertising agency of MacManus, John and Adams to make all the commercials for the series. It was the decision of both GM and the advertising agency to run one commercial of safety plate glass. In addition, GM agreed to the general outline for the commercial but delegated the responsibility for production to the agency.

47. The advertising agency chose Klaeger Film Productions, Inc., to make the films for the commercial. GM did not participate in this selection. Klaeger and the advertising agency jointly decided to make a commercial comparing safety plate glass with home window glass.

48. In making the film, a single piece of glass installed in the window in a wooden frame was used. Although there is no positive evidence whether the glass was sheet or plate glass, it was reasonably inferable that it was sheet, judging from price paid for it.

49. The same scene was shot through the glass twice, in one instance purportedly showing the scene through plate glass and in the other showing the same scene through home window glass. In the plate glass shot, the camera was in a stationary position. In the home window shot, the glass was streaked with vaseline and the camera was panned from side to side as though the viewer were walking past the window. The film thus created showed an undistorted view for the plate glass shot, but a distorted view for the home window glass shot. The distorted view for the home window shot, however, was not an exaggerated one compared to the experience of witnesses viewing other window glass under similar circumstances.

50. GM was not aware of the use of a single light of glass for both shots nor of the use of vaseline for the home window shots nor of the use of the moving camera technique, nor did the advertising agency have such knowledge at the time.

51. GM has not used any advertising comparing safety plate glass with safety sheet glass since the above-mentioned commercial was last used in May 1958, nor does it intend to use such advertising in the future.

52. Although the GM commercial referred to above compares the GM safety plate glass with home window glass specifically, it addi-

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tionally states that only GM puts plate glass in all its car windows. The inference is plain that non-GM cars used something other than plate glass in their side windows. The immediate comparison that follows between the GM plate glass and home window glass would unavoidably cause some viewers to associate the home window glass with the glass used in non-GM cars. This association must obviously be intended inasmuch as GM would have no purpose for comparing home window glass with its plate glass unless the visual effects of home window glass were to be found in non-GM cars.

DISCUSSION

The LOF commercials which were prepared by FS&R and Television Graphics, as well as the printed material prepared by LOF for use by GM, were received in evidence as to respondent LOF and were offered in evidence by counsel supporting the complaint as to respondent GM as well. The basis for such offer, as stated by counsel supporting the complaint, was:

The exhibits here in question are the acts of one "joint adventurer" and they are therefore applicable and binding on both.

Complaint counsel urges that the evidence proves the joint venture and that both respondents "took an equal part herein and certainly both benefited therefrom."

To understand the problem it is first necessary to arrive at an accurate definition of the term. Although Commission counsel cites a definition of joint adventure to the effect that it is a legal relation generally described as an association of persons to carry out a single business venture for profit, the courts have been much more specific in their definition. Thus, American Jurisprudence summarizes this attitude as follows:

A joint venture [the modern preference for the older technical term "joint adventure"] is an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill, and knowledge, but without creating a partnership in the legal or technical sense of the term, or a corporation, and they agree that there shall be a community of interest among them as to the purpose of the undertaking, and that each coadventurer shall stand in the relation of principal, as well as agent, as to each of the other coadventurers, with an equal right of control of the means employed to carry out the common purpose of the adventure. 30 Am., Jur., *Joint Ventures* § 2 (1958) (footnotes omitted).

It is therefore apparent that there are several essential components in a joint venture: first, an agreement or contract whether express or implied; second, a combining of efforts or properties or abilities;

third, a community of interest as to the purpose of the undertaking; fourth, an equal right of control of the means employed to carry out the purpose of the common adventure.

1. *The contract.* I have considerable doubt that the behavior of the parties constituted a contract, express or implied. A contract entails the assumption of duties as well as rights. There is some doubt in my mind that GM assumed any material obligation with respect to the advertising campaign. It has been said that the contract is a *sine qua nom* of a joint venture which is a status not imposed by law. *Carboneau v. Peterson*, 95 P. 2d 1043 (Wash. 1939).

2. *A combining of efforts or properties or abilities.* There was no combining of efforts, properties or abilities as between the respondents to carry out LOF's advertising program. At most there was an agreement that each respondent would further its own advertising campaign.

3. *A community of interest as to the purpose of the undertaking.* Even if I assume that criteria one and two above were met in this situation, I find it impossible to satisfy the third criterion or the fourth, below. A community of interest as applied to the relation of joint venture has been defined as an interest common to both parties, that is, a mixture or identity of interest in a venture in which each or all are reciprocally concerned. For instance, two parties may be engaged in the performance of a purpose or objective which may be for the sole interest or advantage of one and from which the other is to derive no benefit whatever, or the interest of the one may be different and distinct from that of the other; in either of such cases there would not be a joint adventure. *Carboneau v. Peterson, supra*. That case cites the example of two boys undertaking a ride together for the purpose of visiting each party's home in order to obtain the key which each boy had forgotten. Although the joint ride was for their mutual benefit, *viz*, for each to get his own key, the purpose of that undertaking was separate and individual for each of them and not common to both of them, rendering it not a joint venture. So, here the advertising campaign was for the mutual benefit of both respondents, but the purpose was separate and independent as to each of them and not common to both. In the case of GM, the purpose was to sell more safety plate glass not merely to GM but to other car manufacturers and the public generally.

4. *An equal right of control of the means employed to carry out the purpose of the common adventure.* Of greatest significance in this matter, however, is the element of joint control. This factor has been of considerable interest to the courts. Cases are numerous in which

the lack of a joint control or a mutual right to control destroyed the alleged joint venture. In *Carboneau v. Peterson*, *supra*, the court held that the relationship must have equal rights to a voice in the manner of performance of the enterprise; more specifically, that each party may equally govern how, where, and when the agreement will be performed. In *Chisholm v. Gilmer*, 81 F. 2d 120 (4th Cir. 1936) the court held that each must have a voice in management. In *Van Hook v. U.S.*, 108 F. Supp. 32 (N.D., Ill., 1951), the Court referred to it as "a mutual right to control." Thus in *Cross v. Pasley*, 270 F. 2d 88 (8th Cir. 1959), where defendant embarked on oil discovery and production and hired a salesman to sell interests in oil rights, and the holder of interests, although having the right to enter the premises to view the progress of drilling, had nothing to do with its supervision, there was no joint venture. In a similar vein, see *Potter v. Florida Motor Lines, Inc.*, 57 F. 2d 313 (S.D., Florida, 1932); *Bales-trieri and Co. v. Commissioner of Internal Revenue*, 177 F. 2d 867 (9th Cir. 1949); and *Arline v. Brown*, 190 F. 2d 180 (5th Cir. 1951).

The television program was arranged by the advertising agency of respondent LOF; it was paid for by LOF; it was constantly reviewed by officials of LOF; it was undertaken by LOF and discontinued by LOF. Even if GM approved the program, this is not tantamount to a clear and equivalent right to control that program with the same authority as LOF.

Commission counsel puts great emphasis on the undisputed fact that both respondents shared the benefits of the advertising campaign which indeed they did. The decisions are numerous, however, in the holding that the showing of benefits alone will not make a joint venture. *Pemberton v. Windsor Leasing Co.*, 58 N.Y.S. 2d, 292 (1945); *Brenner v. Plitt*, 34 A. 2d 853 (Md. 1943). Thus, in *Detachable Bit Co. v. Timken Roller Bearing Co.*, 133 F. 2d 632 (6th Cir. 1943) there was no joint venture in the absence of joint property or joint profits in the undertaking, nor any showing of the right of one to incur a debt obligating the other. Even where two parties reserve certain negative powers of control in an undertaking to one of the parties, the court found no joint venture in view of the party's lack of a proprietary interest in the properties. *U.S. v. Westmoreland Mangenese Corp.*, 134 F. Supp. 898 (E.D. Ark. 1955), *affirmed* 246 F. 2d 351 (8th Cir. 1957). See also *Hyman v. Regenstein*, 258 F. 2d 502 (5th Cir. 1958) *cert. denied* 359 U.S. 913 (1959):

* * * an agreement to furnish the finances for a scheme or project does not necessarily constitute the transaction a joint venture, even though the profits may be divided * * *. The parties must intend that there be a joint proprietary interest and a right of mutual control * * *.

The conclusion is inescapable that the admission of the subject exhibits as to respondent GM cannot be justified on the theory of joint venture between GM and LOF.

The same conclusion is achieved if we consider the situation under the doctrine of joint tort. In the recent decision *In the Matter of Colgate-Palmolive Company, et al.*, FTC Docket No. 7736, December 29, 1961 [59 F.T.C. 1452, 1471], the Commission cited *Federal Trade Commission v. Standard Education Society*, 86 F. 2d 692 (2d Cir. 1936) to the effect that to establish individual liability on a corporate officer for an unfair trade practice it must be shown that such officer "had such connection with the wrong as would have made him an accomplice were it a crime, or a tortfeasor, were the corporation an individual."

To hold GM responsible for the corporate acts of LOF requires at least as much culpability on GM's part as a corporate officer's responsibility for the corporate act.

A superficial examination of the decisions concerning joint tortfeasor is sufficient to discredit the applicability of that doctrine here. Thus, in *Allis Chalmers Manufacturing Co. v. Board*, 118 SW 2d 996 (Texas 1938) the court said, "To be guilty as a tortfeasor one must be guilty of some wrongful or negligent conduct." This attitude has been exemplified in two landmark cases. In *Wert v. Potts*, 41 NW 374 (Iowa, 1889), several people were engaged in making a lawful arrest. One of them committed an unlawful act without the concurrence of the others. The others were held not liable for the unlawful act even though it was done in the furtherance of a purpose common to all. Similarly, in *Richardson v. Emerson*, 3 Wis. 319, 62 Am. Dec. 694 (1854), several people were engaged in the removal of a dam. Some of them did so under improper and unlawful circumstances. The court held the others not liable:

Where several persons are engaged in the accomplishment of a lawful object, if one or more shall become a tortfeasor, even with a view to aid such purpose, the others, who neither direct nor countenance such tortious acts, are not liable.

Assuming that respondent LOF committed a tort in the alleged deceptive advertising, it nowhere appears that respondent GM concurred, countenanced, or directed such tort. GM did countenance and concur in an advertising campaign designed to sell more safety plate glass and more GM cars. None of this was allegedly improper. Assuming that there was a deceptive practice employed by respondent LOF in the furtherance of the purpose of selling glass and cars, there can be no liability attached to respondent GM for LOF's activities.

Accordingly, the motion of counsel supporting the complaint that the LOF commercials be received in evidence as to respondent GM is hereby denied.

We turn next to the liability of each respondent for the advertising disseminated by or through it separately.

LOF argues that its advertising did not represent that the safety plate glass used in the side windows was the same grade and quality as that used in the windshields. It points to the fact that in every instance the attention of the viewer was directed to the clarity of vision and that for such purpose the windshield and side window glass was the same. It is true that for many, if not most, of the commercials the only comparison between the two windows was a comparison of clarity of vision. In some commercials (see Findings 22 and 24, above), however, such as CX 51, there was a representation that laminated safety plate glass was put in every window of the car. Similarly, in CX 53 there is the statement that safety plate glass is put in windshields and the *same* safety plate glass is in every window. Had the statement been simply that safety plate glass is in every window, it might have been unobjectionable, but by using the expression "the same safety plate glass" there was a clear representation that the safety plate glass of the side window was identical to the safety plate glass of the windshield. The record makes it quite clear that the laminated plate glass of the windshield is not always found in the side windows where tempered plate glass may be and is often used. This even goes beyond a representation of grade and quality, it is a representation of the identical product and as such is patently untrue. It is untrue without reference to whether or not the side window plate glass is as good, better, or worse in performance than windshield glass. It is enough that it is different in material respects and has been represented to be the same. Moreover, since (as found earlier) a lower grade of plate glass is permissible and generally used in the side windows than in the windshield, it is inaccurate to represent that the side windows of plate glass are of the same grade and quality as the windshield.

The complaint further charges that LOF in its commercials represented that its automotive safety plate glass was free from *all* optical distortion when admittedly all glass, even safety plate glass, has some distortion, perhaps only discernible with scientific instruments. I do not find, however, that the respondent made such a representation in its commercials. In all of its commercials the absence of distortion referred to is perceptible distortion; that is, distortion that can be seen by the car passenger. The fact that there may be and probably

is some distortion in plate glass which is instrumentally observable does not render the representation which was made false. There was no such representation of instrument-observable distortion made or inferable from these commercials. As was said in *International Parts Corporation v. Federal Trade Commission*, 133 F. 2d 883 (7th Cir. 1943), the Commission may not inject novel meanings into advertising which expand the claims beyond their intended scope and then strike down the advertisement because the expanded claims cannot be supported. There is nothing in the record here to justify a conclusion that anyone would have taken the commercials to represent that the distortion is such as cannot be detected even with the use of scientific instruments. The commercials make it quite clear that the distortion is such as cannot be detected by the eye.

The LOF film "The Perfect Parallel" does not alter this result. That film merely proved that perceptible distortion is present in large panes of plate glass when viewed from a substantial distance. Such distortion is not apparent in glass panes of automobile window size, nor even in larger panes when viewed from a short distance of about three feet.

The complaint further charges that LOF falsely represented an excessive amount of perceptible distortion in automotive safety sheet glass. This charge must be distinguished from the later charge concerning deceptive camera techniques to exaggerate distortion. Assuming for the moment that there were no deceptive camera techniques employed, the complaint in effect charges the respondent with having shown more perceptible distortion in sheet glass than occurs. To support this charge it was incumbent upon Commission counsel to prove the normal amount of perceptible distortion in sheet glass and compare that with the amount of distortion shown in the commercials. The only record evidence pertaining to the normal amount of perceptible distortion in automotive sheet glass is the testimony of one witness to the effect that in his opinion the commercials exaggerated the amount of distortion perceptible in automotive sheet glass made by his company. No physical samples of such sheet glass were offered by the witness. In fact, the witness showed considerable confusion when on cross-examination he was confronted with a pane of his own sheet glass which differed in many material respects from the description previously made by him. I cannot attach much significance to the testimony offered in this connection and conclude that the Commission has not sustained its burden of proof with respect to the charge that LOF has exaggerated the perceptible distortion in automotive sheet glass.

The fourth charge in the complaint alleges that both respondents have falsely represented that automobile safety sheet glass is of the same grade and quality as home window glass. The LOF commercials at no point make specific reference to home windows. Instead, the language usually employed referred to "ordinary safety glass made of window glass." Since the industry uses sheet glass synonymously with window glass, LOF contends there was no misrepresentation in their commercials in this respect.

The meaning to be given an advertisement cannot be limited to the meaning within the industry. Instead, it is the meaning that the casual unsuspecting reader or viewer or listener will attach to the language employed that is the criterion in false advertising. *Charles of the Ritz v. Federal Trade Commission*, 143 F. 2d 676 (2d Cir. 1944); *Ward Laboratories v. Federal Trade Commission*, 276 F. 2d 952 (2d Cir. 1960), *cert. denied* 364 U.S. 827 (1960). Statements susceptible of both a misleading and a truthful interpretation will be construed against the advertiser. *United States v. 95 Barrels of Vinegar*, 265 U.S. 438 (1924). In this instance, some viewers or listeners subjected to a statement with respect to window glass are more likely than not to think automatically of home windows, which cannot be a "novel meaning." (*cf. International Parts Corp., supra*) Home windows, however, are of an inferior grade and quality when compared with automotive windows even though both types are made from the same ribbon of glass. The representation, therefore, that non-GM cars use ordinary window glass is false and deceptive in conveying the impression that such windows are made of home window glass.

This misrepresentation is even more clearly demonstrated in the case of the "Wide Wide World" commercial of GM. In that film, comparison is made between the plate glass of the GM car with an ordinary home window. The point of the commercial is that the GM window is superior to the home window. Coupled with this representation is the statement that only GM has plate glass, "the most restful viewing glass known." The viewer necessarily associates the home window glass with the glass used by non-GM cars. Since, however, home window glass is of an inferior grade and quality compared to automotive sheet glass, the comparison is unfair and deceptive.

The fifth and final charge of the complaint relates to the accuracy of the representations made by the respondents in the commercials. As found above, certain photographic techniques were used by both respondents which made the comparison shots deceptive. The use of a camera shot from the rear seat of a car through the front window resulted in a sharper angle of vision with attendant greater percepti-

ble distortion than a passenger would ordinarily experience since he would probably be looking through the rear window. The use of telephoto lens for the distortion shot, while not increasing the degree of distortion, had the effect of magnification of such distortion making a proper comparison between it and the plate glass shot difficult, if not impossible. The picture of a zebra board taken through the sheet glass turned to an angle which was more acute than the angle of the plate glass picture was similarly an unfair and deceptive comparison, in that the sharper angled sheet glass would ordinarily tend to show greater distortion. Likewise, the photographing of a scene through the right front window for the sheet glass shot and through the right rear window for the plate glass shot had the similar result of creating a sharper angle of view for the former, which accentuated any distortion present.

In all these instances, the principle is essentially the same. A comparison should be as comparable as possible. Disparity should be eliminated, particularly if the disparity has the tendency to exaggerate the comparative differences claimed. Otherwise, the viewer is apt to be misinformed. In this respect the principle is the same as the enunciated *In the Matter of Colgate-Palmolive Company, supra*. In that decision the Commission found that the advertised product could not shave sandpaper as claimed in the advertisement. The decision, however, went on to rule that even if the product could do what was claimed of it, the advertisement was deceptive in not showing it shaving sandpaper, but shaving plexiglass.

* * * the commercials would be deceptive, within the meaning of the statute, in the manner in which they deliberately misinform the viewer that what he sees being shaved is genuine "tough, dry sandpaper" rather than a plexiglass mock-up.

The camera techniques described above cannot be said to have resulted in a portrayal which the viewer could depend upon as a fair comparison, even though what was claimed of the product may have been, and in many instances was, actually true. It is necessary, in addition, that the demonstration of what may be actually true be fair, representative, and accurate. Where a sharper angle of view accentuates perceptible distortion, the use of such an angle for one piece of glass but not for another with which it is being compared, misinforms the viewer. This deception is obviously illustrated in those instances where the plate glass shot was taken through a rolled down window. The public was told to observe for itself the clarity of the glass when in fact there was no glass. Even if the view through the glass would have been the same as without a glass, the public was entitled to make that decision and judgment for itself and not have the matter prejudged by the advertiser.

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Similarly, in the GM commercial where vaseline was streaked across some sheet glass to emphasize the distortion in the glass, even if the distortion thus shown was no greater than that usually found in sheet glass, the public was entitled to make its own judgment in the issue or, in the alternative, to be told that vaseline had been used to accentuate the distortion.

Both respondents raise a number of additional legal defenses to the action.

Both respondents ask for a dismissal of the complaint because the deceptions were committed by a photographer employed by a film company, in turn hired by an advertising agency which was retained by the respondent and given full authority over the preparation and production of the film. The relationship of the advertising agency to each respondent is said to be that of individual contractor, making the respondents not responsible for the wrongs of the entity. Although this decision absolves the respondent GM from liability for the tortious acts of respondent LOF, this same approach is not proper with respect to each respondent and its own advertising agency. GM did not direct, countenance or concur in the tort of LOF, nor did it employ LOF. It did, however, direct or have the right to direct the work of the advertising agency which it did employ. The deception practiced by the advertising agencies was within the direct scope of their employment even as independent contractors, and the fact of employment is sufficient to bind the employer.

Both respondents urge that the complaint be dismissed because the issues have become moot. They point to the fact that the advertisements involved were the product of a single campaign of fixed duration and that they had been voluntarily discontinued even before the institution of the Government investigation. In addition, a GM officer testified that there was no intention to resume the type of advertising involved. All of these factors must be considered to determine whether the public interest requires the issuance of a cease and desist order. It is noted, however, that the objectionable advertising was not discontinued because of a realization of the impropriety of the advertising. In fact, such impropriety is still not conceded by either respondent. There has been no assurance of the specific steps that would be taken by either respondent to assure the nonrecurrence of such deceptive advertising. The expression of the Commission in the *Colgate-Palmolive* case, *supra*, is most pertinent:

Another factor militating against dismissal of this complaint on the grounds of abandonment is respondent's continued insistence that its advertising is not false. In our view, this attitude on the part of the respondent has a definite bearing on whether there is any likelihood of a resumption of the practice either for competitive or for other reasons.

See, also, *C. Howard Hunt Pen Co., v. Federal Trade Comm.*, 197 F. 2d 273 (3d Cir. 1952); *Galter v. Federal Trade Comm.*, 186 F. 2d 810 (7th Cir. 1951).

Finally, counsel supporting the complaint has proposed an order in this proceeding which prohibits the false representations made regarding the automobile glass. In addition, however, Commission counsel proposes that the order be applicable to "any other merchandise" of these respondents. In this suggestion I cannot concur. General Motors Corporation, a giant among the manufacturing giants of this country, manufactures many products—as counsel states, "from locomotives to washing machines." This proceeding concerns only one of its products, automobiles, and only one of the many component parts of such a product, the glass. There is no suggestion of any irregularities elsewhere or otherwise. Similarly, although to a lesser degree, the Libbey-Owens-Ford Glass Company is involved here in only one of its many lines. An order broad enough to cover all of the products of these respondents is unwarranted unless the advertising operations of these respondents provide a common denominator for all of them. This has not been shown and is quite unlikely.

CONCLUSIONS

1. Respondent LOF has falsely represented that the safety plate glass used in the side windows of GM automobiles is of the same grade and quality as that used in the windshields of GM cars.
2. Respondent LOF and respondent GM have falsely represented that the automobile safety sheet glass used in the side windows of automobiles other than GM automobiles is of the same grade and quality as the sheet glass used in home windows.
3. Respondent LOF and respondent GM have falsely represented that the pictures used in connection with its advertising are accurate demonstrations of the perceptible disparity between the optical distortion of automobile safety plate glass and automobile safety sheet glass under ordinary conditions of use.
4. The use by the respondents of the aforesaid false and deceptive representations has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondents from their competitors and injury thereto has been done to competition in commerce.

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5. The aforesaid acts and practices of the respondents were to the prejudice and injury of the public and of respondents' competitors, and 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.

ORDER

It is ordered, That Libbey-Owens-Ford Glass Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with advertising, offering for sale, sale, and distribution of its automotive glass products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) The automobile safety plate glass used in the side windows of General Motors automobiles is of the same grade and quality as that used in the windshields;

(b) The automobile safety sheet glass used in automobiles other than General Motors automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Representing, directly or by implication, in describing, explaining, or purporting to prove the quality or merits of any such products or the superiority of any such products over competing products, that pictures, depictions, or demonstrations, either alone or accompanied by oral or written statements, are genuine or accurate representations, depictions, or demonstrations of, or prove the quality or merits of any such products, or the superiority of any such products over competing products, when such pictures, depictions or demonstrations are not in fact genuine or accurate representations, depictions, or demonstrations of, or do not prove the quality or merits of any such products or the superiority of any such products over competing products.

It is further ordered, That General Motors Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, and distribution of automobiles and automotive parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the automobile safety sheet glass used in automobiles other than General Motors automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Representing, directly or by implication, in describing, explaining, or purporting to prove the quality or merits of any such products or the superiority of any such products over competing products, that pictures, depictions, or demonstrations, either alone or accompanied by oral or written statements, are genuine or accurate representations, depictions, or demonstrations of, or prove the quality or merits of any such products, or the superiority of any such products over competing products, when such pictures, depictions or demonstrations are not in fact genuine or accurate representations, depictions, or demonstrations of, or do not prove the quality or merits of any such products or the superiority of any such products over competing products.

OPINION OF THE COMMISSION

JULY 16, 1963

By MACINTYRE, *Commissioner*:

In this matter the respondents, Libbey-Owens-Ford Glass Company (LOF) and General Motors Corporation (GM), are charged with violating the Federal Trade Commission Act by the use of false and deceptive advertising statements and representations as to safety glass used in automobiles. The hearing examiner found that some of the charges were sustained and entered a cease and desist order as to such practices against the respondents. While he found respondent GM in violation of law for practices individually engaged in, he declined to hold this respondent also responsible with LOF for the alleged acts of LOF.

All parties have appealed. The exceptions of counsel supporting the complaint are taken to specific findings and rulings of the examiner adverse to the allegations in the complaint. One of their exceptions is to the refusal of the examiner to receive LOF commercials and other evidence in the record against respondent GM and to find GM jointly responsible with LOF for such commercials. Complaint counsel also except to the form of the order. Respondents GM and LOF, in separate briefs, have filed exceptions to most of the basic findings and conclusions holding each individually in violation of law and to the examiner's order to cease and desist.

The examiner has succinctly outlined the facts which gave rise to this litigation. It does not appear that there are any substantial differences between respondents and complaint counsel as to these facts, although there is disagreement as to their interpretation.

Respondents are well-known concerns in their respective fields. They are Libbey-Owens-Ford Glass Company, an Ohio corporation

which manufactures and sells glass products to the automobile industry for installation in automobiles and to other distributors for resale to the public, and General Motors Corporation, a Michigan corporation which makes and sells many products, including motor vehicles and automobile parts. Both corporations are engaged in business in interstate commerce.

The LOF advertising challenged by the complaint developed out of the circumstances which will be described below. GM, which had been purchasing its requirements of automotive glass from LOF for many years, considered, in 1957, a change from safety plate glass (a superior product made by grinding and polishing) to safety sheet glass (not a ground glass) for the side windows of its automobiles at an estimated savings of \$3.3 million for the 1958 model cars. In June 1957, LOF informed GM that it was willing to invest some \$3.3 million in a safety plate glass advertising campaign approved by GM if GM's car division would gear their own advertising to the same objective. LOF's advertising campaign was to be a general promotion of safety plate glass.

Thereafter, on June 12, 1957, GM decided to continue the use of safety plate glass in its 1958 cars in consideration for LOF's offer to spend \$3.3 million in advertising safety plate glass. The examiner found that there was no formal contractual arrangement or other agreement obligating LOF to advertise if GM bought its glass nor obligating GM to buy the glass if LOF advertised. But he further found that LOF's promise to advertise was one of the factors considered by GM in continuing to use safety plate glass.

The LOF advertising program consisted primarily of twenty-two television commercials used in 1957 and 1958. These commercials were broadcast by the National Broadcasting Company in conjunction with the NCAA (National Collegiate Athletic Association) football television programs, sponsored in part by LOF, beginning September 21, 1957, and ending December 7, 1957; and by the Columbia Broadcasting System with the Perry Mason television shows, sponsored in part by LOF from September 28, 1957, to June 21, 1958. In general these commercials dealt with the advantages of safety plate glass over safety sheet glass with respect to perceptible distortion.¹ They represented by visual demonstrations and written and oral statements that, in automotive use, no perceptible distortion was seen through safety plate glass, but that it was seen through safety sheet glass. The viewer was advised in these advertisements that LOF was the sponsor of the

¹ Perceptible distortion is defined in the initial decision as follows: a twisting motion or misshapen condition relating to the optics of vision which is perceived or discerned by the viewer.

program. In the commercials themselves there were numerous shots of GM automobiles and in the audio portion GM was the only corporation mentioned in connection with the use of safety plate glass in car windows. The advertisements were prepared by an advertising agency, Fuller & Smith & Ross, which employed Television Graphics, a film-producing firm, to make the motion picture films for the commercials.

Libbey-Owens-Ford Advertising

The LOF television commercials as above indicated purport to show the relative merits of safety plate glass and safety sheet glass and in particular the lack of distortion in safety plate compared with the presence of distortion in safety sheet glass. Thus, in one the action shows two pieces of glass which are cut identically in the shape of an automobile side light set up side by side with the announcer standing between them. The announcer states, "Two pieces of safety glass for the windows of a car. They look alike but they don't 'see through' alike and you should know about the difference." Subsequently the action moves to scenery along the roadside and a sign reading "Entering Fairlawn" which show perceptible distortion seen through the side window of a moving car. The words "ORDINARY SAFETY GLASS" are superimposed on the screen. The announcer at this point states: "This is ordinary safety glass made of window glass. It puts a wiggle in the things you watch." The next scene shows scenery along the roadside and a sign reading "Entering Fairlawn," which show no perceptible distortion seen through the side window of a moving car. An LOF etch mark, "SAFETY LOF PLATE," is superimposed on the screen. The announcer here states, "This is safety plate glass. It takes the wiggle out of what you watch." The announcer additionally makes other statements in this commercial, such as follows: "Because it gives the driver better vision, laminated safety plate glass is required by law in windshields * * * but only cars with Body by Fisher use safety plate glass in every window of every car as standard equipment. It doesn't cost you a cent extra."

In another commercial the action at one point shows the announcer with two pieces of glass which are cut identically in the shape of an automobile side light. The pieces of glass are mounted on each side of the announcer and in front of zebra boards, *i.e.*, square boards with parallel black and white lines running diagonally across the surface of the boards. The action next shows a close-up of the glass on the announcer's right as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through

the glass show perceptible distortion. The announcer states: "Watch the lines wiggle through ordinary safety glass * * *." Subsequently the action shows a close-up of the glass on the announcer's left as he rotates it so that it is at an acute angle to the zebra board behind it. The lines of the zebra board seen through the glass show no perceptible distortion. The announcer then states: "Safety glass takes the wiggle out of watching."

The above descriptions refer only to portions of the respective commercials. The examiner found that a number of the comparisons were untrue and improper because they exaggerated or tended to exaggerate any distortion found in the sheet glass. Such findings are fully supported by the record.

In one sequence the use of the camera shot from the rear seat of an automobile through the front window resulted in a sharper angle of vision and greater distortion than a passenger would ordinarily experience. Here the challenge is not necessarily to the degree of distortion shown, which may be the distortion which would be observed from the angle used. The deception is in the fact that the angle at which the pictures were taken is not a normal viewing angle for the occupant of a car. The examiner so found in Finding 34 of the initial decision. The commercial, by using an extreme and unusual angle, unfairly exaggerated the distortion present in the sheet glass. The deception in the commercial resulted from a partial or half-truth, a form of misrepresentation condemned in *P. Lorillard Co. v. Federal Trade Commission*, 186 F. 2d 52 (4th Cir. 1950).

In one of the commercials, the comparison sequence uses films taken through different windows of the car. The sheet glass shot was made through the right front window and the plate glass shot was made through the right rear. The testimony indicates that the scene through the sheet glass was taken at a sharper angle than that through the plate glass. The examiner found that this camera technique accentuated any distortion present. Such finding is amply supported by the record, including the testimony of Mr. Alexander of LOF and Mr. Shaneyfelt, a special FBI agent.

In another comparison sequence the plate glass scene was photographed through a normal lens whereas the sheet glass scene was shot through a telephoto lens. The examiner found that this had the effect of magnifying the distortion in the sheet glass scene. Evidence of record such as the testimony of Mr. Shaneyfelt supports such finding. In the commercial using the zebra boards, the sheet glass shot was at an angle more acute than that for the plate glass. This was a deceptive comparison since, as the examiner found and the record

shows, the more acute angle would tend to show greater distortion in the sheet glass.

Finally, comparison sequences were made in which the picture of the safety plate glass was made through an open window instead of through an actual piece of safety plate glass. In the latter case, the examiner found that witnesses, including experts, by looking at the scene, were unable to detect in which instances scenes were shot through open windows rather than through plate glass. The film producer testified that the open window shots were taken because of a shortness of time and bad weather conditions which curtailed shooting. No contention is made that it was necessary to use the open window substitution for real glass or the other "techniques" above mentioned because of any technical limitations in the television medium.

General Motors' Advertising

From September 1957 to May 1958 General Motors Corporation sponsored a national television series called "Wide Wide World." The series included approximately thirty separate commercials, one of which involved glass. The glass commercial was used twice in the series. GM employed advertising agency MacManus, John & Adams, Bloomfield Hills, Michigan, to make the commercials for this program. Klaeger Film Productions, Inc., of New York made the films for the glass commercial. Pertinent video and audio portions were as follows:

VIDEO

9. DROP IN WINDSHIELD, HEAVILY OUTLINED
10. DROP IN OTHER WINDOWS
11. HORIZONTAL ANIMATION
VERY TIGHT CLOSE-UP OF
PROFILE OF ORDINARY WIN-
DOW GLASS SHOWING IM-
PERFECTIONS AND MARKED
"Ordinary Glass"
12. MOVE UP AND DISSOLVE IN
PLATE GLASS SHOWING FLAT
PLANES AND MARKED
"PLATE"

AUDIO

* * * every automobile has safety plate glass in the windshield.

But only General Motors has gone to the extra care and trouble of protecting your vision by putting safety plate glass all the way around in all its cars. Windshield * * * doors * * * and in the rear.

What's the difference? Ordinary window glass has small bubbles and imperfections that mar your vision.

But plate glass is ground and polished on both sides with jeweler's rouge to give you the safest, most restful viewing glass known.

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VIDEO—Continued

13. WIDE SHOT OF WINDOW

14. CLOSE-UP SHOWING DISTORTION

15. REPLACE WITH CLEAR SCENE

16. REPEAT NO. 10

AUDIO—Continued

Try this test in your own house. Look through a pane of window glass at the extreme edge, move your head back and forth a few inches.

And this is the kind of distortion you'll see. Straight lines become curved, distances distorted.

But with plate glass, this is what you see—everything sharp and clear.

That's why General Motors feels it's important to give you this sharper, clearer vision in *every* window of your automobile.

In making the comparison scenes in this commercial, a single piece of glass was installed in a wooden frame in the studio. Background scenery was arranged to simulate an outdoor scene. The glass used apparently was sheet glass. The same scene was shot through the glass twice. First, photographs were made through the glass as purchased, purporting to show the scene through safety plate glass. Thereafter, other photographs were made through the glass with streaks of vaseline applied to it, purporting to show the scene through home window glass. In the plate glass shot, the camera was in a stationary position. In the home window shot, the camera was panned from side to side as though the viewer were walking past the window. The film thus created showed an undistorted view for the "plate glass" shot, but a distorted view for the "home window glass" shot. The examiner found that the distorted view for the home window shot was not an exaggerated one compared to the experiences of witnesses viewing other window glass under similar circumstances. No contention is made that technical limitations in the television medium required the use of the faked demonstration above described.

While the demonstration purported to compare plate glass with home window glass, the advertisement may reasonably be construed as comparing the safety plate glass in the side and rear windows in GM cars with the glass in such windows in other makes of automobiles. As found by the examiner, the association with the glass in non-GM cars was obviously intended, for there would be no purpose in comparing home window glass with the plate glass in GM cars unless the claim was that the visual effects of home window glass were to be found in other makes of cars.

The Issue of GM Liability for LOF Commercials

The hearing examiner ruled that he would not receive the LOF commercials and certain other documents in evidence as against respondent GM. He in effect held that no basis was established for finding GM liable for the representations contained in the LOF commercials. He came to this conclusion in spite of his findings that GM continued the use of safety plate glass in 1958 automobiles in consideration of LOF's offer to spend \$3.3 million in advertising safety plate glass and that LOF embarked on such a program "only after it had secured GM's approval." The examiner found that the undertaking could not be considered a "joint venture" and that there could be no liability under the "doctrine of joint tort." Since we find, as will be further discussed below, that respondent GM separately and independently engaged in practices similar to those of LOF, which were found to be unlawful, there appears to be no necessity for consideration of the question of whether GM may also be liable for the representations in the LOF commercials. Accordingly, the examiner's ruling denying complaint counsel's motion to receive the LOF commercials and other evidence as against GM will be sustained, but his specific findings on this issue will not be adopted.

Respondents' Individual Representations

The first allegation in the complaint charges that respondents falsely represented that automobile safety plate glass used in the side windows of GM cars is the same grade and quality as that used by GM in the windshields of its cars. The examiner found this charge sustained as to LOF but not as to GM. In this he erred. GM advertised that every automobile has safety plate glass in the windshield but that only GM has "safety plate glass all the way around in all cars. Windshield * * * doors * * * and in the rear." The advertising contains the clear inference that all the windows are equal in quality to the windshield. This is not true. The record clearly shows that GM used different types of safety plate glass in different windows of its cars and that the plate glass in the windshields generally was of a higher quality than that in the side windows. This is disclosed by the material specification for glass in GM cars, received in the record as Commission Exhibit 69 A-S, and other evidence. The initial decision will be modified to incorporate appropriate findings and conclusions sustaining the charge on this point as to GM.

The primary issue in this case concerns the use of demonstrations on television which are fake or at least partly rigged performances but

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which give to the viewer of the television screen the impression that an actual experiment or an actual demonstration is taking place. For example, what appears to be, in one commercial, a real comparison in distortion characteristics between plate glass and sheet glass is not that at all; it is actually a comparison between empty space and sheet glass. In other instances, the substitution of material or the use of photographic techniques makes the comparisons fictitious. The viewer of the television screen is led to believe that he is seeing a real comparison which has previously been filmed and which is now shown to him as it actually happened. But what he is led to believe is *not* true.

These spurious or fake demonstrations contravene the Federal Trade Commission Act in two ways. The first concerns the accuracy or the truth of the representation or claim which is being made. The commercials convey the impression that sheet glass shows more distortion than is true in ordinary use, a claim which is a misrepresentation of comparative quality between products and a false disparagement of competing products. See the Commission's opinion in *Carter Products, Inc., et al.*, Docket No. 7943 (April 25, 1962) [60 F.T.C. 782, 792].

In the LOF commercials the representation is that a comparison between safety plate glass and safety sheet glass will show no perceptible distortion in safety plate but a degree of distortion (the distortion actually shown and observed in the commercials) in safety sheet. The demonstration and comparison of the two products on the television screen is supposed to prove this point. The fact is, and the record shows, that the distortion in the sheet glass under ordinary conditions of use would not be as great as that represented. The means by which the distortion in sheet glass was exaggerated have been noted above, that is, by the use of different camera angles and different lenses and other photographic techniques. The result was a misrepresentation in comparative quality between the two products and a false disparagement of the quality of safety sheet glass.

The GM commercial contains a similar quality misrepresentation and a disparagement of competing products. Therein the claim is made that every automobile has safety plate glass in the windshields but only GM has it all the way around, and a comparison is made with home window quality glass. The home window shot (which, by inference, is the side and rear window glass found in cars other than GM's) was made by smearing ordinary sheet glass with vaseline. In using such a mockup for demonstration, GM was, in effect, saying to the viewer, "See the distortion in home window glass which is like

the distortion you will see in the side and rear windows of other cars." But the home window glass distortion, since such glass as established by the record is inferior to that used in automobiles, is not the distortion found in automobile sheet glass. The assertion of GM that the distortion was greater in the side windows in other cars than it actually is, *i.e.*, equivalent to that in home window glass, was a false representation as to the comparative quality of the glass products and disparaging of the glass in other cars. It was also a false disparagement of other cars.

The representations made by the respondents in their respective commercials are violations of the Federal Trade Commission Act in yet another way. The fake or spurious demonstrations were unfair methods of competition in that they purported to prove the merits or qualities of products but did not do so.² This is aside from the question of whether an actual demonstration would give the same results. The Commission discussed this kind of practice in its recent decision in *Colgate-Palmolive Company*, Docket No. 7736 (February 18, 1963) [62 F.T.C. 1269, 1274]. There we said in part:

* * * If, relying on falsehoods told them by a seller, consumers have been persuaded to buy his product, they may perhaps not be deceived or hurt in a strict pecuniary sense if the falsehoods did not relate to the quality or merits of the product. But such "deception" of purchasers is by no means essential to a finding of unfair competition. Regardless whether consumers are "injured" when they are induced to buy through false advertising claims, honest competitors are injured—because some or many of such sales have been made at their expense. And the Federal Trade Commission Act has enacted into law the fundamental concept that businessmen may not, in competing with each other for the consumer's dollar, resort to "unfair methods of competition in commerce and unfair * * * acts or practices in commerce." Even apart from any moral or ethical considerations, Congress considered that such methods and practices must be outlawed in a competitive system where sellers should have fair and equal access to markets and where success should be the reward of the most efficient rather than the least scrupulous.

We concluded in *Colgate* that if people are led by misrepresentation to buy an advertised product, in preference to an honest competitor's, it is *not sufficient justification to say that the product actually possesses the claimed quality or merits*. These same considerations discussed in *Colgate* apply with equal force in this proceeding.

Both respondents raise the question of discontinuance or abandonment of the unfair practices. It seems that this argument is based on the assertion that the particular commercials were used for a

² The LOF commercials contained false demonstrations purporting to prove the superiority of safety plate glass over safety sheet glass. The GM commercial had a false demonstration purporting to prove the superiority in plate glass over sheet glass and superiority in GM cars over other makes of cars.

specific advertising campaign and will not be used again. This does not by any means establish conclusively that similar practices will not again be engaged in. We believe that it is clear that the public interest in this proceeding is substantial and that an order to cease and desist is warranted.

Respondent LOF makes a further argument that it is not responsible for the acts of what it terms an "independent contractor." There is no question in our view that the relationship between respondent LOF and the advertising company was one of agency and that LOF was responsible for the acts of its agent.

Exceptions have been taken to the scope and form of the order in the initial decision by each of the parties. We believe that some changes in the order are justified. These include limiting the General Motors Corporation order to automotive glass products sold either as a part of the automobile or a separate item. The order against GM, on the other hand, should include a prohibition against misrepresenting the quality of the glass in the side windows of its automobiles and other closely related practices. A clear prohibition against the use of false disparagement of competing products should be included against both respondents. These and other changes for clarification and for coverage of closely related practices will be incorporated in the proposed order to be issued herewith.

Complaint counsel except in particular to the examiner's holding on page 769 of the initial decision to the effect that complaint counsel have not sustained their burden of proof with respect to the charge that LOF has exaggerated the perceptible distortion in automotive sheet glass. This holding concerns only the third allegation under Paragraphs 6 and 7 of the complaint. The examiner distinguished this charge from "the later charge concerning the deceptive camera techniques to exaggerate distortion." Thus, the holding in this instance is not inconsistent with his other findings and conclusions. As limited to the particular charge, we will sustain the holding.

Exceptions taken by the parties not covered by the discussion above have all been noted and they are rejected. The exceptions of complaint counsel are sustained to the extent above indicated and otherwise rejected. The exceptions of respondent GM are sustained to the extent of limiting the order to automotive glass products and otherwise rejected. The exceptions of respondent LOF are rejected. The initial decision will be modified in accordance with the views expressed in this opinion and as modified will be adopted as the decision of the Commission. An appropriate order will be entered.

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Final Order

FINAL ORDER

SEPTEMBER 20, 1963

Pursuant to Section 4.22(c) of the Commission's Rules of Practice, published May 16, 1962, 27 Fed. Reg. 4609, 4621 (superseded August 1, 1963), respondents were served with the Commission's decision on appeal and afforded the opportunity to file exceptions to the form of the order which the Commission contemplates entering; and

Respondents, having timely filed separate exceptions to the order proposed, which exceptions were opposed by respective replies thereto filed by counsel supporting the complaint, and the Commission, upon review of these pleadings, having determined that the exceptions filed by both respondents should be disallowed and that the order as proposed should be entered as the final order of the Commission:

It is ordered, That the FINDINGS OF FACT in the initial decision be, and they hereby are, modified by adding at the end of such findings on page 764 the following new finding:

53. GM advertised that every automobile has safety plate glass in the windshield but that only GM has "safety plate glass all the way around in all cars. Windshield * * * doors * * * and in the rear." This statement represents by inference, contrary to fact, that the side windows in GM cars are made of safety plate glass of the same grade and quality as that in the windshields of GM cars.

It is further ordered, That paragraph 1 of the CONCLUSIONS contained in the initial decision be, and it hereby is, modified to read as follows:

Respondent LOF and respondent GM have falsely represented that the safety plate glass used in the side windows of GM automobiles is of the same grade and quality as that used in the windshields of GM cars.

It is further ordered, That the paragraphs in the initial decision beginning with the first paragraph under the heading DISCUSSION on page 764 and ending with the first paragraph on page 768, inclusive, be, and they hereby are, stricken, and that the following be substituted therefor:

The LOF commercials which were prepared by FS&R and Television Graphics, as well as the printed material prepared by LOF for use by GM were received in evidence as to respondent LOF and were offered in evidence by counsel supporting the complaint as to respondent GM as well. In view of the showing hereafter discussed as to the individual and separate liability of

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each respondent for acts and practices alleged to be unlawful by the complaint, it becomes unnecessary to consider the possible liability of GM for the LOF commercials. The motion of counsel supporting the complaint that the LOF commercials be received in evidence as to respondent GM is hereby denied.

It is further ordered, That the findings, conclusions and order contained in the initial decision, as modified herein, be, and they hereby are, adopted as the findings and conclusions and order of the Commission.

It is further ordered, That Libbey-Owens-Ford Glass Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of its automotive glass products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) The automobile safety plate glass used in the side windows of General Motors Corporation automobiles is of the same grade and quality as that used in windshields of such automobiles or otherwise misrepresenting the grade or quality of glass used in any window.

(b) The automobile safety sheet glass used in automobiles other than General Motors Corporation automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Using in advertising any picture, demonstration, experiment or comparison, either alone or accompanied by oral or written statements, to prove the quality or merits of any such products, or the superiority of any such products over competing products, when such picture, demonstration, experiment or comparison is not in fact genuine or accurate and does not constitute actual proof of the claim because of the undisclosed use and substitution of a mock-up or prop instead of the product, article, or substance represented to be used therein.

3. Disparaging the quality or properties of any competing product or products through the use of false or misleading pictures, depictions, demonstrations, or comparisons, either alone or accompanied by oral or written statements.

4. Misrepresenting in any manner the quality or merits of any such products, or the superiority of any such products over competing products.

It is further ordered, That General Motors Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of its automotive glass products, sold either as part of an automobile or separately, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) The automobile safety plate glass used in the side windows of its automobiles is of the same grade and quality as that used in windshields of such automobiles or otherwise misrepresenting the grade or quality of glass used in any window.

(b) The automobile safety sheet glass used in automobiles other than General Motors Corporation automobiles is of the same grade and quality as the sheet glass used in home windows.

2. Using in advertising any picture, demonstration, experiment or comparison, either alone or accompanied by oral or written statements, to prove the quality or merits of any such products, or the superiority of any such products over competing products, when such picture, demonstration, experiment or comparison is not in fact genuine or accurate and does not constitute actual proof of the claim because of the undisclosed use and substitution of a mock-up or prop instead of the product, article, or substance represented to be used therein.

3. Disparaging the quality or properties of any competing product or products through the use of false or misleading pictures, depictions, demonstrations, or comparisons, either alone or accompanied by oral or written statements.

4. Misrepresenting in any manner the quality or merits of any such products, or the superiority of any such products over competing products.

It is further ordered, That respondents 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 set forth herein.

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IN THE MATTER OF

CENTRAL SEWING CENTER, INC., ET AL., DOING BUSINESS AS
TRI-STATE DISTRIBUTINGORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8556. Complaint, Mar. 5, 1963—Decision, Sept. 20, 1963*

Order requiring Denver, Colo., sellers of sewing machines and vacuum cleaners to the public, to cease representing falsely in advertising and orally that their "bait" offers made to develop leads to prospects, were bona fide offers to give sewing machines free to specially selected persons; that an excessive amount set forth as "Retail Value" was the usual price and a stated lesser figure represented savings; that a customer preferring one of their regular line would be granted a substantial discount; that drawings for their products displayed at theaters or business establishments—actually schemes to obtain leads to prospective customers—were bona fide contests and that participants won valuable certificates entitling them to reductions from usual prices; and that their products and practices had been tested and approved by "Good Housekeeping" and "Parents Magazine".

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 Central Sewing Center, Inc., a corporation, and Leonard H. Dorey, individually and as an officer of said corporation, and said respondents collectively, doing business as Tri-State Distributing, 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 Central Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1417 South Broadway, in the city of Denver, State of Colorado.

Respondent Leonard H. Dorey is an individual and an officer of respondent corporation. He formulates, directs and controls the acts and practices of the respondent corporation, including the acts and practices hereinafter set forth. His address is the same as that of the respondent corporation.

Respondents Central Sewing Center, Inc., and its officers, and Leonard H. Dorey, as an individual and as an officer of respondent