

report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
LENS CRAFT RESEARCH AND DEVELOPMENT CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTIONS 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. 8950. Complaint, Jan. 17, 1974—Decision, Sept. 4, 1974

Consent order requiring an Escondido, Calif., seller of contact lenses and advertising literature and brochures designed to assist in the sale of the lenses, among other things to cease making false claims for its Burnor hard plastic contact lenses, and to run corrective advertisements.

Appearances

For the Commission: *Rosemary P. Capodieci, Bertrand E. Christian*
and *Blanche Deight*.

For the respondents: *Kedrick & Subkow*, Los Angeles, Calif.

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 Lens Craft Research and Development Co., a corporation, and John L. Burnor and Terry E. Gustine, individually and as officers of said corporation, hereinafter sometimes 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 Lens Craft Research and Development Co., hereinafter sometimes referred to as Lens Craft, is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of California with its principal office and place of business located at 1720 E. Valley Parkway in the city of Escondido, State of California.

Respondent John L. Burnor is an officer of the corporate respondent. He helps formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. In addition respondent John L. Burnor is the sole proprietor of Lens Craft Optical of Escondido, 1720 E. Valley Parkway, Escondido, Calif., Lens Craft Optical of San Diego, 2550 5th Avenue, Suite 148, San Diego, Calif., and Lens Craft Optical of Riverside, 6859 Magnolia Avenue, Riverside, Calif.. His address is the same as that of the corporate respondent.

Respondent Terry E. Gustine is an officer of the corporate respondent. He helps formulate, direct, and control acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondent Lens Craft Research and Development Co. is now, and for some time last past has been, engaged in the sale of contact lenses to opticians who sell them to the public.

The corporate respondent Lens Craft Research and Development Co. also sells and distributes, and has sold and distributed, to sellers of contact lenses various types of advertising literature and brochures designed to assist in the sale of its said lenses. Contact lenses are designed to correct errors and deficiencies in the vision of the wearer and are devices, as "device" is defined in the Federal Trade Commission Act.

Respondent John L. Burnor doing business as Lens Craft Optical of Escondido, Calif., Lens Craft Optical of San Diego, Calif., and Lens Craft Optical of Riverside, Calif., sells and distributes, and has sold and distributed contact lenses to the public.

PAR. 3. In the course and conduct of their business as aforesaid, corporate respondent Lens Craft Research and Development Co. now causes, and for some time last past has caused, its products when sold, to be shipped from its place of business in the State of California to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business respondents have disseminated and have caused the dissemination of, advertisements concerning their said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal

Trade Commission Act, including but not limited to advertisements inserted in newspapers of general circulation, radio, brochures and in oral sales presentations to opticians, prospective purchasers and purchasers, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their said devices by the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of said statements and representations contained in said advertisements, but not all inclusive thereof, are the following:

Written Representations

Burnor Contact Lenses are the result of 12 years of extensive research. Burnor Contact Lenses are specially designed for 24 hour wear. These hard plastic lenses can be worn for 5 to 7 days continuously in comfort. * * * [V]irtually anyone whose visual problem can be corrected with eyeglasses is a candidate for Burnor Contact Lenses. * * * Symptoms normally expected from conventional contact lenses such as excessive tearing, extreme sensitivity to light, etc., are either non-existent with Burnor Contact Lenses or experienced only to a very mild degree. * * * Most Burnor Contact Lens wearers are able to sleep in their lenses. The lenses enable patients (under the supervision of their eye specialists) to sleep in their lenses with comfort.

A revolutionary new technique in the fitting of contact lenses has recently been introduced by Lens Craft Research and Development Company, founded by John L. Burnor. These lenses are known as the Burnor Contact Lenses. * * * [N]ow, anyone whose healthy eyes can be corrected can wear Burnor Contact Lenses! Begin by wearing them from 8 to 15 hours the first day!

Oral Representations

Sleeping in the lens will improve the comfort and the eyesight of the wearer. * * * specifically designed for 24 hour wear. The longer you wear the Burnor Lenses the better it is for you. * * * [T]he use of a lacometer to measure the cornea is a unique feature of the Lens Craft fitting process. The advertising claims made by respondents are approved by the California Board of Medical Examiners.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication that:

1. The Burnor Contact Lenses are the result of 12 years of extensive research.
2. Members of the medical profession generally prescribe 24 hour wear for the respondents' contact lenses.

3. Sleeping in respondents' contact lenses and wearing them for 5 to 7 days continuously will not result in harm to wearers thereof.

4. Persons who desire to sleep in respondents' contact lenses do so under the supervision of their eye specialist.

5. There is little or no discomfort associated with wearing respondents' contact lenses.

6. Respondents' contact lenses are unique or substantially different from other hard plastic contact lenses presently available on the market.

7. Any person whose healthy eyes can be corrected can successfully wear respondents' contact lenses.

8. Respondents have introduced a revolutionary, new fitting technique which includes the use of a lacometer, a special instrument developed by John Burnor to map the cornea.

9. Wearing the respondents' contact lenses for continuous periods will result in an improvement in eyesight and increase wearing comfort.

10. Respondents' hard plastic contact lenses are specifically designed for 24 hour wear.

11. The advertising claims of respondents are approved by the California Board of Medical Examiners.

PAR. 6. In truth and in fact:

1. Burnor Contact Lenses are not the result of 12 years of extensive research. The only experimentation with the lens was a limited trail study conducted by a medical doctor which showed that a significant number of people could not safely undertake 24 hour wear.

2. Members of the medical profession do not generally prescribe 24 hour wear for respondents' contact lenses.

3. Sleeping in respondents' contact lenses and wearing them 5 to 7 days continuously has resulted in harm to respondents' customers. The longer and the more continuous the periods of wear of respondents' contact lenses the greater the probability of harm to the eyes.

4. Persons who desire to wear the Burnor Lens while sleeping do not do so under the supervision of their eye specialist, but do so under the supervision of employees of Lens Craft or their licensees, none of whom are qualified eye specialists.

5. Many persons who attempt to wear respondents' lenses will experience some discomfort after wearing them. In a significant number of cases the discomfort will be prolonged and in some cases will never be overcome.

6. The respondents' contact lenses are not unique nor are they substantially different from other hard plastic contact lenses presently available on the market.

7. A significant number of persons whose healthy eyes can be corrected cannot successfully wear respondents' contact lenses.

8. Respondents' fitting process is not revolutionary or new because a lacometer is essentially the same as a topogometer, an instrument which has been commonly used for some time to map the surface of the cornea.

9. Continuous wear of respondents' contact lenses does not result in an improvement in the wearer's eyesight, nor does it increase wearing comfort.

10. Respondents may have specifically designed their lenses for 24 hour wear; however, the lenses do not constitute a significant improvement in contact lens design and are not medically accepted for 24 hour wear.

11. The advertising claims of the respondents have not been approved by the California Board of Medical Examiners.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were, and are false, misleading or deceptive acts or practices.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms, and individuals, in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices, has had, now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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 methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereto with violations of Sections 5 and 12 of the Federal Trade Commission Act; and

The Commission having withdrawn the matter from adjudication for

the purpose of negotiating a settlement by the entry of a consent order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Lens Craft Research and Development Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1720 East Valley Parkway, in the city of Escondido, State of California.

Respondents John L. Burnor and Terry E. Gustine are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Lens Craft Research and Development Co., a corporation, its successors and assigns, and John L. Burnor and Terry E. Gustine, individually and as officers of said corporation, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale, advertising, offering for sale, or the transportation or distribution of any contact lens or any related products, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce as "commerce" is defined in the Federal Trade Commis-

sion Act, which advertisement represents, directly or indirectly that:

1. The respondents' contact lenses are the result of 12 years of extensive research; or misrepresents in any manner the length of time or amount of research conducted on respondents' contact lenses or on any of their related products.
2. Members of the medical profession generally prescribe 24 hour wear for respondents' contact lenses.
3. Sleeping in respondents' contact lenses and wearing them for 5 to 7 days continuously is possible without disclosing, clearly and conspicuously, that such practices may be injurious to the eyes; or misrepresents in any manner the wearing characteristics of any of their contact lenses or any related products.
4. Persons who wear the Burnor lenses while sleeping do so under the supervision of an ophthalmologist, if such is not the fact; or misrepresents in any manner that the supervision provided for Burnor lens wearers is by a person or persons professionally qualified to do so.
5. All persons can wear respondents' contact lenses without discomfort, or that most people can wear said contact lenses without discomfort except after they have become fully adjusted thereto; or misrepresents in any manner the wearing comfort or the period of time required for the initial adjustment.
6. Respondents' contact lenses are unique; or misrepresents in any manner the character or quality of any of respondents' contact lenses or any of their related products.
7. Every person whose healthy eyes can be corrected can successfully wear respondents' contact lenses.
8. Respondents' fitting process is revolutionary or uniquely different from other processes; or that the use of a lacometer in the fitting process is revolutionary or a new technique in fitting contact lenses; or misrepresents in any manner the ability of respondents to fit contact lenses or any related products.
9. Sleeping in respondents' contact lenses will improve the eye comfort or the eyesight of the wearer.
10. Respondents' hard plastic contact lenses are specifically designed for 24 hour wear; or misrepresents in any manner

that their design is a significant improvement over other contact lenses; or misrepresents in any manner that their design is generally approved by persons professionally qualified to make such approval.

11. The content of respondents' advertising claims has been approved by the California Board of Medical Examiners; or misrepresents in any manner that an approval of any product or service or an approval of advertising claims relating to any product or service has been obtained from any individual or organization.

B. Disseminating, or causing the dissemination of any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, or any related products, which advertisements contain any of the representations prohibited in Paragraph A hereof.

C. Communicating orally, in writing or in any other manner, directly or by implication, any of the representations prohibited in Paragraph A hereof; except, that this order provision is not intended to apply to representations made orally, in writing or in any other manner, directly or by implication, to ophthalmologists or optometrists in furtherance of research and development of respondents' contact lenses.

It is further ordered, That respondents shall cause dissemination, clearly and conspicuously, of the affirmative disclosure attached hereto as Appendix A in the same section of each newspaper used by Lens Craft or licensees of said Lens Craft to advertise the Burnor lens two or more times in the past two years. The affirmative disclosure shall be at least 4-3/4 inches by 4-3/4 inches in size and shall be published thirty (30) days after this order becomes final, at least once each week in each publication for four consecutive weeks.

It is further ordered, That respondents shall cause dissemination of the affirmative disclosure attached hereto as Appendix B on each radio station used by Lens Craft or licensees of Lens Craft to advertise the Burnor lens two or more times in the last two years. Thirty (30) days after this order becomes final, said affirmative disclosure shall be made on each radio station for one week in the exact manner and time periods as previous advertising.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present

business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future licensees of respondents engaged in the offering for sale or the sale of any of respondents' products, or in any aspect of preparation, creation or placing of advertising for the offering for sale, sale or distribution of respondents' contact lenses or any related products, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents obtain from each present and future distributor, franchisee, licensee or sales representative an agreement in writing (a) to abide by the prohibitions of Paragraphs A, B and C of this order, and (b) to cancellation of their license or franchise for failure to do so; and cancel the license or franchise of any distributor to do so; and cancel the license or franchise of any distributor, franchisee or licensee, or terminate the employment of any sales representative, who fails to abide by the prohibitions of Paragraphs A, B and C of this order; *Provided, however,* That no such agreement is required from an ophthalmologist or optometrist who is a distributor, franchisee or licensee, whether or not engaged in research, if a copy of this order is given to such exempted ophthalmologist or optometrist, and a signed acknowledgement of receipt of this order is secured and retained by respondents in a manner available for inspection by the Commission staff upon reasonable notice.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may effect compliance obligations arising out of the order.

It is further ordered, That the respondents herein 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 this order.

Decision and Order

84 F.T.C.

APPENDIX A

NOTICE

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BURNOR CONTACT LENSES

We have previously advertised our Burnor lenses as 24 hour sleeping lenses that could be worn 5 to 7 days continuously with little or no discomfort.

Wearing *any* hard plastic contact lens while sleeping is not generally recommended by members of the medical profession. The research studies conducted to date indicate that wearing hard plastic contact lenses during sleep may be a health hazard. Thus, our lenses should not be worn while sleeping or continuously for more than a period of time prescribed by a physician. Not all persons with correctable vision problems can successfully wear our contact lenses.

LENS CRAFT RESEARCH AND DEVELOPMENT CO. ESCONDIDO,
CALIFORNIA

APPENDIX B

RADIO

ANNOUNCER: RECENTLY, WE HAVE ADVERTISED THE BURNOR CONTACT LENS FROM LENS CRAFT RESEARCH AND DEVELOPMENT COMPANY AS A LENS THAT CAN BE WORN WHILE SLEEPING! AND FOR 5 TO 7 DAYS CONTINUOUSLY WITH LITTLE OR NO DISCOMFORT! WEARING ANY HARD PLASTIC CONTACT LENS WHILE SLEEPING IS *NOT* GENERALLY RECOMMENDED BY MEMBERS OF THE MEDICAL PROFESSION. RESEARCH STUDIES CONDUCTED TO DATE INDICATE THAT WEARING HARD PLASTIC CONTACT LENSES WHILE SLEEPING MAY BE A HEALTH HAZARD! THUS OUR LENSES SHOULD NOT BE WORN WHILE SLEEPING OR CONTINUOUSLY FOR MORE THAN A PERIOD OF TIME PRESCRIBED BY A PHYSICIAN. NOT ALL PERSONS WITH CORRECTABLE VISION PROBLEMS CAN SUCCESSFULLY WEAR OUR CONTACT LENSES. THIS ANNOUNCEMENT IS MADE BY LENS CRAFT RESEARCH AND DEVELOPMENT COMPANY OF ESCONDIDO, CALIFORNIA.

IN THE MATTER OF

PIONEER ASSOCIATED CONTRACTORS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket 8895. Complaint, Aug. 10, 1972—Decision, Sept. 5, 1974

Consent order requiring a Denver, Colo., home improvement firm, among other things to cease making false pricing, savings and guarantee claims; inducing purchasers to sign blank or partially blank legal documents; and failing to disclose to consumers in connection with the extension of consumer credit, such information as required by Regulation Z of the Truth in Lending Act. Further, respondent is required to include on the face of its notes, a notice that any subsequent holder takes the note with all conditions of the contract evidencing the debt.

Appearances

For the Commission: *Thomas H. Emmerson.*

For the respondents: *Gould, Moch & Bernick*, Denver, Colo.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Pioneer Associated Contractors, Inc., a corporation, and Robert Rudey, Duane Morey, and Ray Grass, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the implementing regulation promulgated under the Truth in Lending 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 Pioneer Associated Contractors, 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 4301 York Street, in the city of Denver, State of Colorado.

Respondents Robert Rudey, Duane Morey, and Ray Grass are individuals and officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.