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broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" with the meaning of this order, by any employee of a radio or television broadcasting station; or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed to the listening public at the time the record is played that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of October 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents James Higgins and Robert West, individually and as copartners, trading and doing business as B & H Distributing Co., and Betty Alexander, General Manager, 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.

 IN THE MATTER OF

DANIEL D. WEINSTEIN ET AL.

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

Docket 7956. Complaint, June 16, 1960—Decision, Oct. 21, 1960

Consent order requiring sellers of corneal contact lenses in Oakland, Calif., to cease advertising falsely that their contact lenses could be worn successfully by all in need of visual correction and without discomfort, would correct all defects in vision and protect the eye, could be worn for a lifetime without change of prescription, etc.

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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 Daniel D. Weinstein and Irwin R. Title, individually and as copartners trading

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under their own names, 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. Respondents Daniel D. Weinstein and Irwin R. Title are individuals trading under their own names as copartners with their principal offices and place of business located at 1212 Broadway, Suite 538, Oakland 12, California.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising and in the sale to the public of corneal contact lenses known as "Micro-Thin" and "Star-Vault" contact 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.

PAR. 3. 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 mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers and by means of circulars and pamphlets, for the purpose of inducing, and which were and 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 various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Any one who wears glasses, no matter how slight the correction, can wear contact lenses.

See—the new invisible, comfortable way without glasses.

* * * designed for comfortable all-day wear.

* * * freedom from old-fashioned spectacles—with all new Micro-Thin Contact Lenses.

You too can take off your glasses and see with invisible contact lenses.

Completely grooved Micro-Thins are specially designed to allow normal tear and air flow for all day comfort.

For a lifetime investment in better looks and more natural vision.

Question: How safe are contact lenses?

Answer: It is safer to wear contact lenses than regular spectacle lenses because the plastic lens acts as a protective covering for the eye.

PAR. 4. By and through the statements made in said advertisements, and others of similar import not specifically set out herein, respondents represent and have represented, directly and by implication that:

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. There is no discomfort in wearing their contact lenses.
3. Said contact lenses can be worn all day with complete comfort.
4. Eyeglasses can be discarded upon the purchase of their contact lenses.
5. Their contact lenses will correct all defects in vision.
6. Their contact lenses differ from other contact lenses in that they permit tear and air flow.
7. Said lenses may be worn for a lifetime without change of prescription.
8. Said lenses protect the eye.

PAR. 5. The advertisements containing the aforesaid statements and representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

In truth and in fact:

1. A significant number of persons in need of visual correction cannot successfully wear respondents' contact lenses.
2. Practically all persons will experience some discomfort when first wearing respondents' contact lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.
3. Many persons cannot wear respondents' contact lenses all day without discomfort, and no person can wear said lenses all day in complete comfort until he or she has become fully adjusted thereto.
4. Eyeglasses cannot always be discarded upon the purchase of respondents' contact lenses.
5. Respondents' contact lenses will not correct all defects in vision.
6. Many competitive contact lenses permit tear and air flow to the same extent as respondents' lenses.
7. In the case of certain individuals, prescriptions for contact lenses must be changed during their lifetime.
8. Respondents' lenses provide protection to only a small portion of the eye.

PAR. 6. The dissemination by the respondents of the aforesaid false advertisements constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frederick McManus for the Commission.
Respondents for themselves.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, on June 16, 1960, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On August 30, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and counsel supporting the complaint, under date of August 12, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondents Daniel D. Weinstein and Irwin R. Title are individuals trading under their own names as copartners with their principal offices and place of business located at 1212 Broadway, Suite 538, Oakland 12, California.
2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.
3. This agreement disposes of all of this proceeding as to all parties.
4. Respondents waive:
 - a. Any further procedural steps before the hearing examiner and the Commission;
 - b. The making of findings of fact or conclusions of law; and
 - c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.
5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.
6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

It is ordered, That Daniel D. Weinstein and Irwin R. Title, individually and as copartners trading under their own names or under any other name, or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of contact lenses, do forthwith cease and desist from, directly or indirectly:

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

- (a) All persons can successfully wear their contact lenses;
- (b) There is no discomfort in wearing their contact lenses;
- (c) All persons can wear respondents' contact lenses all day without discomfort; or that any person can wear said contact lenses all day without discomfort until such person has become fully adjusted thereto;
- (d) Eyeglasses can always be discarded upon the purchase of respondents' lenses;
- (e) Their contact lenses will correct all defects in vision;

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(f) Their contact lenses differ from other contact lenses in that they permit tear and air flow;

(g) Said contact lenses may be worn for a lifetime without change of prescription; or misrepresenting the time that they may be so worn;

(h) Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in Paragraph 1 above.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 21st day of October 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Daniel D. Weinstein and Irwin R. Title, individually and as copartners trading under their own names, 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.

IN THE MATTER OF

ALFONSO GIOIA & SONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2(a), 2(d), AND 2(e) OF THE CLAYTON ACT

Docket 7790. Complaint, Feb. 25, 1960—Decision, Oct. 22, 1960

Consent order requiring a macaroni manufacturer in Rochester, N.Y., with annual sales exceeding \$2,500,000, to cease discriminating in price in violation of the Clayton Act by giving some customers but not their competitors substantial discounts, such as special prices and free goods granted to Foodtown Purchasing Co., The Kroger Co., and Stop-N-Shop Super Markets, thus violating Sec. 2(a); and by paying advertising allowances and furnishing demonstrators to favored customers, in violation of Secs. 2(d) and 2(e), respectively.

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The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more

particularly designated and described, has violated, and is now violating the provisions of subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Alfonso Gioia & Sons, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 89 Canal Street, Rochester, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of macaroni and macaroni products.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use, consumption, or resale therein, including wholesalers, retailers, and chain stores. Respondent's sales of its products are substantial, exceeding \$2,500,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New York to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business, respondent is in substantial competition with other corporations, partnerships, individuals, and firms engaged in the manufacture, sale and distribution of macaroni and macaroni products.

Many of respondent's purchasers are likewise in competition with each other in the resale of respondent's products within the same trading areas.

PAR. 5. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent is now and has been discriminating in price between different purchasers of its products by selling said products to some purchasers at substantially higher prices than the prices charged competing purchasers for such products of like grade and quality.

PAR. 6. For example, in Cleveland, Ohio, trading area, respondent gave substantial discounts on certain of its products, through the use of special prices and free goods, to Foodtown Purchasing Company, The Kroger Company, and Stop-N-Shop Super Markets but did not offer or grant such discounts to other purchasers who compete with the above-named favored purchasers in the sale and distribution of respondent's products.

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PAR. 7. The effect of such discriminations in price made by respondent, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged, or to injure, destroy or prevent competition with respondent and with purchasers from respondent who receive the lower prices.

PAR. 8. The discrimination in price, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT II

PAR. 9. Paragraphs 1 through 4 of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 10. In the course and conduct of its business in commerce, since January 1, 1957, and continuing to the present, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 11. For example, during the year 1959, respondent contracted to pay, and periodically did pay, amounts of \$350.00 to Stop-N-Shop Super Markets of Cleveland, Ohio, as compensation or as allowances for advertising or other services or facilities furnished by or through Stop-N-Shop Super Markets in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with Stop-N-Shop Super Markets in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 12. The acts and practices of respondent, as alleged herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT III

PAR. 13. Paragraphs 1 through 4 of Count I hereof are hereby set forth by reference and made a part of this Count III as fully and with the same effect as if quoted here verbatim.

