

employees, directly or through any corporate or other device, in or in connection with the sale of biscuit products in commerce as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting to pay to or for the benefit of any customer anything of value as compensation or in consideration for any advertising, promotional activities, or other services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale or distribution of respondent's products, unless such payment or consideration is offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That the respondent, United Biscuit Company of America, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist as set forth in this order.

Commissioner Elman concurring in the result and Commissioner Reilly not participating.

IN THE MATTER OF

STAUFFER LABORATORIES, INC., ET AL.

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

Docket 7841. Complaint, Mar. 21, 1960—Decision, Feb. 7, 1964

Order requiring Los Angeles sellers of a device operated by electric current and designated as a "Posture Rest" and "Magic Couch", to cease representing falsely in advertisements in magazines and periodicals and in advertising matter and brochures distributed to dealers that the device was of value in reducing the body in particular areas such as hips, thighs, legs and stomach, as well as the over-all body weight, and that it would tone and firm sagging muscles.

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 Stauffer Labora-

* Reported as amended by order of hearing examiner dated Oct. 20, 1960.

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tories, Inc., a corporation, and Bernard H. Stauffer, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Stauffer Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its principal office and place of business located at 1919 Vineburn Avenue, in the city of Los Angeles, California.

Respondent Bernard H. Stauffer is the president of the corporate respondent and formulates, directs and controls the 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. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, directly to the public and also to distributors and dealers, of a device as "device" is defined in the Federal Trade Commission Act used in connection with the "Stauffer Home Plan". Such device operates by electrical current and is and has been designated as a "Posture Rest" and "Magic Couch".

PAR. 3. Respondents cause the said device, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other states of the United States and in the District of Columbia both for rental and sale. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said device in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, certain advertisements concerning the said device by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to magazines and periodicals of general circulation and in advertising matter and brochures supplied to dealers and distributors, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondents have disseminated, and caused the dissemination of, advertisements

concerning said device by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Greet summer with a lovelier figure.
How you'll look in a swimsuit depends on
how you reduce. No longer need
heavy hips, thighs, legs and waistline "rolls"
embarrass you. Beautify your posture,
reproportion your figure into more
youthful looking, lovelier lines by trimming
away unwanted inches with the famous
Stauffer home reducing plan
of effortless exercise and calorie reduction.

And the wonderful thing is that you
can do this in your own home.
Reduce—while you relax * * * with the
Stauffer home reducing plan.
This plan of effortless exercise and
calorie reduction lets you lose pounds—
and inches—while you relax on the
"Magic Couch", the famous Posture-Rest.

* * * The Magic Couch (Posture-Rest) is the heart of the
Stauffer plan of effortless exercise and calorie reduction.

* * * You lose unwanted pounds.

You lose inches where you need to—from hips, tummy, thighs.

You achieve a graceful lifted posture.

Your skin fits smoothly-sagging tissue is firmed and
toned. * * *

There is more to the Stauffer home
plan than just reducing. Rather, it
is a complete program of scientific figure control. It not only takes off
excess weight, but also removes hard-to-lose inches from ankles
thighs, hips and tummy. * * *

For a woman, it tones and firms
sagging muscles, beautifies posture
for a lovelier carriage, and gives her
a more youthful-looking figure.

PAR. 6. Through the use of the statements contained in the aforesaid advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, di-

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rectly and by implication, that said device used in connection with a "Plan" which provides for a low calorie diet:

1. Is of value in reducing the body in particular areas such as hips, thighs, legs, and the stomach, as well as the over-all body weight.*
2. Will tone and firm sagging muscles.

PAR. 7. The said representations were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of said devices:

1. Is of no value either in reducing the body in any particular area or the over-all body weight. Any reduction of weight that might result from the use of respondents' "Plan" will be brought about by the reduction in the caloric intake and not by use of the device.
2. Will neither tone nor firm sagging muscles.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Harold A. Kennedy supporting the complaint.

Rhyne & Rhyne, Washington, D.C., by *Mr. Charles S. Rhyne*, for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

MARCH 21, 1963

The Federal Trade Commission issued its complaint against the respondents on March 21, 1960, charging them with disseminating advertisements which falsely represented the effects to be obtained from a device designated as Posture-Rest and as Magic Couch in connection with their Stauffer Home Reducing Plan. The complaint charged that these practices constituted unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act. Respondents' answer denied generally the allegations of the complaint, although some allegations were admitted. Following the trial of the case, the hearing examiner filed an initial decision on June 26, 1962. On February 21, 1963 [62 F.T.C. 1511], the Commission vacated and set aside this initial decision and remanded the matter to the hearing examiner for his further consideration and for the preparation and filing of a new initial decision.

* Reported as amended by order of hearing examiner dated Oct. 20, 1960.

This proceeding is again before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, and proposed findings of fact and conclusions filed by counsel for respondents and by counsel supporting the complaint and oral argument thereon. Consideration has been given to the proposed findings of fact and conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

Respondent Stauffer Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Mexico, with its principal office and place of business located at 1919 Vineburn Avenue, Los Angeles, California.

Respondent Bernard H. Stauffer is president of the corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondents for some time last past have been engaged in the advertising, offering for sale, sale and distribution, directly to the public and also to distributors and dealers, of a device, as "device" is defined in the Federal Trade Commission Act, used in connection with a body-reducing plan called the "Stauffer Home Plan." Such device operates by electrical current and is, and has been designated as a "Posture-Rest" and "Magic Couch".

Respondents cause the said device, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia both for rental and sale. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said device in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been, and is, substantial.

In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, certain advertisements concerning the said device by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to magazines and periodicals of general circulation and in advertising matter

and brochures supplied to dealers and distributors, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device; and respondents have disseminated, and caused the dissemination of, advertisements concerning said device by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove found are the following:

Greet summer with a lovelier figure.
How you'll look in a swimsuit depends on
how you reduce. No longer need
heavy hips, thighs, legs and waistline "rolls"
embarrass you. Beautify your posture,
reproportion your figure into more
youthful looking, lovelier lines by trimming
away unwanted inches with the famous
Stauffer home reducing plan
of effortless exercise and calorie reduction.

And the wonderful thing is that you
Can do this in your own home.
Reduce—while you relax * * * with the
Stauffer home reducing plan.
This plan of effortless exercise and
calorie reduction lets you lose pounds—
and inches—while you relax on the
"Magic Couch", the famous Posture-Rest.

* * * You lose unwanted pounds.
You lose inches where you need to—from hips, tummy,
thighs. You achieve a graceful, lifted posture.
Your skin fits smoothly—sagging tissue is firmed
and toned. * * *

There is more to the Stauffer home
plan than just reducing. Rather, it
is a complete program of scientific
figure control. It not only takes off
excess weight, but also removes
hard-to-lose inches from ankles
thighs, hips and tummy. * * *
For a woman, it tones and firms
sagging muscles, beautifies posture
for a lovelier carriage, and gives her
a more youthful-looking figure.

* * * The Magic Couch (Posture-Rest) is the heart
of the Stauffer Plan of effortless exercise and
calorie reduction.

Through the use of the statements contained in the aforesaid advertisements respondents have represented, directly and by implication, that said device used in connection with a plan which provides for a low calorie diet:

1. Will reduce the body in particular areas such as hips, thighs, legs, and stomach, as well as the over-all body weight.
2. Will tone and firm sagging muscles.

The foregoing findings of fact are in substance those which were proposed by counsel supporting the complaint and were conceded by respondents to be accurate, except that respondents did not concede that the advertisements referred to above were typical of respondents' advertising or that the description of respondents' plan was complete. (Tr. 1461-62.)

The complaint alleges that respondents' device, which they designate as "Posture-Rest" and "Magic Couch", is of no value either in reducing the body in any particular area or the over-all body weight and will neither tone nor firm sagging muscles, and that as a result the dissemination of the above advertisements, and others of like import, were false and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The basic device is composed of a motorized unit with a platform on top which has been described by respondents as an oscillating platform; a leg and foot rest; and an upper body and head rest. Thus, the basic device is composed of three parts. Respondents contend that they are selling not only this device, but a home reducing plan which includes a "Calorie Guide" and consultations with the counselor or salesman who makes the original sale to the user.

EVIDENCE SUPPORTING THE COMPLAINT

In support of the allegations that respondents' device is ineffective in reducing weight and toning and firming muscles, counsel supporting the complaint adduced testimony from several physicians, two of whom had conducted certain tests of respondents' device. The first of these, Dr. Charles S. Wise,¹ was professor of physical medicine and rehabilitation at George Washington University School of Medicine and director of the Department of Physical Medicine and Rehabilitation at George Washington University Hospital. His education, experience, and a list of his writings are set forth in detail in Commission Exhibits 18, 19 and 20.

¹ Testimony begins at Tr. 31.

