stone Tire and Rubber Company, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by The Firestone Tire and Rubber Company or any distributor of Firestone products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to Shell Oil Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by The Firestone Tire and Rubber Company or any distributor of Firestone products to any wholesaler or retailer of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to Shell Oil Company or to any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

It is further ordered, That the initial decision as so modified and supplemented be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Shell Oil Company and The Firestone Tire and Rubber Company, corporations, 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 aforesaid order to cease and desist.

IN THE MATTER OF

COLGATE-PALMOLIVE COMPANY

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

Docket 7660. Complaint, Nov. 19, 1959—Decision, Mar. 9, 1961

Order requiring a manufacturer of a dentifrice, among other products, with headquarters in New York City, to cease representing falsely in advertisements and television commercials that its "Colgate Dental Cream with Gardol" formed a "protective shield" around teeth, thereby affording users complete protection against tooth decay or the development of cavities in their teeth.

Edward F. Downs, Esq. and *Anthony J. Kennedy, Esq.* supporting the complaint.

Cahill, Gordon, Reindel & Ohl, by *Mathias F. Correa, Esq.*, and *Corydon B. Dunham, Jr., Esq.*, of New York, N. Y., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

PRELIMINARY STATEMENTS

The complaint issued in this proceeding on November 19, 1959, charges respondent with violating the Federal Trade Commission Act by using false, misleading and deceptive representations in advertising a dentifrice, Colgate Dental Cream with Gardol, sold by it in interstate commerce. Respondent answered the complaint; prehearing conferences were held; and hearings were had in Washington, D.C. and New York, New York. Proposed findings of fact, conclusions of law, and proposed orders were filed by the parties and orally argued on June 17, 1960. On February 4, 1960, a ruling was issued granting the motion of counsel supporting the complaint to strike portions of respondent's answer. On February 26, 1960, a ruling was issued denying respondent's motion to dismiss the proceedings on the grounds that the initial complaint failed to inform the respondent adequately of the charges it would have to meet, and on the further grounds that counsel supporting the complaint had failed to sustain the burden of proof imposed upon them by law.

This is one of the first proceedings under the Federal Trade Commission Act against allegedly deceptive *television* advertising.

There is no substantial controversy over the legally operative facts. Respondent contends (1) its advertising was not false, misleading and deceptive; and (2) should this fact be found against it, that it has, nevertheless, voluntarily abandoned the condemned practices; and that this proceeding should be dismissed because all that could be accomplished by a cease and desist order has already been achieved by respondent's voluntary abandonment of the practices.

Two categories of respondent's advertising are assailed in this proceeding: "print" advertising and television advertising. The print advertising in evidence in this case does not require the application of any criteria different from that which has been applied in countless prior print advertising cases where the charges are that such advertising is false, misleading and deceptive. The precedents for judging such print advertising are legion.

Television advertising, on the other hand, has in it an element which the examiner has designated "visual innuendo." An example of visual innuendo in television advertising is those advertisements in which men in white coats, similar to those worn by doctors and dentists, advertise pharmaceuticals. The television advertisement

does not state that the person in the white coat is a doctor or dentist but such innuendo is intended, and usually is drawn by the viewer, even though neither expressed nor directly implied.

Although the visual innuendo of a television advertisement may be a bit empirical, television advertising, as all other forms of advertising, can be subjected to a disinterested, objective, dispassionate judgment whether it is, with its visual innuendo, false, misleading and deceptive.

The hearing examiner finds that counsel supporting the complaint have proven in this proceeding the legally essential allegations of the complaint by a preponderance of material, relevant and probative evidence and enters an order granting counsel supporting the complaint the relief requested.

On the basis of the entire record, the examiner makes the findings of fact hereinafter set forth. Findings requested by counsel which are not specifically adopted and incorporated in this initial decision are rejected. The fact that the examiner has not incorporated in this decision, nor rejected, nor dismissed specifically, evidence which is in the record, should not be construed as indicating that such evidence has not been fully considered by the examiner in preparing this initial decision. It indicates merely that the evidence which the examiner has specifically incorporated in his findings of fact is sufficiently preponderant, relevant, probative and substantial for a proper adjudication of the issues.

The hearing examiner has excluded two offers of evidence by the respondent which merit comment:

A series of articles written by various persons relating to tooth decay in general and the alleged properties of Colgate Dental Cream with Gardol, (exhibits RX 3A through RX 3Z 58) was excluded because (a) no evidence was introduced as to the qualifications of the persons who wrote the articles; (b) the authors of the articles were not tendered for cross-examination by counsel supporting the complaint; and (c) to have received such hearsay evidence into the record without affording counsel supporting the complaint an opportunity to cross-examine the authors of the articles, would have deprived counsel supporting the complaint of a very fundamental and basic legal right.

A series of advertisements of dentifrices by respondent's competitors was excluded because it is irrelevant and immaterial. *Moog Industries v. FTC, 355, U.S. 411.* A respondent to Federal Trade Commission proceedings may not escape the penalties of its own wrong doing, by showing or attempting to show similar wrong doing of that respondent's competitors. The advertising of respond-

ent's competitors is not relevant to determining whether respondent Colgate's advertising was false, misleading and deceptive.

The examiner makes the following

FINDINGS OF FACT

The Federal Trade Commission has jurisdiction over the parties and over the subject matter of this proceeding and this proceeding is in the public interest.

The complaint filed herein states a good cause of action against respondent, and counsel supporting the complaint have proven the essential allegations of the complaint by preponderant, relevant, probative evidence in the record.

Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

Colgate-Palmolive Company, a Delaware corporation, whose consolidated income account for the year ended December 31, 1959, was $581,981,689 has its principal office and place of business located at 300 Park Avenue, New York, New York. It manufactures, advertises, offers for sale, sells, and distributes, in interstate and foreign commerce, a dentifrice designated "Colgate Dental Cream with Gardol" and various other products to distributors and retailers for resale to the public. Respondent's domestic sales of Colgate Dental Cream with Gardol for the six months ended June 30, 1958, were $30,764,764.

In promoting the sale of its products respondent advertised and does advertise extensively in magazines of national circulation, in newspapers of interstate circulation, and by means of television programs and commercials broadcast over nation-wide networks.

In the conduct of its business, at all times material to this proceeding, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of dental cream. At the time the complaint issued in this proceeding respondent was representing in both its print advertising and its television advertising that brushing with Colgate Dental Cream with Gardol would put a "protective shield" around teeth, and prevent tooth decay. The manner in which this theme is developed in the print advertising is accurately shown in CX 15, CX 16, CX 17, CX 18, CX 19, CX 20, CX 21, CX 22, CX 23, CX 24, and CX 26. The treatment of this theme in respondent's television advertisements is accurately shown in CX 3, CX 4, CX 5, CX 6, CX 7, CX 8, CX 9, CX 10, CX 11, CX 12, CX 13, and CX 14.

It is stipulated in this record that neither Colgate Dental Cream with Gardol nor any other dentifrice on the market at the time this

complaint issued, or now, affords the users thereof complete protection against tooth decay or the development of cavities in their mouth.

The word "audio" as used in these findings refers to that portion of respondent's television advertisements which communicates by means of the auditory sense. The word "video" refers to that portion of the television presentation which communicates by means of the visual sense. In addition to the audio and video portions of the advertisement, considered separately, there is a "visual innuendo" in television advertising which was briefly alluded to and characterized above in the Preliminary Statements.

Respondent's print advertising and its television advertising at the time the complaint issued herein in November, 1959, sought to convey, and did convey, the impression to the prospective purchasers of Colgate Dental Cream with Gardol, (the television advertisement by means of visual innuendo) that persons who brushed their teeth with that toothpaste would thereby prevent decay from *getting to* their teeth; that "Gardol forms an invisible protective shield around your teeth."

The video portion of respondent's television advertisements depicted objects being propelled toward, *but not hitting*, a person because of an invisible shield. The visual innuendo was intended, and was conveyed to the viewer, that decay cannot *get to* the teeth of a person brushing with Colgate Dental Cream with Gardol. This representation was and is false, misleading and deceptive. It deceives and misleads the public concerning the properties and the caries-prevention value, if any, of Colgate Dental Cream with Gardol.

Respondent's specimen television advertisements in evidence (CX 3, CX 5, CX 7, CX 9, and CX 11) have the following audio sequence: In CX 3 as Mighty Mouse in the video sequence takes the top off a Colgate with Gardol tube and points to the Happy Tooth standing near by, the audio portion says,

> Now to put up the ***invisible protective shield*** around our Happy Tooth with Colgate Dental Cream with GARDOL. (Emphasis supplied.)

At this point in the video portion of the advertisement, Mighty Mouse spreads Colgate Dental Cream on a toothbrush, flies around the tooth and puts up a "gardol shield."

In the video portion of CX 5, CX 7, CX 9, and CX 11, a coconut, tennis ball, and lariat are thrown or hit toward a person in the foreground of the scene. The coconut, tennis ball, and lariat bounce off an unseen transparent glass shield which is, invisibly, between the person propelling the objects, and the person toward whom the object is propelled. The coconut, tennis ball, and lariat do not reach

the person at whom they are thrown because they cannot *get to* them. The audio portion accompanying this action (CX 6A, CX 8B, CX 10B, CX 12B) says,

And here's how Gardol works. Now just as I was protected by this (man knocks on shield) invisible shield, Colgate's with Gardol forms an invisible, protective shield around your teeth. Fights tooth decay . . . *and* bad breath *all day!* Yes, for most people, just *one brushing* stops mouth odor *all day.*

Respondent's print advertising in the record actually shows a transparent protective shield in front of the teeth of a person whose face appears in the advertisement.

The invisible shield theme in respondent's advertising had the tendency to and did deceive prospective purchasers of Colgate Dental Cream with Gardol insofar as it represented the true nature of the properties of Colgate Dental Cream with Gardol, and the manner in which Colgate Dental Cream with Gardol inhibits tooth decay.

Respondent's print advertising and the visual innuendo of its television advertising were intended to convey the impression, and did convey the impression, that decay could not get to the teeth of a person brushing with Colgate Dental Cream with Gardol, just as the coconut, tennis ball, and lariat could not get to the person at whom they were thrown, because of the "invisible shield." This was, and is, a false, misleading and deceptive portrayal of the true properties of Colgate Dental Cream with Gardol.

Such false, misleading and deceptive advertising is proscribed by the Federal Trade Commission Act.

When the complaint in this proceeding was served upon respondent, alerting respondent to the Commission's objection to the "invisible shield" theme, respondent, at a cost in excess of $100,000, promptly took steps to eliminate, and eliminated, the invisible shield theme from its print and television advertising. It has not been used since.

The invisible shield theme has not been reinserted in respondent's advertising since it was eliminated for the purpose of meeting the objections thereto stated in the instant complaint issued November 19, 1959. The evidence in this record does not support a finding that respondent will not, in the future, unless restrained by this Commission, misrepresent the true properties, and caries-inhibiting value, if any, of Colgate Dental Cream with Gardol.

DISCUSSION

It is in the public interest to prevent the sale of commodities by the use of false and misleading statements and representations.[1]

[1] *Parke Austin & Lipscomb v. FTC,* 142 F. 2d 437 [4 S. & D. 168] citing L. & C. Mayers Co., Inc. v. Federal Trade Commission, 97 F. 2d 365, 367 [2 S. & D. 460].

Capacity to deceive and not actual deception is the criteria by which practices are tested under the Federal Trade Commission Act.[2] To tell less than the whole truth is a well-known method of deception; and he who deceives by resorting to such method, cannot excuse the deception by relying upon the truthfulness per se of the partial truth by which it has been accomplished.[3] "A statement may be deceptive even if the words may be literally or technically construed so as to not constitute a misrepresentation . . . The buying public does not weigh each word in an advertisement or misrepresentation. It is important to ascertain the impression that is likely to be created upon the prospective purchaser."[4] Advertisements are not to be judged by their effect upon the scientific or legal mind, which will dissect and analyze each phrase, but rather by their effect upon the average member of the public who more likely will be influenced by the impression gleaned from a first glance.[5]

Measured by these criteria which have been culled from deceptive advertising decisions of the courts, respondent's advertising reflected in this record violated the proscriptions of the Federal Trade Commission Act and the cease and desist order requested by counsel supporting the complaint should issue.

THE "ARGUS DEFENSE"

Respondent argues, most persuasively, that it has always cooperated with the Commission, voluntarily eliminated the invisible shield theme from its advertising after being served with this complaint, and nothing can be accomplished by a cease and desist order which has not already been accomplished by respondent's voluntary action. The proceeding should, therefore, be dismissed. In support of its position respondent cites in its brief, inter alia, *Argus Cameras, Inc.*, 51 FTC 405 (1954); *Dietzgen Co.* v. FTC, 142 F.2d 321 (CA 7 1944); *Firestone Tire and Rubber Co.*, Docket No. 7020; *Wildroot Co., Inc.*, 49 FTC 1578 (1953); *Bell & Howell Co.*, Docket No. 6729; *United States* v. *W. T. Grant Co.*, 345 U.S. 629 (1953).

Although there is in the record respondent's evidence of events occurring prior to the issuance of the complaint to demonstrate its complete cooperation with the Commission, the examiner must assume, and does assume, that respondent's conduct prior to November 19, 1959, was fully considered by the Commission at the time it issued this complaint. The issuance of this complaint carried with it a finding and conclusion that the Commission had reason to

[2] *Goodman* v. *FTC*, 244 F. 2d 584, 604 CA 9th (1957).
[3] *P. Lorillard Co.* v. *FTC*, 186 F. 2d 52, 58 (CA 4 1950).
[4] *Kalwajtys* v. *FTC*, 237 F. 2d 654, 656. Cert Den. 352 U.S. 1025.
[5] *Ward Laboratories Inc., et al.* v. *FTC*, 276 F. 2d 952, 954 (CA 2—April 14, 1960).

believe, at that time, that respondent was violating the law, and that this proceeding was, and is, in the public interest. Respondent seeks to be rewarded for doing that which it was, and is, required by law to do—advertise accurately, truthfully, and honestly the products which it sells. This primary legal duty is upon the advertiser and it may not be shifted to the Federal Trade Commission. Respondent has proven most of the elements which would entitle it to a dismissal under the "Argus defense," except one: The examiner cannot on this record, find that there is "no reasonable likelihood that respondent will in the future misrepresent" the true properties of Colgate Dental Cream with Gardol unless an order to cease and desist therefrom issues.[6]

Now, therefore, the examiner makes the following

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. The complaint which was filed herein states a good cause of action and this proceeding was and is in the public interest.

3. Respondent sells Colgate Dental Cream with Gardol in interstate commerce as "interstate commerce" is defined in the Federal Trade Commission Act.

4. Counsel supporting the complaint have proven the legally material allegations of said complaint by a preponderance of relevant, probative and material evidence.

5. In the conduct of its business, at all times material to these proceedings, respondent has been in substantial competition in commerce with corporations, firms, and individuals in the sale of "dental creams."

6. The advertising used by respondent to sell Colgate Dental Cream with Gardol, and complained against in this complaint, and now abandoned, is and was false, misleading and deceptive, and is proscribed by the Federal Trade Commission Act.

It is, therefore,

Ordered, That respondent Colgate-Palmolive Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the product "Colgate Dental Cream with Gardol" or any other dentifrice possessing substantially the same properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

[6] See *Charles Pfizer & Co., Inc.*, Docket No. 7487. Commission's opinion of May 23, 1960, affirming examiner's dismissal of complaint.

1. Representing, directly or by implication, that said dentifrice affords the users thereof with complete protection against tooth decay or the development of cavities in their teeth.

2. Misrepresenting in any manner the degree or extent of protection against tooth decay or the development of cavities in teeth afforded users of any such dentifrice.

OPINION OF THE COMMISSION

By Kern, Commissioner:

Respondent, Colgate-Palmolive Company, is charged with violation of the Federal Trade Commission Act in advertisements, including television commercials, used by it in promoting the sale of Colgate Dental Cream with Gardol. The hearing examiner in his initial decision held that the allegations were sustained by the evidence and ordered respondent to cease and desist from the practice found to be unlawful. Respondent has appealed from this decision. In substance, the complaint charges respondent with representing that Colgate Dental Cream with Gardol forms a "protective shield" around teeth, thereby affording the users thereof complete protection against tooth decay or the development of cavities in their teeth, when in truth and in fact said product does not afford such complete protection by forming a "protective shield" or otherwise.

There is no dispute concerning the question of whether Colgate Dental Cream with Gardol affords complete protection. It is stipulated in the record that "neither Colgate Dental Cream with Gardol, nor any other dentifrice on the market, affords the users thereof complete protection against tooth decay or the development of cavities in their teeth." However, respondent vigorously contends that its advertisements do not claim such complete protection for its dentifrice.

As aptly described by the hearing examiner, in the video portion of one of respondent's typical television commercials in evidence, a tennis ball is hit toward the announcer in the foreground of the scene. Another commercial pictures a coconut being thrown toward the announcer. The ball and coconut bounce off an unseen transparent shield which is, invisibly, between the person propelling these objects and the announcer. Neither the ball nor the coconut reaches the announcer and the shield is in no way damaged or penetrated. In the audio portion accompanying this action, the announcer states:

> And here's how Gardol works. Now just as I was protected by this (announced taps shield) invisible shield, Colgate's with Gardol forms an invisible, protective shield around your teeth. Fights tooth decay . . . and bad breath *all day!*

In another television commercial, Mighty Mouse is pictured spreading Colgate Dental Cream on a tooth after stating:

Now to put the invisible protective shield around our Happy Tooth. Colgate Dental Cream with Gardol.

In the following scene, Mr. Tooth Decay attempts to reach the tooth but is unable to because of the Gardol shield.

In respondent's newspaper and magazine advertisements, a transparent shield is pictured protecting teeth from the words "Tooth Decay" and "Bad Breath." In the text of the advertisements there appears the statement that "* * * only Colgate's contains Gardol to form an invisible, protective shield around your teeth that fights decay all day."

The hearing examiner found that the representation alleged in the complaint was conveyed by means of "visual innuendo." However, we do not find it necessary to rely on an innuendo to establish the existence of the alleged representation in this case. The audio portion of the commercial specifically claims that Colgate's with Gardol forms an invisible protective shield around the teeth and states that this protection is the same as that afforded the announcer by the invisible shield in the commercial. The picture accompanying this statement plainly shows that the announcer was completely protected. The fact that the shield is not visible in the commercial is obviously respondent's method of indicating the *manner* in which Colgate's with Gardol works, which is not at issue in this proceeding. Whether the shield is invisible or visible, as in the print advertisements, is of no consequence in determining whether the alleged representation was made. In our opinion, respondent's television commercials and print advertisements clearly and directly represent that Colgate Dental Cream with Gardol affords users complete protection against tooth decay and against the development of cavities. On the basis of the aforementioned stipulation, such representations as to the degree or extent of the protection afforded users of respondent's dentifrice are deceptive.

Respondent contends that the advertisements do not claim complete protection because of the statement therein that Colgate's "fights" tooth decay and that the product is backed by a two-year clinical research on the "reduction" of tooth decay. In our opinion, the words "fights" and "reduction" in the context in which they are used in respondent's advertisements, do not negate a claim of complete protection from tooth decay. Viewed in the light most favorable to respondent, these words only serve to make the advertisements capable of two meanings. It is well settled that where one of two meanings conveyed by an advertisement is false, the advertisement

is misleading.[1] Respondent's argument on this point is rejected.

Likewise, we must reject respondent's various arguments in support of its contention that evidence of public understanding is required to determine whether its advertising has a capacity to lead purchasers into believing that Colgate's affords complete protection. The courts have made it clear that the Commission is not required to sample public opinion to determine what meaning is conveyed to the public by particular advertisements.[2]

Respondent next contends that the hearing examiner erred in failing to dismiss the complaint on the grounds of abandonment. In support of its position respondent relies principally on the Commission's action in *Argus Cameras, Inc.*, 51 F.T.C. 405 (1954).

Although the hearing examiner rejected this defense, he found that respondent has proven most of the elements which would entitle it to dismissal under the *Argus* case, except one. The "element" which the hearing examiner found was not proven is that there is no reasonable likelihood of a resumption of the practice. We do not fully understand the hearing examiner's reasoning on this point, as this "element" is obviously a conclusion which must result if all other elements present in the *Argus* case are proven. Regardless, however, of his reasoning, his finding that most of the elements present in the *Argus* matter have been established on this record is in error.

In the *Argus* case, the respondent filed affidavits stating that it had no intention of resuming the practices with which it was charged. Nowhere in this record has the Colgate-Palmolive Company given any such express assurance. It is true, as asserted in respondent's answer and as found by the hearing examiner, that upon being served with the complaint, respondent eliminated the protective shield theme from its advertising at a cost in excess of $100,000 and has not resumed the use of that theme. However, the fact that respondent has discontinued one means by which it has misrepresented the degree of protection afforded by its dentifrice cannot be considered an assurance that the practice itself will not be resumed by other means.

In dismissing the complaint against *Argus*, the Commission took into consideration its letter to that respondent several years before complaint issued which stated in part that the Commission did not contemplate further proceedings at that time. Colgate was not given any such express assurance and was, in fact, informed by

[1] *Rhodes Pharmacal Co., Inc.* v. *Federal Trade Commission*, 208 F. 2d 382 (7th Cir. 1953); *United States* v. *95 Barrels of Vinegar*, 265 U.S. 438 (1924).

[2] *E. F. Drew & Co., Inc.* v. *Federal Trade Commission*, 235 F. 2d 735 (2d Cir. 1956); *Rhodes Pharmacal Co., Inc., supra.*

the Commission's staff that its advertising practices were under investigation during the period immediately preceeding issuance of the complaint.

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 respondent has a definite bearing on whether there is any likelihood of a resumption of the practice either for competitive or for other reasons.

In support of its argument for dismissal on the basis of the *Argus* case, respondent relies to a great extent on certain exhibits which were rejected by the hearing examiner. Respondent argues that the exhibits should have been admitted to show that although it did not discontinue the protective shield theme until after complaint issued, such discontinuance should be viewed as voluntary.

We do not find it necessary to decide whether the hearing examiner erred in excluding these exhibits. Since he allowed them to be forwarded with the record, the exhibits are available for our examination and have been reviewed by us. They consist of copies of a letter and documents submitted by respondent to the Commission about one year before complaint issued and purport to show that respondent did not attempt to support a claim of complete protection for its dentifrice. From the fact that the Commission's staff had this data before it for a year prior to issuance of the complaint, respondent argues that the staff did not view respondent's advertising as claiming complete protection and that it was justified in believing that no challenge was being made to its protective shield theme.

Respondent's argument as to the reason complaint did not issue a year earlier is purely speculative. There is no evidence that the Commission's staff gave respondent any reason to believe that its protective shield theme was not deceptive. To the contrary, respondent was advised by the staff on three occasions prior to issuance of the complaint that its advertising, in which the protective shield is featured, was still under investigation. Moreover, respondent's argument ignores the fact that the interval between the initiation of an investigation and the issuance of a complaint may be affected by several factors. One such factor would be the necessity for consideration of all aspects of a respondent's advertising at staff level to determine the number and nature of the charges which may be warranted by the available evidence. Under the circumstances, we find no substance in respondent's argument on this point. Respondent was in no way prejudiced by the hearing examiner's exclusion of the exhibits.

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It is true that respondent was cooperative throughout the investigation of this matter. Nevertheless, respondent did not revise its advertising to eliminate the protective shield theme until after complaint issued. Moreover, as we had previously stated, respondent has persisted in its argument that the advertising is not false. On the basis of this record, we cannot find that the circumstances of this case warrant a conclusion that the practice charged has been surely stopped and will not be resumed. In our view, an order to cease and desist is required in the public interst.

Respondent next contends that the hearing examiner's order goes beyond the charge in the complaint. Specifically, it objects to paragraph 2 of the order which requires that in connection with the sale of Colgate Dental Cream with Gardol, or any other dentifrice possessing substantially the same properties, respondent cease "Misrepresenting in any manner the degree or extent of protection against tooth decay or the development of cavities in teeth afforded users of any such dentifrice."

We have found that respondent has engaged in the practice of misrepresenting the degree of protection afforded users of its dentifrice by its claims of complete protection. It is well settled that the Commission is not limited to proscribing an unfair practice in the precise form to have existed in the past but may frame its order broadly enough to prohibit the future use of the deceptive sales method in any form.[3] In our opinion, paragraph 2 of the order in the initial decision is necessary to achieve that purpose.

Under the circumstances, respondent's appeal is denied. To the extent the findings of the hearing examiner are deficient, the initial decision is modified to include the factual findings together with the reasons and basis thereof embodied in this opinion. As so modified, the initial decision is adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having denied the aforementioned appeal, and having modified the initial decision to the extent necessary to conform to the views expressed in the said opinion:

[3] *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404 (2d Cir. 1952); *Hershey Chocolate Corp.* v. *Federal Trade Commission*, 121 F. 2d 968 (3d Cir. 1941); *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337 (7th Cir. 1960).