

so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which under Section 4 of the Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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.

IN THE MATTER OF
RODALE PRESS, INC., ET AL.

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

*Docket 8619. Complaint, April 3, 1964—Decision, June 20, 1967**

Order requiring an Emmaus, Pa., book publisher to discontinue making claims in its advertising that readers of two of its health and diet publications would gain various therapeutic benefits.

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 Rodale Press, Inc., a corporation, and Rodale Books, Inc., a corporation, and Jerome I. Rodale and Robert Rodale, individually and as officers of said corporations, 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 Rodale Press, Inc., and Rodale Books, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with their offices and principal places of business located at 33 East Minor Street, Emmaus, Pennsylvania.

* Order of Dec. 4, 1968, dismissed the complaint in this matter after a remand dated Oct. 18, 1968, 407 F. 2d 1252 (1968), from the Court of Appeals.

Jerome I. Rodale and Robert Rodale are officers of said corporations. They formulate, direct and control the acts and practices of the corporate respondents. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the publication, advertising, sale and distribution of various books, pamphlets and magazines pertaining to diet, diseases and the health of mankind. Among, but not all inclusive of the books published by respondent Rodale Press, Inc., is "The Health Finder." Respondent Rodale Press, Inc., also publishes various pamphlets and paperback books. Rodale Books, Inc., participates in the publishing, advertising and distribution of the books published by Rodale Press, Inc., and has also published various pamphlets and paperback books, including but not limited to, "How To Eat for a Healthy Heart" and "This Pace is Not Killing Us."

Respondents cause and have caused said books and pamphlets when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondents at all times mentioned herein have maintained a course of trade in said books, pamphlets and magazines in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale of said books and pamphlets in commerce is and has been substantial.

PAR. 3. In the conduct of their business at all times mentioned herein respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale and distribution of books and pamphlets.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase in commerce of said books and pamphlets respondents have made certain statements and representations with respect thereto in advertisements and promotional material including letters, circulars and brochures, sent through the United States mails into various States of the United States and into the District of Columbia.

PAR. 5. Among and typical, but not all inclusive, of the statements and representations made and appearing in said advertisements are the following:

Better Health can mean a lot to you personally. Have you ever stopped to think that all the good things in life depend upon good health? * * * Wouldn't you like to enjoy one or more of these rewards of good health? * * * Good health and abundant energy that goes with it * * * Are you "just too tired"

to take a full part in the life of your community? * * * Do you enjoy your leisure moments as you should? Or are you so tired you spend most of your leisure time in resting and sleeping? * * * Are you bored and discontented because you don't feel well? * * * Turn page for important message * * *.

Health Finder, an encyclopedia of Health Information from the preventive point of view. ANSWERS HEALTH PROBLEMS.

Which of the health ideas in this amazing book will * * * (1) Add years to your life? (2) Give you more energy? (3) Cut down on your doctor and dentist bills? (4) Make you feel better than you ever felt before? (5) Help your family to achieve health and happiness? * * * Recommendations for a winter free from common colds (pages 260-1) * * * What is the most successful preventative and cure for constipation (pages 278-9) * * * Cancer and nutrition (pages 165, 6, 7) * * * Diet for children during polio season (pages 623, 4, 5) * * * Prevention of ulcers (page 854) * * * Heart Disease and the use of Vitamin E (pages 415, 6-7-8-9) * * * Use of garlic in the treatment of hypertension (high blood pressure) (page 388) * * * Laboratory experiments indicating that brewers yeast and dried liver prevent cancer (page 141) * * * Experiments showing the effectiveness of the B complex vitamins in preventing the growth of cancer (pages 176-7) * * * The garlic treatment for tuberculosis (page 386) * * * Goiter-what it is, where it occurs, what should be done to prevent it (pages 392, 393-4-5-6-7-8) * * * Reasons for a salt-free diet if you suffer from high blood pressure (pages 424-5) * * * Exciting discovery concerning the use of desiccated liver as a means of preventing fatigue (pages 450-1-2) * * * Experiments which indicate that liver in the diet helps prevent cancer (page 452) * * * Infantile paralysis and vitamin deficiency (pages 625-6-7-8-9) * * * Food and polio (pages 596-7-8-9) Polio its cause and prevention by Dr. Virgil A. David, New York City (pages 599-603).

Certain of the advertisements referred to in Paragraph Four included testimonials from alleged readers of said publication under headings CANCER, HEART DISEASE, MENTAL HEALTH, POLIO, ULCERS, and ARTHRITIS.

PAR. 6. Through the use of said statements and others not specifically set out herein, respondents have represented, and are now representing, directly or by implication, in their advertising:

(1) That readers of the book, "The Health Finder" who follow the ideas and suggestions set forth therein will:

- (a) Add years to their lives.
- (b) Gain more energy.
- (c) Effectuate savings on medical and dental expenditures.
- (d) Feel better than ever before.
- (e) Gain and maintain health.

(2) That readers of the book, "The Health Finder" will find therein the answer to any health problem including but not limited to:

- (a) How to free oneself of common colds.
- (b) How to prevent and cure all types of constipation.

- (c) How to prevent ulcers.
- (d) How to prevent fatigue.
- (e) How to prevent goiter.
- (f) How to prevent high blood pressure.

(3) That the ideas and suggestions contained in "The Health Finder" are effective in the prevention, relief and treatment of cancer, tuberculosis, infantile paralysis, heart disease, arthritis and mental illness.

PAR. 7. In truth and in fact:

1. The ideas and suggestions contained in "The Health Finder" will not assure readers:

- (a) An increased life span.
- (b) More energy.
- (c) Savings on medical and dental expenditures.
- (d) That they will feel better than ever before.
- (e) That they will gain and maintain health.

2. "The Health Finder" does not contain the answer to all health problems and will not enable the reader to:

- (a) Free himself of common colds.
- (b) Prevent or cure all types of constipation.
- (c) Prevent ulcers.
- (d) Prevent fatigue.
- (e) Prevent goiter.
- (f) Prevent high blood pressure.

3. The ideas and suggestions contained in "The Health Finder" are not effective in the prevention, relief or treatment of cancer, tuberculosis, infantile paralysis, heart disease, arthritis, or mental illness. Moreover, reliance on the advertising statements and representations resulting in purchase of the aforesaid book and the attendant delay in receiving adequate treatment promptly, may result in relentless progression of these serious diseases, irreparable injury to health, crippling, and loss of life.

Therefore, the statements and representations as set forth and referred to in Paragraphs Five and Six were and are false, misleading and deceptive.

PAR. 8. Included in the advertising of "The Health Finder" as set forth and referred to in Paragraph Four, respondents have advertised, as a gift to purchasers of said book, their publications "How to Eat For a Healthy Heart" and "This Pace is *Not* Killing Us," combined in a single volume.

PAR. 9. Among and typical of the statements and representations made and appearing in said advertisements concerning the

publications "How to Eat For a Healthy Heart" and "This Pace is *Not* Killing Us," but not limited thereto, are the following:

Did you know that in the United States alone 773,980 people died of heart disease last year? HOW TO EAT FOR A HEALTHY HEART attacks this terrifying problem from a new angle. THIS PAGE IS NOT KILLING US is also concerned with the heart disease problem. It contains an equally vital health message for you.

* * * * *

Here's why you should read both of these books at once: American men are dying from heart disease five times faster than Italian men—ten times faster than Japanese men! Why is this so? Is there any hope for Americans?

Yes Mr. Rodale says, there is all the hope in the world, if the enigma of heart disease is approached as a problem in nutrition * * *. Mr. Rodale brings to light many facts about heart disease—facts you must consider if you want to live a long, useful, vital life * * *.

If you have heart symptoms you won't want to miss this amazing book * * *.

PAR. 10. Through the use of said statements and others not specifically set out therein respondents have represented and are now representing, directly or by implication, in their advertising, that the books "How to Eat For a Healthy Heart" and "This Pace is *Not* Killing Us" contain information which will be of benefit in the prevention, treatment and cure of heart disease. Contrary to said representations said books do not contain information which will be of benefit in the prevention, treatment or cure of heart disease. Moreover, reliance on the advertising statements and representations resulting in purchase of the aforesaid books and the attendant delay in adequately treating heart disease promptly, may result in irreparable injury to health and loss of life.

Therefore the statements and representations as set forth and referred to in Paragraphs Nine and Ten were, and are, false, misleading and deceptive.

PAR. 11. The use by the respondents of the foregoing, false, misleading and deceptive statements in advertising has had and now has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true and into the purchase of substantial quantities of respondents' books, magazines and pamphlets by reason thereof.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and un-

fair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson and Mr. Richard W. Whitlock supporting the complaint.

Arnold, Fortas & Porter, by *Mr. Thurman Arnold and Mr. Stuart J. Land*, of Washington, D.C., and *Mr. Morton J. Simon*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

APRIL 16, 1965

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on April 3, 1964, charging them with engaging in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements in advertising certain books and pamphlets published and distributed by them. After being served with said complaint respondents appeared by counsel and thereafter filed their answer denying, in substance, having engaged in the illegal practices charged.

Pursuant to notice duly given, prehearing conferences were convened in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to act as hearing examiner in this proceeding, on July 22, 1964, and October 5, 1964. Prehearing orders embodying the stipulations, admissions and agreements made at said conferences were thereafter issued by the undersigned. In accordance with the understandings reached at the prehearing conferences respondents moved the examiner to dismiss the complaint herein or, in the alternative, to certify the questions presented in said motion to the Commission. Said motion was denied by order of the undersigned issued November 19, 1964. Respondents' request for permission to file an interlocutory appeal from said order was denied by Commission order issued December 3, 1964, and a motion for reconsideration of said ruling was denied by the Commission on January 5, 1965.

Hearings on the charges were held in Washington, D.C., from November 30, 1964, to December 11, 1964, and, pursuant to order of the Commission granting leave to hold noncontinuous hearings, said hearings were recessed until January 19, 1965, and concluded on said date. At said hearings, testimony and other evi-

dence were received in support of and in opposition to the allegations of the complaint, said evidence being duly recorded and filed in the office of the Commission. All parties were represented by counsel, participated in the hearings and were afforded full opportunity to be heard and to examine and cross-examine witnesses. At the close of all the evidence, and pursuant to leave granted by the undersigned, proposed findings of fact, conclusions of law and order, together with supporting briefs, were filed by the parties on March 5, 1965, and a reply to complaint counsel's proposed findings was filed by respondents on March 16, 1965, the former electing not to file any reply to respondents' proposed findings.

After having carefully reviewed the evidence in this proceeding, and the proposed findings and conclusions submitted, the undersigned finds that this proceeding is in the interest of the public and, based on the entire record and from his observation of the witnesses, makes the following: ¹

FINDINGS OF FACT

Identity of Respondents

1. Respondents Rodale Press, Inc., and Rodale Books, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with their office and principal place of business located at 33 East Minor Street, Emmaus, Pennsylvania. Jerome I. Rodale and Robert Rodale are officers of said corporations. They formulate, direct and control the acts and practices of the corporate respondents. Their business address is the same as that of the corporate respondents.²

Business of Respondents

2. Respondents are now, and have been for some time last past, engaged in the publication, advertising, sale and distribution of various books, pamphlets and magazines pertaining to diet, dis-

¹ Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters. References to the proposed findings are hereinafter made with the abbreviations: "CPF" (for the findings of complaint counsel), "RPF" (for the findings of respondents) and "RR" (for respondents' reply). References to the transcript are made with the abbreviated symbol "Tr." References to exhibits are made with the abbreviated symbols: "CX" (for exhibits of complaint counsel) and "RX" (for exhibits of respondents). All such citations of the record are intended to refer to the principal portions relied upon by the undersigned, in connection with particular findings, but do not purport to be an exhaustive compendium of the portions of the record reviewed and relied upon by him.

² The above findings are based on the admitted allegations of the complaint. Although said allegations were partially denied in respondents' answer, said denial was withdrawn during the prehearing conferences (Prehearing Order No. 2, par. 3).

eases and the health of mankind. Among, but not all inclusive of the books published by respondent Rodale Press, Inc., is "The Health Finder." Respondent Rodale Press, Inc., also publishes various pamphlets and paperback books. Respondent Rodale Books, Inc., participates in the publishing, advertising and distribution of the books published by respondent Rodale Press, Inc., and has also published various pamphlets and paperback books including, but not limited to, "How to Eat For a Healthy Heart" and "This Pace Is *Not* Killing Us."³

Sales in Commerce

3. Respondents cause and have caused said books and pamphlets, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondents at all times mentioned herein have maintained a course of trade in said books, pamphlets and magazines in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale of said books and pamphlets in commerce is and has been substantial.⁴

Competition in Commerce

4. In the conduct of their business at all times mentioned herein respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale and distribution of books and pamphlets.⁵

Advertising in Commerce

5. In the course and conduct of their business, and for the purpose of inducing the purchase in commerce of said books and pamphlets, respondents have made certain statements and representations with respect thereto in advertisements and promotional material, including letters, circulars and brochures sent through the United States mails into various States of the United States and into the District of Columbia.⁶

The Challenged Advertising

6. The allegations of the complaint that respondents have used false, misleading and deceptive advertising in connection with the

³ Same as n. 2, *supra*.

⁴ Same as n. 2, *supra*.

⁵ Same as n. 2, *supra*.

⁶ Same as n. 2, *supra*.

sale of certain of their books and pamphlets are based principally on mailer advertisements sent to potential purchasers of their book, "The Health Finder." The advertisements cited in the complaint as "typical" of those used by respondents were circulated from 1956 to April 5, 1960, and consist of a 4-page yellow-colored brochure and a 4-page compendium of testimonial extracts (CX 8 A-D, CX 9 A-D; Tr. 22, 25, 130, 571, 573; Prehearing Order No. 1, par. A 5). The statements appearing in the yellow-colored brochure which are quoted in the complaint may, for convenience, be classified under four headings:

- A. General statement regarding the importance of good health.
- B. General description of the book, "The Health Finder."
- C. Statement concerning the value of the ideas contained in the book.
- D. Statement concerning specific diseases or subjects discussed in the book, with reference to pages in the book where such subjects are discussed.

These statements, arranged in accordance with the foregoing subject headings, are as follows:

A

Better Health can mean a lot to you personally. Have you ever stopped to think that all the good things in life depend upon good health? * * * Wouldn't you like to enjoy one or more of these rewards of good health? * * * Good health and the abundant energy that goes with it * * * Are you "just too tired" to take a full part in the life of your community? * * * Do you enjoy your leisure moments as you should? Or are you so tired you spend most of your leisure time in resting and sleeping? * * * Are you bored and discontented because you don't feel well? * * * Turn page for important message * * *.

B

Health Finder, an encyclopedia of Health Information from the preventive point of view. ANSWERS HEALTH PROBLEMS.

C

Which of the health ideas in this amazing book will * * * (1) Add years to your life? (2) Give you more energy? (3) Cut down on your doctor and dentist bills? (4) Make you feel better than you ever felt before? (5) Help your family to achieve health and happiness?

D

* * * Recommendations for a winter free from common colds (pages 260-1)
 * * * What is the most successful preventative and cure for constipation (pages 278-9) * * * Cancer and nutrition (pages 165, 6, 7) * * * Diet for children during polio season (pages 623, 4, 5) * * * Prevention of ulcers (page 854) * * * Heart Disease and the use of Vitamin E (pages 415, 6-7-8-9) * * * Use of garlic in the treatment of hypertension (high blood pressure) (page 388) * * * Laboratory experiments indicating that brewers yeast and dried liver prevent cancer (page 141) * * * Experiments showing

the effectiveness of the B complex vitamins in preventing the growth of cancer (pages 176-7) * * * The garlic treatment for tuberculosis (page 386) * * * Goiter-what it is, where it occurs, what should be done to prevent it (pages 392, 393-4-5-6-7-8) * * * Reasons for a salt-free diet if you suffer from high blood pressure (pages 424-5) * * * Exciting discovery concerning the use of desiccated liver as a means of preventing fatigue (pages 450-1-2) * * * Experiments which indicate that liver in the diet helps prevent cancer (page 452) * * * Infantile paralysis and vitamin deficiency (pages 625-6-7-8-9) * * * Food and polio (pages 596-7-8-9) Polio its cause and prevention by Dr. Virgil A. David, New York City (pages 599-603).

7. The extracts from testimonials purporting to have been received from readers are arranged according to certain specific diseases or subjects discussed in "The Health Finder." The first and second pages of the series of testimonial extracts are headed, respectively: "The Health Finder article that helped me most was—" and "I'm glad I bought the Health Finder because—." The complaint alleges that the testimonial extracts contain various misrepresentations with respect to the following diseases or subjects discussed in the book: Cancer, heart disease, mental health, polio, ulcers and arthritis (CX 9 A-D). The contents of the challenged portions of the testimonials will be hereafter more fully described.

8. Shortly prior to their discontinuance of the circulation of the above-mentioned yellow-colored brochure and the testimonial extracts on April 5, 1960, respondents, in February 1960, began to distribute a green-colored mailer advertisement for "The Health Finder," and a modified compendium of testimonial extracts. Respondents continued to distribute such mailer advertisement and testimonial extracts until at least August 1963 (CX 10 A-D, CX 22 A-H, CX 24 A-D, CX 25 A-B; Tr. 572, 586).⁷ The revised brochure omits all of the material quoted under the headings "A" and "C" above. It also contains some modifications in the statements dealing with specific diseases and subjects, as set forth in "D" above. The nature of such changes will be hereinafter more fully discussed. Complaint counsel contend that despite the changes, the green-colored brochure contains many of the misleading statements found in its yellow-colored predecessor (Brief, p. 32). Respondents, while not conceding that the yellow-colored brochure and accompanying testimonial extracts contained any misleading material, contend that any material

⁷ According to respondent Robert Rodale, respondents ceased distributing the green-colored brochure in April 1963 (Tr. 572). However, in August 1963, following the receipt by respondents of a proposed complaint in this proceeding, respondents submitted to the Commission a copy of the green-colored brochure as reflecting their "current" advertisement for "The Health Finder" (CX 22 E).

which could possibly be objectionable was eliminated in the later green-colored brochure and accompanying testimonial extracts (CX 22 D-E).

9. Respondents are not currently engaged in advertising "The Health Finder," although the title of the publication does appear in their catalog of current publications. As of the time of the hearings herein, there were approximately 240 copies of the publication in stock, out of a total of approximately 137,000 copies which had been sold between 1955 and 1964 (Tr. 572-573, 588). Respondents are currently publishing and distributing another book entitled "The Complete Book of Food and Nutrition," some portions of which are identical to those appearing in "The Health Finder" (CX 29; Tr. 598, 613-615). Respondents are now utilizing a red-colored brochure as a mailer ad which they send to prospective purchasers of this publication (Tr. 608; CX 30 A-D). To the extent the statements in the current mailer ad are material, they will be hereinafter referred to in greater detail. Respondents also publish other books and pamphlets dealing with food, nutrition and health (CX 4 A-B, CX 27, CX 28). However, except for one which will be hereinafter discussed, the record contains no evidence of the advertising used in the sale of these publications.

The Alleged Misrepresentation

10. The charge of false advertising with respect to the publication "The Health Finder" is based on the allegation that by the use of certain of the statements above quoted or referred to, respondents have represented, directly or by implication, that readers of "The Health Finder" who follow the ideas and suggestions set forth in the book will obtain certain health benefits, whereas in truth and in fact the ideas and suggestions in the book will be of no value in the respects indicated (Complaint, par. 6-7). It is the position of respondents that the complaint is based on an erroneous interpretation of their advertising and that the advertising, as properly interpreted, is truthful in every respect (Answer, par. 6-7). In addition, respondents rely on several affirmative defenses, the principal ones being, (a) that the complaint contravenes the First Amendment of the Federal Constitution since, in essence, it challenges the opinions and ideas set forth in the book, and (b) that there is no public interest in this proceeding since the advertising challenged by the complaint was discontinued four years prior to the issuance of the complaint (Answer, pp. 8-9). The merits of these affirmative defenses will be reserved

for consideration, following the disposition of the factual issues raised with respect to the alleged misleading character of respondents' advertising.

11. In support of their position concerning the nature of the representations made by respondents in their advertising, complaint counsel rely solely on the advertisements themselves, portions of which have been set forth above (Prehearing Order No. 1, par. A 6). No so-called "public" or consumer witnesses were called to testify as to the impression received by them from the advertisements. To establish the fact that the ideas and suggestions in the book will not afford the health benefits suggested by respondents' advertising, complaint counsel called a number of physicians to testify as to the alleged lack of efficacy of the ideas and suggestions in the book for the prevention, cure or treatment of the various medical conditions covered by the complaint. Respondents likewise called no public or consumer witnesses to support their interpretation of the advertising. Like complaint counsel they called a number of medical witnesses, who testified as to the alleged value of the ideas and suggestions contained in the book with respect to various indicated conditions, in accordance with respondents' theory as to the proper interpretation of the advertisements.

12. In order to resolve the issue of whether respondents' advertising with respect to "The Health Finder" is false, misleading and deceptive, it is necessary to first determine what it is that respondents have represented in their advertising concerning the efficacy of the ideas and suggestions contained in the book. Since no opinion testimony was offered as to the impression which the advertisements would make on the public, a determination as to the meaning of respondents' advertising must rest entirely on the advertisements themselves.⁸ The advertising principally relied upon by complaint counsel, as being deceptive, is quoted in paragraph 6, *supra*. As there indicated, the statements-made in the yellow-colored brochure used between 1956 and April 1960 fall into four broad categories. No contention is specifically made that the statements in category "A" are deceptive, such statements being apparently set forth in the complaint as background for the other statements which complaint counsel contend are deceptive. The statements set forth under headings "C" and "D"

⁸ While opinion testimony of consumers is sometimes offered in Commission proceedings, it is now well established that the Commission may make a determination of the "natural and probable" impression which advertising expressions will have upon members of the public, without calling public or consumer witnesses. *Drew v. F.T.C.*, 235 F. 2d 735, 741 (2 Cir. 1956), *cert. den.* 352 U.S. 969; *Zenith Radio Corp. v. F.T.C.*, 143 F. 2d 29, 31 (7 Cir. 1944).

are both claimed to be deceptive, the statements under "C" allegedly containing misrepresentations with respect to the benefits to be afforded by the book generally, and those under "D" allegedly containing misrepresentations with respect to specific subjects and portions of the book.

Alleged Misrepresentations As To Benefits Generally

13. It is contended by complaint counsel that by the statements appearing under "C" respondents have represented and are now representing, directly and by implication, that readers of the book, "The Health Finder," who follow the ideas and suggestions set forth in the book will, (a) "add years to their lives," (b) "gain more energy," (c) "effectuate savings on medical and dental expenditures," (d) "feel better than ever before," and (e) "gain and maintain health" (Complaint, par. 6, CPF, pp. 6, 8, 13, 17). Complaint counsel contend that these representations are false, misleading and deceptive since, in truth and in fact, the ideas and suggestions in the book will not *assure* readers (a) "an increased life span," (b) "more energy," (c) "savings on medical and dental expenditures," (d) "that they will feel better than ever before," and (e) "that they will gain and maintain health" (Complaint, par. 7, CPF, p. 17). The expert witnesses called by complaint counsel testified, in substance, that persons following the ideas and suggestions in the book would not be "assured" of (a) an increased life span, (b) more energy, (c) savings on medical and dental expenditures, (d) feeling better than ever before, or (e) gaining or maintaining health (Tr. 226-227, 341-343, 409-410, 470).

14. Respondents make no contention that the ideas and suggestions contained in "The Health Finder" will "assure" one of an increased life span and the other broad benefits referred to above. In fact, they concede that no one, not even a doctor, could "assure" anyone, in the sense of giving him a "guarantee," that by following certain medical advice he will be able to live longer, etc. (Tr. 475, 479). However, it is their position that the advertisements for the book do not purport to "assure" readers of these benefits. Respondents called a number of medical witnesses who testified that the book does contain valuable ideas and suggestions which, if followed, could result in better health and the avoidance of some types of diseases, thereby helping to prolong life (Tr. 542, 642, 730, 806). It is clear, therefore, that what is involved in this issue is not a question of the truth or falsity of the alleged representations in respondents' advertis-

