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## Federal Trade Commission Decision on 'Evis Water Conditioner' Claims

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*A news release, issued on Apr. 3, 1959, by the Office of Information of the Federal Trade Commission, Washington, D.C., summarizing an FTC decision on a complaint against Evis Mfg. Co. (In an initial decision in April 1956, the hearing examiner had dismissed the complaint. The FTC counsel then appealed to the commission, which remanded the case to the examiner for the reception of evidence concerning further scientific tests of the "Evis Water Conditioner." The examiner, after taking such evidence, filed a second decision in June 1958, again dismissing the complaint. He based his holding on the ground that the disposition of the proceeding must be controlled by the legal principle that, when conflicting evidence is in such a state of balance that substantial doubt exists as to the conclusions to be drawn therefrom, the burden of proof has not been sustained. The FTC counsel appealed to the commission once more; the result of this appeal is set forth below.)*

THE Federal Trade Commission has ordered Evis Manufacturing Co., San Francisco, Calif., to stop falsely claiming that its "Evis Water Conditioner" has any beneficial effect on water. The scientific evidence and testimony in support of the charges clearly outweigh the testimony given by the concern's user witnesses, the FTC ruled.

Accordingly, it granted an appeal by its trial counsel, and vacated a hearing examiner's initial decision, filed Jun. 30, 1958, which would have dismissed the Feb. 5, 1954, complaint for failure of proof.

The FTC's opinion, by Commissioner Sigurd Anderson, describes the device as "an oversized pipe coupling with an interior crosspost integrally cast in place. It is made of cast iron or bronze or similar metals and coated inside and out with zinc galvanizing.

The device is intended to be fitted into water systems for the purpose of beneficially treating and conditioning water."

Evis and its vice-president, Arthur N. Wells, were ordered to discontinue more than a score of false claims. Specifically, they are forbidden to represent that the "Evis Water Conditioner":

Has a catalytic effect on water or changes its physical behavior

Will solve hard-water problems, make hard water soft, or cause hard water to feel, taste, or act softer

Will remove or reduce unpleasant odors or flavors from water

Will make water taste better or improve the taste of beverages or food

Will save soap and reduce the cost of heating water

Will eliminate or reduce harshness of water to hands

Will cause dishes or glassware to dry without leaving water stains

Will remove grease, prevent or remove scale, and improve the action of chemicals used for water softening

Will prevent, reduce, or eliminate scum, rust stains, and corrosion, or retard pitting of metal

Will leach out alkali and salts in soil, and reduce the amount of water required for agricultural irrigation

Will improve the soil's texture or structure, and the growth or production of agricultural or orchard products.

### Weight of Evidence

The commission pointed out that the record indicates that Evis' counsel admitted failure of the Evis unit in 3,000 installations. More important, the opinion continued, is the testimony and other evidence by engineering and scientific experts that the device will neither alter the characteristics of water nor produce the claimed beneficial effects. The experts' testimony conflicted with that of users of the device who appeared for the company.

"The hearing examiner," the opinion stated,

has given little weight to the evidence received in support of the complaint. In many instances of tests or studies being made, he questions the results because of the doubt raised on cross examination about whether the Evis unit was properly installed. Apparently, not all of the experimenters followed instructions for installation in every particular. This may have a bearing on the fairness of the tests in some cases, but we do not think that a substantial part of the scientific evidence should be largely discounted for such a reason. Manufacturers' instructions should be followed, of course, to achieve the results claimed for a product, but in this case the "instructions" have

varied from time to time and apparently are not all contained in any one document. A step indicated as essential in one instruction sheet, for example, may not even be mentioned in another. Under such circumstances, the failure to follow the omitted instruction should not necessarily put doubt on the experiment. . . .

The scientific evidence and testimony . . . supports the allegations of the complaint, and it is substantial. This evidence is strong, clear, and persuasive. Taken all together, it would be of compelling significance under any circumstances. Here we have the opinions of men of broad training and experience, which opinions were based on studies in the laboratory and field, as well as upon general experience. Their qualifications generally are beyond challenge.

For example, the opinion noted, Dr. James I. Hoffman of the National Bureau of Standards testified that, based on his scientific knowledge and his experience with the device, it could have no effect on water. The hearing examiner, in his initial decision, held that the probative value of this testimony was lessened because the witness did not preclude the possibility, at some future date, of a change being effected in the physical behavior of water, in a water system, by contact at the interface with a specially processed metal. The examiner held that the claimed change in the behavior of water by passage through the device had not been proved *impossible*. Disagreeing, the commission said:

This, we think, is much too high a standard of proof. Dr. Hoffman has clearly testified that the "Evis Water Conditioner" will not beneficially affect water. To the extent that he may have admitted the possibility of any claimed effect, it was under the qualification that it would be beyond his comprehension if

it could be done. He testified on the basis of present-day knowledge and his experience with the Evis device. In our view, his testimony should not suffer merely because, as a man of science, he admits the possibility of an occurrence, however remote. . . .

It is obvious that [the FTC] counsel supporting the complaint has made a showing with reliable, substantial, and probative evidence that the "Evis Water Conditioner" will not perform as claimed. We do not think that counsel has shown it is impossible for the Evis unit to produce beneficial results, nor do we think such proof, if it could ever be made in a case of this nature, is necessary. Not all of the evidence in support of the complaint is strong; not all of it is free from defects. Taken in its entirety, however, it covers the views of many scientific and engineering experts in the various related fields and it is almost wholly adverse to the "Evis Water Conditioner." The views expressed were not simply opinions based on general experience alone. In almost every case, experiments or tests were performed. Some were in the laboratory and some involved practical installations.

Turning to the respondents' (Evis) evidence, the commission stated that, although they introduced some of a scientific nature, "it appears to be of little, if any, significance." The opinion continued:

In any event, respondents do not press their cause on the basis of any scientific evidence. They apparently concede that the effect resulting in the benefits to be derived from the use of their device, if any, is a scientific mystery. Respondents' evidence is largely that of the user testimony and the related exhibits.

An examination of this evidence shows that a number of users, including operating engineers and others, believed that they obtained beneficial results from the use of the "Evis Water Conditioner." While a number of the witnesses testified about observing results in parallel practical experiments, it nevertheless appears that the observations were not of tests under scientifically controlled conditions. Any one of a number of factors not connected with the "Evis Water Conditioner" could have caused any differences which may have been noted. This evidence, while relevant, must be considered and weighed in the light of all the surrounding circumstances. In some cases, such testimony may be more important than in others, particularly where there is scientific evidence of considerable weight on both sides of the question. . . . That is not the situation in this proceeding. The scientific evidence in the record almost entirely supports the allegations of the complaint. The user evidence, in these circumstances, is of relatively little value.