

public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

For purposes of this Order:

1. “Doan’s” shall mean any over-the-counter internal analgesic drug, as “drug” is defined in the Federal Trade Commission Act, bearing the Doan’s brand name, including, but not limited to, Regular Strength Doan’s analgesic, Extra Strength Doan’s analgesic, and Extra Strength Doan’s P.M. analgesic.
2. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

IT IS ORDERED that respondent Jordan, McGrath, Case & Taylor, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Doan’s or any other over-the-counter analgesic drug, in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that such product is more effective than other over-the-counter analgesic drugs for relieving back pain or any other particular kind of pain, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of Part I of this order, “competent and reliable scientific evidence” shall include at least two adequate and well-controlled, double-blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, each of whom is qualified by training and experience to conduct such studies, independently of each other.

II.

IT IS FURTHER ORDERED that respondent Jordan, McGrath, Case & Taylor, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Doan’s or any other over-the-counter internal analgesic drug, in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist

from making any representation, in any manner, directly or by implication, regarding such product's efficacy, safety, benefits, or performance, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

III.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IV.

IT IS FURTHER ORDERED that for a period of five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

IT IS FURTHER ORDERED that respondent shall:

- A. Within thirty (30) days from the date of entry of this order, provide a copy of this order to each of its current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and
- B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of its future principals, officers, directors, and managers, and

to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with them or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including, but not limited to, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

VII.

IT IS FURTHER ORDERED that this order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however**, that the filing of such a complaint will not affect the duration of:

- A. Any part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VIII.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days from the date of entry of this order, and at such other times as the Federal Trade Commission may require, file

with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Signed this _____ day of _____, 199__.

JORDAN, MCGRATH, CASE & TAYLOR, Inc., a corporation

By: _____
Patrick McGrath, President
Jordan, McGrath, Case & Taylor, Inc.

Shira D. Modell
Counsel for the Federal Trade Commission

Loren G. Thompson
Counsel for the Federal Trade Commission

APPROVED:

C. Lee Peeler
Associate Director
Division of Advertising Practices

Joan Z. Bernstein
Director
Bureau of Consumer Protection

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
JORDAN, McGRATH, CASE & TAYLOR,)	DOCKET NO.
a corporation.)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Jordan, McGrath, Case & Taylor, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent Jordan, McGrath, Case & Taylor, Inc., is a New York corporation with its principal office or place of business at 445 Park Avenue, New York, New York 10022.

PARAGRAPH TWO: Respondent, at all times relevant to this complaint, was an advertising agency of Ciba-Geigy Corporation or CIBA Self-Medication, Inc., and prepared and disseminated advertisements to promote the sale of Doan's analgesic products. Doan's analgesic products are "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PARAGRAPH THREE: The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondent has disseminated or caused to be disseminated advertisements for Doan's analgesic products, including, but not necessarily limited to, the attached Exhibits A and B. These advertisements contain the following statements and depictions:

- A. If nothing seems to help, try Doan's. It relieves back pain no matter where it hurts. Doan's has an ingredient these pain relievers don't have. *[Depiction of large package of Doan's in front of smaller packages of Bayer, Aleve, Advil, and Tylenol]. [Superscript: Magnesium Salicylate].* Doan's. The Back Specialist. *[Superscript: The Back Specialist]*

[Exhibit A: "Activity - Pets" 15-Second Television]

- B. There are hundreds of muscles in the back. Any one can put you in agony. That's when you need Doan's. *[Depiction of box of Doan's superimposed over boxes of Bayer, Tylenol, Aleve and Advil].* Doan's has an ingredient the leading brands don't. It relieves back pain no matter where it hurts. There are hundreds of muscles in the back. Doan's relieves them all. *[Superscript: The Back Specialist]*

[Exhibit B: "Muscles - Male" 15-Second Television]

PARAGRAPH FIVE: Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that Doan's analgesic products are more effective than other analgesics, including Bayer, Advil, Tylenol, and Aleve, for relieving back pain.

PARAGRAPH SIX: Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH FOUR, including, but not necessarily limited to, the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time it made the representation set forth in PARAGRAPH FIVE, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PARAGRAPH SEVEN: In truth and in fact, at the time it made the representation set forth in PARAGRAPH FIVE, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: Respondent knew or should have known that the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH NINE: The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission on this _____ day of _____, 199__, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-B attached to paper copies, but not available in electronic form]

Analysis of Proposed Consent Order
to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a consent order from Jordan, McGrath, Case & Taylor, Inc. (“Jordan, McGrath”), an advertising agency.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter concerns Doan’s, an analgesic for which Jordan, McGrath created and disseminated advertisements. The Commission’s proposed complaint alleges that the respondent represented without a reasonable basis in its advertisements that Doan’s analgesic products are more effective than other analgesics, including Bayer, Advil, Tylenol, and Aleve, for relieving back pain. The complaint alleges that respondent knew or should have known that the representation lacked a reasonable basis.

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from making any representation that Doan’s or any other over-the-counter analgesic drug is more effective than any other such drug for relieving back pain or any other particular kind of pain, unless it possesses competent and reliable scientific evidence, consisting of at least two adequate and well-controlled, double-blinded clinical studies, that substantiates the representation.

Part II of the proposed order prohibits respondent from making any representation about the efficacy, safety, benefits, or performance of any over-the-counter internal analgesic drug, unless it possesses competent and reliable scientific evidence that substantiates the representation. This Part further provides that it shall be a defense under this Part that respondent neither knew nor had reason to know of an inadequacy of substantiation for a representation.

Part III of the order is a safe harbor provision allowing representations for any drug that are permitted in the labeling for that drug under any tentative final or final standard promulgated by the Food and Drug Administration (“FDA”) or by an approved new drug application.

Parts IV, V, VI, and VII of the order relate to respondent’s obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in corporate structure, and file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.