

Complaint

IN THE MATTER OF

E. C. DEWITT & CO., INC.

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

*Docket 8642. Complaint, Aug. 28, 1964—Decision, Dec. 16, 1966**

Order requiring a New York City manufacturer of "Man Zan Pile Ointment" and other pile remedies to cease falsely representing in its advertising that its product will shrink, avoid need for surgical treatment on, heal, cure, or remove hemorrhoids or effect any other cure beyond temporary relief.

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 E. C. DeWitt & Co., Inc., a corporation, hereinafter referred to as respondent has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. C. DeWitt & Co., Inc., is a corporation, organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 730 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondent E. C. DeWitt & Co., Inc., is now and has been for more than one year last past, engaged in the sale and distribution of three preparations offered for the treatment of piles or hemorrhoids and coming within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent E. C. DeWitt & Co., Inc., for said preparations, the formulas thereof and the directions for use are as follows:

A. *Designation:* "DeWitt's Stainless Man Zan Pile Ointment."

Formula: Active Ingredients: CARBOLIC ACID ½% BENZOCAINE, ZINC OXIDE, ALLANTOIN, EPHEDRINE HCl.

Directions: For palliative relief cleanse affected parts with warm water and toilet soap; dry with soft towel. After gently inserting the

*Modified on Dec. 15, 1970.

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Stainless Man Zan applicator as far as possible into the rectum, squeeze tube to apply a liberal quantity. Use night and morning, also after stooling when convenient.

CAUTION: Avoid using this preparation in case of undue bleeding, since this may indicate a serious condition requiring medical advice.

B. *Designation: "Man Zan Pile Ointment."*

Formula: Active Ingredients: Ephedrine HCl Allantoin, Benzocaine Carbolic Acid 0.5% Menthol, Tannic Acid.

Directions: For palliative relief cleanse affected parts with warm water and toilet soap; dry with soft towel. After gently inserting the Man Zan applicator as far as possible into the rectum, squeeze tube to apply a liberal quantity. Use night and morning, also after stooling when convenient.

CAUTION: Avoid using this preparation in case of undue bleeding since this may indicate a condition requiring medical advice.

C. *Designation: "DeWitt's Stainless Man Zan Suppositories."*

Formula: Active Ingredients: Benzocaine Zinc Oxide, Phenol 0.5% Allantoin, Phenylpropanolamine.

Directions: Before using Man Zan Suppositories remove the protective foil wrapping. Wash affected parts, then insert the suppository as high as possible into the rectum. Use morning and night and after each bowel movement. Treatment should be continued daily for best results. External discomforts are best treated with Man Zan Pile Ointment—Stainless or Regular.

CAUTION: If relief is not obtained in a reasonable period of time, and in cases of undue bleeding, consult your physician.

PAR. 3. Respondent E. C. DeWitt & Co., Inc., causes the said preparations, when sold, to be transported from its place of business located at 2835 Sheffield Avenue, Chicago 14, Illinois, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the preparations referred to in Paragraph Two, above, by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to advertisements in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and has disseminated, and caused the dissemination of, advertisements concerning said preparations by various means,

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

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

Itching and Soreness of hemorrhoid discomfort quickly relieved with DeWitt's Manzan. Manzan contains Allantoin for healing, benzocaine to ease pain, and a vasoconstrictor to help reduce swelling. For soothing action and fast palliative relief, try . . . Manzan ointment or Suppositories

HEMORRHOIDS Real Relief . . . When simple hemorrhoids cause agony . . .

. . . a special healing agent.

. . . to ease pain . . . reduce swelling.

REAL RELIEF FROM HEMORRHOIDS

. . . now even more effective with Allantoin, a special healing agent.

PAR. 6. Through the use of said advertisements and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication that the use of DeWitt's Stainless Man Zan Pile Ointment, Man Zan Pile Ointment, DeWitt's Stainless Man Zan Suppositories, and each of them, will:

1. Reduce piles;
2. Heal piles;
3. Be effective in relieving severe or agonizing pain of piles;
4. Relieve all pain or itching caused by piles.

PAR. 7. In truth and in fact the use of DeWitt's Stainless Man Zan Pile Ointment, Man Zan Pile Ointment, DeWitt's Stainless Man Zan Suppositories, or each of them will not:

1. Reduce piles;
2. Heal piles;
3. Be effective in relieving severe or agonizing pain of piles;
4. Relieve all pain or itching caused by piles;
5. Afford any relief or have any therapeutic effect upon the condition known as piles, or upon any of the symptoms or manifestations thereof, in excess of affording temporary relief of minor pain or minor itching associated with piles.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respect and constituted and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

OPINION OF THE COMMISSION

DECEMBER 16, 1966

BY JONES, *Commissioner*:

I

The complaint in this matter, issued on August 28, 1964, charged that respondent violated Sections 5 and 12 of the Federal Trade Commission Act by making false representations in advertising its preparations sold under the names of "DeWitt's Stainless Man Zan Pile Ointment," "Man Zan Pile Ointment," and "DeWitt's Stainless Man Zan Suppositories," for the treatment of hemorrhoids or piles.¹ The complaint alleged and respondent in its answer admitted that it maintained a course of trade in said preparation in commerce within the meaning of the Federal Trade Commission Act.

Paragraph Five of the complaint charged that the following were typical of the statements made by respondent in its advertising:

Itching and Soreness of hemorrhoid discomfort quickly relieved with DeWitt's Manzan. Manzan contains Allantoin for healing, benzocaine to ease pain, and a vasoconstrictor to help reduce swelling. For soothing action and fast palliative relief, try . . . Manzan ointment or Suppositories.

HEMORRHOIDS Real Relief . . . When simple hemorrhoids cause agony . . .

. . . a special healing agent.

. . . to ease pain . . . reduce swelling.

REAL RELIEF FROM HEMORRHOIDS

. . . now even more effective with Allantoin, a special healing agent.

Paragraph Six of the complaint charged that through the use of these advertisements and others respondent had represented that use of ManZan will: (1) reduce piles; (2) heal piles; (3) be effective in relieving severe or agonizing pain of piles; and (4) relieve all pain or itching caused by piles. Respondent denied the allegations in this paragraph except insofar as this paragraph alleged that respondent represented "that the use of its prepara-

¹ The terms "hemorrhoids" and "piles" are synonymous (Finding of Fact 11; and will be used interchangeably herein. Hereinafter the paragraphs of the Findings of Fact in this case will be referred to as "F.-----."

tions will be effective in relieving pain of simple piles" (Answer, Par. 6).

In Paragraph Seven the representations set forth in Paragraph Six are alleged to be false and it is further alleged that ManZan will not "[a]fford any relief or have any therapeutic effect upon the condition known as piles, or upon any of the symptoms or manifestations thereof, in excess of affording temporary relief of minor pain or minor itching associated with piles." Therefore, it is concluded in this paragraph that respondent's advertisements were misleading in material respects and constituted "false advertisements" within the meaning of the Federal Trade Commission Act. Respondent denied the allegations in this paragraph except that it admitted that "the use of respondent's preparations will not relieve all pain or itching caused by piles" (Answer Par. 7).

The complaint in this matter was issued simultaneously with four other complaints also charging misrepresentations in the advertising of hemorrhoidal preparations, namely: *Humphreys Medicine Company, Incorporated*, Docket 8640 [p. 1502 herein], *American Home Products Corporation*, Docket 8641 [p. 1524 herein], *Grove Laboratories, Incorporated*, Docket 8643 [71 F.T.C. 822] and *The Mentholatum Company*, Docket 8644 [p. 1671 herein]. Hearings in the *American Home Products* case took place in April and May 1965, and the initial decision in that case was rendered on October 22, 1965. Complaint counsel appealed. On January 12, 1966, before argument of his appeal, complaint counsel moved in each of the other four cases to suspend hearings pending the issuance of the Commission's decision in *American Home Products*. This motion was denied by the Commission on March 16, 1966, and respondents in each of these four cases moved for reconsideration. On April 26, 1966 [69 F.T.C. 1179], the Commission entered an order directing the examiner to proceed with the hearings in each of these cases unless the parties desired to enter into a stipulation providing essentially that their cases may be disposed of on the basis of the record and findings in the *American Home Products* case. On May 25, 1966, respondent and complaint counsel filed a stipulation in accordance with the provisions of the Commission's order of April 26, 1966.² The stipulation provided that the Commission may issue such order as it deems necessary in the public interest on the basis of

² The terms of this stipulation (hereinafter referred to as "Stip.") are set forth in full in F.5.

the facts stipulated by the parties and that the respondent waived any intervening steps before the hearing examiner. The parties further stipulated that the advertisements in the case had no significantly different effect upon readers from the effect of the advertisements in *American Home Products*; that the effect of the use of respondent's preparation is not significantly different from the use of American Home Products' preparation; and that, to the extent that respondent's advertisements differ significantly from those in American Home Products, the Commission may, in its order disposing of this proceeding, include appropriate provisions to take into consideration such differences.

Attached to this stipulation are the texts of four virtually identical advertisements. The following is the full text of two of these advertisements:

Real Relief from Hemorrhoids. When simple hemorrhoids cause agony and embarrassing itch, use DeWitt's ManZan—now even more effective with Alantoin, a special healing agent. ManZan also contains benzocaine to ease pain, and a vasoconstrictor to help reduce swelling. For soothing action and fast palliative relief, try . . . ManZan—Ointment or Suppositories.

On the basis of the pleadings, the stipulation of the parties and the attached advertisements, together with such portions of the record in *American Home Products* as are specified in the attached findings, we conclude that we have jurisdiction over respondent and the subject matter and that respondent was engaged in commerce and accordingly are entering our Findings of Fact and Conclusions in the matter.

II

DISCUSSION OF ISSUES

A. *Representations Made by Respondent in Its Advertisements*

Respondent is charged with representing that its product will (1) reduce hemorrhoids, (2) heal hemorrhoids, (3) relieve all pain and be effective in relieving severe or agonizing pain of hemorrhoids, and (4) relieve all itching caused by hemorrhoids.

In *American Home Products* we found that respondent had represented that its preparation would "reduce or shrink hemorrhoids," "heal, cure, or remove hemorrhoids, and cause hemorrhoids to cease to be a problem," "relieve all pain attributed to or caused by hemorrhoids" and "eliminate all itch due to or ascribed to hemorrhoids" (F.8). In Par. 3 of the stipulation executed by the parties, it is provided that the advertisements in the instant case "had no significantly different effect upon readers from the effect

of the advertisements in *American Home Products.*" Accordingly, on the basis of this provision of the parties' stipulation alone, we could conclude that respondent's advertisements represent that the alleged representations were in fact made by respondent. However, there is no need to rely exclusively on parties' stipulation for this conclusion since the advertisements speak for themselves and our own independent examination of them enables us to determine whether the complaint allegations as to the representations made in these advertisements may be sustained.

(1) Respondent's claims respecting shrinkage or reduction of hemorrhoids

Respondent's advertisements state that its products contain "a vasoconstrictor to help reduce swelling." Since a "vasoconstrictor" is an agent which causes constriction of blood vessels (Webster's New International Dictionary, Second Edition), the clear implication of this statement is that the hemorrhoids or blood vessels will be reduced and not merely that the overlying tissue will be reduced in size. Furthermore, the only meaning which the reader could ascribe to the claim that a medication for hemorrhoids will help reduce swelling is that it will reduce or shrink hemorrhoids. Accordingly, we conclude that respondent's claims in its advertising are tantamount to direct representations that its product will shrink hemorrhoids.

(2) Respondent's claims respecting healing of hemorrhoids

Respondent's advertisements state that ManZan contains "Alantoin, a special healing agent." Since the only apparent function of a "healing agent" would be to heal, the reference to such an agent necessarily carries with it the implication that respondent's product heals hemorrhoids. Thus, in our opinion respondent's claims are tantamount to representations that its product will heal hemorrhoids.

(3) Respondent's claims respecting pain

Respondent promises in its advertising that its product will provide "real relief from hemorrhoids" and states that ManZan, which "contains benzocaine to ease pain," should be used when "simple hemorrhoids cause agony." Respondent's claims are unequivocal and do not permit even an inference that the relief actually afforded may be partial or temporary. The reference to the word "benzocaine," a local anesthetic (Webster's New International Dictionary, Second Edition), implies that the preparation

