

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

EQUIFAX INC. (FORMERLY RETAIL CREDIT CO.)

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 8920. Final Order, July 7, 1978—Dismissal Order, July 14, 1981*

On remand from the U.S. Court of Appeals, Ninth Circuit, this order dismisses the March 9, 1978 complaint against a collector and seller of consumer credit information. The Commission concluded that further proceedings would not be in the public interest.

Appearances

For the Commission: *Joseph S. Brownman.*

For the respondent: *J. Wallace Adair and Francis A. O'Brien,
Howrey & Simon, Washington, D.C.*

FINAL ORDER

This matter having been remanded to the Commission by the United States Court of Appeals for the Ninth Circuit, and the Commission having concluded that further proceedings would not be in the public interest,

It is ordered, That the complaint be dismissed.

By the Commission. Commissioner Dixon dissented.

* Complaint, Initial Decision, Opinion of the Commission and Final Order originally published at 92 F.T.C. 1.

IN THE MATTER OF
INTERNATIONAL HARVESTER COMPANY

Docket 9147. Interlocutory Order, July 15, 1981

ORDER DENYING MOTION FOR STAY

On June 25, 1981, Administrative Law Judge Mathias certified to the Commission the question whether further proceedings in this matter are in the public interest.

On June 30, 1981, Judge Mathias refused respondent International Harvester Company's ("IH") request for a stay of further proceedings pending a Commission ruling on the certified question. On July 2, 1981, IH filed a motion for a stay with the Commission pursuant to Section 3.23(c) of the Commission's Rules of Practice. Complaint counsel opposed the motion for a stay in an answer filed on July 7, 1981. On July 9, 1981, IH moved for leave to file, and submitted, a reply memorandum to complaint counsel's answer. IH's reply memorandum is accepted. Because the active pretrial schedule begins on July 13, 1981, IH asks that the Commission grant a stay at the earliest possible time in order to avoid potentially unnecessary costs of litigation.

Section 3.23(c) of the Commission's Rules of Practice provides that an application for review and appeal shall not stay proceedings unless the ALJ or the Commission shall so order. This provision presumes that proceedings will continue unless a stay is appropriate in the opinion of the ALJ or the Commission. An important purpose of this provision is to facilitate discovery and trial with a minimum of interruption due to interlocutory issues that may arise. Generally speaking, the public interest in expeditious disposition of adjudicatory matters disfavors interlocutory suspensions of proceedings except in extraordinary circumstances. In addition, responsibility for resolving procedural questions of this type in adjudicatory matters generally has been left by the Commission to the sound discretion of the administrative law judges. The Commission does not lightly disturb their rulings on the course and conduct of the proceedings over which they preside.

IH argues that Judge Mathias' order places in serious issue whether this case is any longer in the public interest. In light of this development, IH argues that it would be wasteful to incur further costs of litigation during the pendency of Judge Mathias' order before the Commission. The Commission is in no position yet to judge the validity of the real premise for IH's motion for a stay, namely, that a decision to withdraw this matter from litigation is a likely

Interlocutory Order

consequence of Judge Mathias' action and that further expense of litigation thus should be avoided. Until and unless the Commission finds such a likelihood or actually decides that this matter should be withdrawn from litigation, the public interest in expeditious completion of discovery and trial requires that the case go forward.

IH argues that the cost of pretrial litigation will be substantial, heightening the need for a stay. While the Commission is sensitive to IH's alleged financial difficulties and the added stress created by this case, Motion for Stay at 6-7, the cost of litigation, even if considerable, ordinarily is insufficient to support a stay.¹

For these reasons, and because of the broad discretion our administrative law judges have on questions of this kind, the Commission does not believe that Judge Mathias' denial of IH's motion for a stay below should be set aside.²

Accordingly, it is ordered that respondent IH's motion for a stay filed with the Commission is hereby denied.

Commissioner Dixon voted in the negative.

¹ Section 3.23 of the Commission's Rules is modeled after the appeal procedure of 28 U.S.C. 1292(b), in which interlocutory appeals do not stay further proceedings unless the district or appellate court so orders. Precedents under that provision thus can be useful to the Commission in interpreting its own rule governing stays pending appeal. The Commission notes that federal courts have rejected costs of litigation as a ground for a stay pending appeal. See, e.g., *Long v. Robinson*, 432 F. 2d 977, 980 (4th Cir. 1970), quoting *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921, 925, (D.C. Cir. 1958); *Reynolds Metal Co. v. Secretary of Labor*, 453 F. Supp. 4, 6-7 (W.D. Va. 1977).

² IH alleges that in denying a stay, Judge Mathias indicated that if the Commission felt the certified question raised a substantial issue, then the Commission was the appropriate body to issue a stay. Reply Memo at 2. To the extent IH is arguing that Judge Mathias suggested a stay is appropriate, we note that there is no recommendation for a stay in his order.

Complaint

98 F.T.C.

IN THE MATTER OF
SPERRY CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3068. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires a New York City manufacturer, among other things, to cease disseminating advertisements which misrepresent that the Black Man's Shaver or any other device or commercial treatment will cure or minimize "razor bumps." Further, respondent is barred from making statements which are inconsistent with accepted medical opinion or which misrepresent the efficacy, performance or superiority of any drug or device. The order also requires that the company contact previous customers and make refunds to those eligible.

Appearances

For the Commission: *Mark Allan Heller and Teresa A. Hennessy.*

For the respondent: *Roger A. Clark, Rogers & Wells, New York City.*

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 Sperry Corporation, formerly the Sperry Rand Corporation, (hereinafter "Sperry"), through its former Sperry-Remington Division, (hereinafter "Remington"), hereinafter at times referred to as respondent, has violated the provisions of the 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. "Sperry" is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1290 Avenue of the Americas, New York, New York.

PAR. 2. "Sperry" has engaged in the business of manufacturing, advertising, and offering for sale, various products, including but not limited to, Remington's Black Man's Shaver, a product advertised for treating the shaving problems of Black men, to wit pseudofolliculitis barbae (hereinafter "razor bumps"), a disease primarily induced by shaving.

Complaint

PAR. 3. In connection with the manufacture and marketing of the Black Man's Shaver, respondent has disseminated, published and distributed advertisements and promotional material for the purpose of promoting the sale of the Black Man's Shaver for human use. As advertised, this product is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its said business, the respondent has disseminated and caused the dissemination of certain advertisements concerning the Black Man's Shaver through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, the insertion of advertisements in magazines with national circulations and the placement of advertisements with radio and television stations with sufficient power to broadcast across state lines and into the District of Columbia for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the Black Man's Shaver; and has disseminated and caused the dissemination of advertisements concerning the said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said product in commerce.

PAR. 5. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

I used to have a shaving problem. Ingrown hairs that caused ugly razor bumps. Yeah, you know what that's like. But then, Remington came up with the answer. The Black Man's Shaver. The Black Man's Shaver cuts off my tough, curly whiskers to help prevent them from growing back into my skin and becoming those ugly bumps. * * * They're so sure the Black Man's Shaver will help reduce razor bumps, that they'll give you your money back if you're not completely satisfied. Man, that's a guarantee! So thanks to Remington, I said, 'so long messy depilatories. . .farewell beard. . .and bye bye bumps.' * * * The Black Man's Shaver by Remington. It's the answer to a black man's tough shaving problems.

* * * * *

If you're black like I am, shaving may cause problems. You know, those ugly razor bumps. You can camouflage them with a beard. Or mess with depilatories. But there's never been a real solution. Until now. Because now, Remington has created a revolutionary new shaving system called the Black Man's Shaver. * * * The Black Man's Shaver works so well, Remington guarantees it will help prevent razor bumps or they'll give you your money back. * * * The Black Man's Shaver by Remington. It's the first *real* answer to a Black man's shaving problem.

PAR. 6. Through the use of said advertisements referred to in

Paragraphs Four and Five and others, respondent represented directly or by implication that:

- a. Use of the Black Man's Shaver will eliminate "razor bumps" for persons with that condition.
- b. Growing a beard only camouflages "razor bumps" and has no therapeutic value in the treatment of that condition.
- c. The Black Man's Shaver is the only effective means of treating "razor bumps."
- d. Thirty (30) days is an adequate time period for consumers to evaluate the Black Man's Shaver's efficacy and to have a fair opportunity to take advantage of Remington's money back guarantee.

PAR. 7. In truth and in fact:

- a. Use of the Black Man's Shaver will not eliminate "razor bumps" for persons with that condition.
- b. Growing a beard is considered by accepted medical opinion the preferred method of treating "razor bumps", and therapeutic beards are prescribed often for the treatment of that condition.
- c. Regardless of whether the Black Man's Shaver is effective for the treatment of "razor bumps", there are other methods of treating that condition which are effective.
- d. Thirty (30) days is an inadequate time period for many consumers to evaluate the efficacy of the Black Man's Shaver, and many consumers are without a fair opportunity to take advantage of Remington's money back guarantee.

Therefore, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects, and constituted and now constitute false advertisements, and the representations set forth in Paragraph Six were and are false, deceptive, or unfair.

PAR. 8. Through the use of the said advertisements referred to in Paragraphs Four and Five and others, respondent represented directly or by implication, that the Black Man's Shaver is effective in the treatment of "razor bumps."

PAR. 9. There existed at the time of the first dissemination of the representation contained in Paragraph Eight no materials that provided a reasonable basis for the making of that representation. Therefore, the making and dissemination of the said representation as alleged, constituted, and now constitutes unfair or deceptive acts or practices in commerce.

PAR. 10. In the course and conduct of its aforesaid business, and

at all times mentioned herein, respondent has been in substantial competition in or affecting commerce with corporations, firms, and individuals representing or engaged in the manufacture or marketing of shaving products, shaving accessories and health-related devices.

PAR. 11. The use by respondent of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and respondent's competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rule; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sperry Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1290 Avenue of the Americas, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered. That respondent Sperry Corporation ("Sperry"), a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of all drugs and devices as defined by Section 15 of the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that the use of the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment will eliminate pseudofolliculitis barbae (hereinafter "razor bumps") for persons with that condition.

2. Represents that the use of the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment will cure "razor bumps" for persons with that condition.

3. Represents that growing a beard only camouflages "razor bumps" and has no therapeutic value in the treatment of that condition.

B. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of the Black Man's Shaver or any other

product by persons afflicted with "razor bumps" will reduce or minimize that condition;

2. Represents that the Black Man's Shaver or any other product is efficacious for the treatment of "razor bumps";

3. Represents that the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment is superior to other treatments for "razor bumps"; or

4. Represents that any time period is adequate for consumers to evaluate the Black Man's Shaver's effectiveness in the treatment of "razor bumps",

unless at the time of each dissemination of such representation(s) respondent possesses and relies upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two well-controlled clinical studies which conform to acceptable designs and protocols and are conducted by different persons independently of each other. Such persons shall be qualified by training and experience to treat "razor bumps" and to conduct the aforementioned studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with the advertising, offering for sale, sale or distribution of all drugs and devices as defined in Section 15 of the Federal Trade Commission Act (excluding products not primarily advertised or promoted to consumers for personal, family or household use), which directly or indirectly:

1. Misrepresents the uniqueness of any such drug or device intended for human use.

2. Misrepresents the efficacy or performance of any such drug or device.

3. Makes representations, for the purpose of promoting the sale of any such drug or device, that are inconsistent with accepted medical opinion, *provided however*, that this provision, IC3, does not apply where statements inconsistent with accepted medical opinion are supported by a reasonable basis. Accepted medical opinion shall mean the general consensus of opinion of specialists as expressed in the medical literature, or if no such literature exists the consensus of the specialists themselves.

II

It is ordered, That Sperry shall initiate or cause and pay the cost of (1) sending thirty (30) days after the Order is final, to all persons known to it or Remington Products, Inc., at that time, as purchasers of Sperry Remington's Black Man's Shaver, a questionnaire with a self-addressed, stamped envelope (attached hereto and incorporated as Attachment A) to determine, *inter alia*, whether a.) the 30 day period under respondent's advertised money back guarantee was too short for said purchasers to evaluate the performance of the Black Man's Shaver as a treatment for razor bumps, b.) the said purchasers were satisfied with the Black Man's Shaver, and c.) the said purchasers bought the Black Man's Shaver on or prior to February 28, 1979, and (2) sending within thirty (30) days after respondent's receipt of the completed questionnaire referred to above, to those persons who purchased the Black Man's Shaver on or prior to February 28, 1979, and who responded within thirty (30) days after the mailing of the questionnaire that they are dissatisfied with the Black Man's Shaver and that 30 days was not a sufficient time period in which to evaluate the Black Man's Shaver as a treatment for razor bumps, a notice (attached hereto and incorporated as Attachment B) which shall provide said purchasers an additional thirty (30) days from the date of receipt of the notice to request a refund under said money back guarantee. The word "refund", for purposes of this provision, shall mean the return of the requested purchase price not to exceed 30% above the distributor's price for the model of the Black Man's Shaver returned in response to this Order. Said refund shall be provided within six (6) to eight (8) weeks of receipt of purchaser's request for a refund. *Provided, however,* Sperry shall be exempt from the obligations of Part II of the Order where it has *actual knowledge* that a purchaser of its Black Man's Shaver purchased it after February 28, 1979.

III

It is further ordered, That Sperry shall forthwith distribute a copy of this Order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondent shall, within one hundred

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4. Since using your Remington Shaver, has your problem with "bumps"

Decreased Remained the Same Increased

5. Do you feel that the beard lifter

Helps you a lot Helps a little

Does not help at all Not yet sure

How often do you use the beard lifter? _____

6. How do you rate your new Remington Black Man's Shaver compared to previous shaving methods?

Much Better Somewhat Better Equal

Somewhat Worse Much Worse

7. Based on your use so far, how satisfied are you?

Very Satisfied Somewhat Dissatisfied

Somewhat Satisfied Very Dissatisfied

8. If you were not satisfied, did you return the shaver under the 30 day money back guarantee provision?

Yes No

If you did not return the shaver, what did you do with it? _____

9. Do you feel the 30 Day Trial offer allowed you sufficient time to evaluate the shaver's performance?

Yes

No. What would have been a better period of time?

10. When did you purchase your Black Man's Shaver? (Check one from each column)

January/February 1977

March/April 1978

May/June 1979

July/August 1980

September/October

November/December

11. Will you recommend the Remington Black Man's Shaver to a friend?

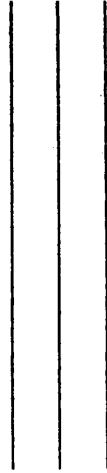
Yes

No

 purchaser's name and address
 (please print)

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Envelope



Sperry Corporation
P.O. Box 1000
Bridgeport, Conn. 06602

Attachment B

Dear Purchaser:

Recently we sent you a survey regarding various aspects of the marketing of the Black Man's Shaver, including the 30 day money back guarantee. Inasmuch as you indicated that the original 30 day refund period did not allow you sufficient time to evaluate your shaver's performance, we are extending to you an additional thirty (30) days from the date of receipt of this letter to request a refund under the advertised money back guarantee for the Black Man's Shaver.

If you wish to take advantage of our offer, just return the shaver, postage prepaid, with your name, address and approximate purchase price, clearly and legibly written. For your convenience fill in the attached form showing your name, address and approximate purchase price and return it with your shaver to Sperry Corporation, P.O. Box 1000, Bridgeport, Connecticut 06602. You must respond within thirty (30) days from the date of receipt of this letter to receive a refund. Please allow 6-8 weeks for your check to arrive.

We at Sperry Corporation wish to thank you for your patronage and cooperation.

Sincerely,

Sperry Corporation

Enclosure

SPERRY REMINGTON BLACK MAN'S SHAVER REFUND FORM

Dear Gentlemen:

Enclosed is my Sperry Remington Black Man's Shaver which I am returning for a refund. Please mail my refund check to:

(Name)

(Address)

(City, State and Zip Code)

The approximate price of the enclosed Black Man's Shaver is _____.

(Signature)

Complaint

IN THE MATTER OF
DKG ADVERTISING, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3069. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires, among other things, a New York City advertising agency to cease disseminating advertisements which misrepresent that the Black Man's Shaver or any other device or commercial treatment will cure or minimize "razor bumps." Further, respondent is barred from making statements which are inconsistent with accepted medical opinion or which misrepresent the efficacy, performance or superiority of any drug or device. The order also requires the company to maintain specific records for a period of 3 years and provide its operating divisions with a copy of the order.

Appearances

For the Commission: *Mark A. Heller and Teresa A. Hennessy.*

For the respondent: *Steven Winston, Kantor, Davidoff, Winston & Ferber, P.C., New York City.*

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 DKG Advertising, Inc., (hereinafter "DKG"), hereinafter at times referred to as respondent, has violated the provisions of the 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. "DKG" is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 1271 Avenue of the Americas, New York, New York.

PAR. 2. Respondent is now and for all times relevant to this complaint has been an advertising agency of Sperry-Rand Corporation (hereinafter "Sperry"), for its division Sperry-Remington (hereinafter "Remington"), and for all times relevant to this complaint has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein, to promote the sale for human use of the product Remington's Black Man's Shaver, a product advertised for treating the shaving prob-

lems of Black men, to wit pseudofolliculitis barbae (hereinafter "razor bumps"), a disease primarily induced by shaving. As advertised, this product is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its said business, the respondent has disseminated and caused the dissemination of certain advertisements concerning the Black Man's Shaver through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, the insertion of advertisements in magazines with national circulations and the placement of advertisements with radio and television stations with sufficient power to broadcast across state lines and into the District of Columbia for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the Black Man's Shaver; and has disseminated and caused the dissemination of advertisements concerning the said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce.

PAR. 4. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

Complaint

DKG ADVERTISING, INC.

AS PRODUCED --
11/16/77

CLIENT REMINGTON DATE December 7, 1977
 Rev. #1
 JOB # RR-3485A CODE # RM-40-77-60 PRODUCT Black Man's Shaver
 TITLE "Shaving Problems" Rev. 1 LENGTH :60 Radio

BROADCAST COPY

SFX UNDER: HUMMING OF AN ELECTRIC SHAVER.

BLACK MAN:

I used to have a shaving problem: Ingrown hairs that caused ugly razor bumps. Yeah, you know what that's like. But then, Remington came up with the answer. The Black Man's Shaver. The Black Man's Shaver cuts off my tough, curly whiskers to help prevent them from growing back into my skin and becoming those ugly bumps. I didn't believe it at first. But those guys at Remington are smart dudes. They're so sure the Black Man's Shaver will help reduce razor bumps, that they'll give you your money back if you're not completely satisfied. Man, that's a guarantee! So thanks to Remington, I said, "So long messy depilatories...farewell beard...and bye, bye bumps." And my woman said, "Hello, sexy."

ANNCR:

The Black Man's Shaver by Remington. It's the answer to a black man's tough shaving problems.

D.J.:

The new Black Man's Shaver is available for the first time at: STORE NAMES. Satisfaction guaranteed or return shaver and sales slip to Remington within 30 days for a full refund.

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DKG

NO PRODUCE
11/16/77

CLIENT REMINGTON DATE November 9, 1977
 JOB# RR-1485A CODE# RM-39-77-60 PRODUCT Black Man Shaver
 TITLE "If You're Black" Rev #2 LENGTH :60 Radio

BROADCAST COPY

BLACK ANNOUNCER:

If you're black like I am, shaving may cause problems. You know, those ugly razor bumps. You can camouflage them with a beard. Or mess with depilatories. But there's never been a real solution. Until now. Because now, Remington has created a revolutionary new shaving system called The Black Man's Shaver. It comes with a unique Beard Lifter comb which helps dislodge ingrown hairs before you shave. Then the shaver's specially engineered head, blunt cuts your whiskers at skin level to help prevent them from growing back into your skin. The Black Man's Shaver works so well, Remington guarantees it will help prevent razor bumps or they'll give you your money back. Man, that's a guarantee. The Black Man's Shaver by Remington. It's the first real answer to a black man's shaving problem.

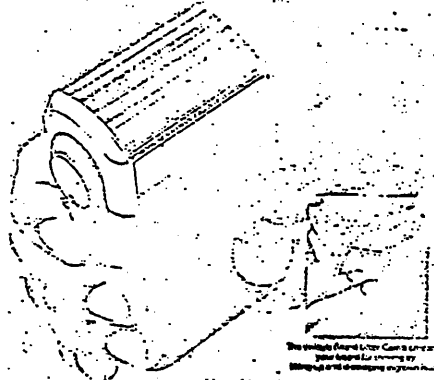
LIVE ANNCR:

THE new Black Man's Shaver is available for the first time at: Store names.

Satisfaction guaranteed or return shaver and sales slip to Remington within 30 days for a full refund.

Complaint

**THE NEW BLACK MINT SHOWER
BY RAYMOND RAMMIGEN
GROWS BEARD IN 24 HOURS
GROWS BEARD IN 24 HOURS**



**The unique Beard-Lite Cartridge
your beard is growing by
itself and it's growing by itself.**

If you have very curly hair, shaving may cause problems. The curly hair of your beard can grow back into your skin and become ugly razor burn.

You can camouflage them with a beard. Or mess with chemicals. But there's never been a real solution. Until now.

Because now Rammigen has created a revolutionary new shaving system called the Black Mint Shower.

The Black Mint Shower comes with a unique Beard-Lite Cartridge which has a lodge in your hair before you shave.

Then the Shower's specially engineered head blurs out whiskers at skin level to help prevent them from growing back into the skin. Which helps keep the beard from forming.

The Black Mint Shower is so advanced Rammigen guarantees that it will help prevent razor burn. Or your money back.

So try the Black Mint Shower by Rammigen. It's the real answer to the black man's shaving problems.

**RAYMOND RAMMIGEN
BLACK MINT SHOWER**

PAR. 5. Through the use of said advertisements referred to in Paragraphs Three and Four and others, respondent represented and now represents, directly or by implication that:

- a. Use of the Black Man's Shaver will eliminate "razor bumps" for persons with that condition.
- b. Growing a beard only camouflages "razor bumps" and has no therapeutic value in the treatment of that condition.
- c. The Black Man's Shaver is the only effective means of treating "razor bumps".
- d. Thirty (30) days is an adequate time period for consumers to evaluate the Black Man's Shaver's efficacy and to have a fair opportunity to take advantage of Remington's money back guarantee.

PAR. 6. In truth and in fact:

- a. Use of the Black Man's Shaver will not eliminate "razor bumps" for persons with that condition.
- b. Growing a beard is considered by accepted medical opinion the preferred method of treating "razor bumps", and therapeutic beards are prescribed often for the treatment of that condition.
- c. Regardless of whether the Black Man's Shaver is effective for the treatment of "razor bumps", there are other methods of treating that condition which are effective.
- d. Thirty (30) days is an inadequate time period for many consumers to evaluate the efficacy of the Black Man's Shaver, and many consumers are without a fair opportunity to take advantage of Remington's money back guarantee.

Therefore, the advertisements referred to in Paragraphs Three and Four were and are misleading in material respects, and constituted, and now constitute, false advertisements, and the representations set forth in Paragraph Five were and are false, deceptive, or unfair.

PAR. 7. Through the use of the said advertisements referred to in Paragraphs Three and Four and others, respondent represented, and now represents, directly or by implication, that the Black Man's Shaver is effective in the treatment of "razor bumps."

PAR. 8. There existed at the time of the first dissemination of the representation contained in Paragraph Seven no reasonable basis for the making of that representation. Therefore, the making and dissemination of the said representation as alleged, constituted, and now constitutes, unfair or deceptive acts or practices in commerce.

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is in substantial competition in or affecting commerce with other advertising agencies.

PAR. 10. The use by respondent of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and respondent's competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rule; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent DKG Advertising, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1271 Avenue of the Americas, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent DKG Advertising, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of all devices as defined by Section 15 of the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that the use of the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment will eliminate pseudofolliculitis barbae (hereinafter "razor bumps") for persons with that condition, *provided however*, that the respondent shall have an affirmative defense to this provision if it can prove that the statements prohibited herein are in fact true.

2. Represents that the use of the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment will cure "razor bumps" for persons with that condition, *provided however*, that the respondent shall have an affirmative defense to this provision if it can prove that the statements prohibited herein are in fact true.

3. Represents that growing a beard only camouflages "razor bumps" and has no therapeutic value in the treatment of that condition.

4. Misrepresents the uniqueness of any device intended for human use.

B. Disseminating or causing the dissemination of any advertise-

ment by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of the Black Man's Shaver or any other product by persons afflicted with "razor bumps" will reduce or minimize that condition;
2. Represents that the Black Man's Shaver or any other product is efficacious for the treatment of "razor bumps";
3. Represents that the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment is superior to other treatments for "razor bumps";
4. Represents that any time period is an adequate time period for consumers to evaluate the Black Man's Shaver's effectiveness in the treatment of "razor bumps",

unless at the time of each dissemination of such representation(s) respondent possesses and relies upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two well-controlled clinical studies which conform to acceptable designs and protocols and are conducted by different persons, independently of each other. Such persons shall be qualified by training and experience to treat "razor bumps" and to conduct the aforementioned studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations, for the purpose of promoting the sale of a device, that are inconsistent with accepted medical opinion unless a reasonable basis exists therefor. Accepted medical opinion shall mean the general consensus of opinion of specialists as expressed in the medical literature, or if no such literature exists, the consensus of the specialists themselves.

It is further ordered, That DKG Advertising, Inc. shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days

after this order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

It is further ordered, That respondent shall maintain files and records of all substantiation related to the requirements of Parts B and C of this Order for a period of three (3) years after the dissemination of any advertisement which relates to these portions of the Order. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such material.

Complaint

IN THE MATTER OF

YKK (U.S.A.) INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 (A)
OF THE CLAYTON ACT

Docket C-3070. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires a New Jersey based firm engaged in the manufacture and sale of finished zippers, zipper chain and sliders, among other things, to cease discriminating in price between different customers on the same functional level, purchasing products of like grade and quality, through the use of discriminatory prices and rebates.

Appearances

For the Commission: *Randall S. Leff* and *Karen G. Bokat*.

For the respondent: *Francis Y. Sogi, Miller, Montgomery, Sogi, Brady & Taft, New York City, James H. Lundquist, Barnes, Richardson & Colburn, New York City, and Salvatore A. Romano, Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent, subject to the jurisdiction of the Commission, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45) and of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, charging as follows:

PARAGRAPH 1. Respondent YKK (U.S.A.) Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1251 Valley Brook Ave., Lyndhurst, New Jersey.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, distribution and sale of finished zippers, zipper chain and sliders.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, and the Federal Trade Commission Act, as amended, having sold or shipped its products or caused them to be transported from its principal place of business in New Jersey

or manufacturing facility in Georgia to customers located in other States of the United States or the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has discriminated in price between different purchasers of finished zippers of like grade and quality, zipper chain of like grade and quality, and sliders of like grade and quality in commerce through the use of discriminatory prices, discounts, rebates and deductions on sales within the United States.

PAR. 5. The effect of respondent's discriminations in price alleged in Paragraph 4 has been or may be substantially to lessen or prevent competition in the sale of finished zippers, zipper chain and sliders.

PAR. 6. The acts and practices of respondent set forth in Paragraphs 4 and 5 above violate Section 5 of the Federal Trade Commission Act, as amended, and Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein contemplated.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton and Federal Trade Commission Acts; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent YKK (U.S.A.) Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and the principal place of business located at 1251 Valley Brook Ave., Lyndhurst, New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

Definitions

For purposes of this Order the following definitions apply:

1. *Slide Fastener Manufacturer* means an integrated manufacturer who produces finished zippers, zipper chain, and sliders.

2. *Assembler* means a customer who purchases finished zippers, zipper chain, sliders or components such as tops, bottoms, opening parts and wire from various manufacturers and assembles and sells finished zippers.

3. *Jobber* means a customer who a) purchases finished zippers of various sizes from manufacturers and assemblers for sale to users or b) purchases zipper chain and sliders for resale without assembly or finishing.

4. *User* means a customer who purchases finished zippers, zipper chain, sliders and components in order to incorporate them in products other than finished zippers that it manufactures.

I

It is ordered, That respondent YKK (U.S.A.) Inc. and its officers, representatives, agents, employees, successors, and assigns, directly, indirectly, or through any corporate or other device, in or in connection with the sale of finished zippers of like grade and quality, zipper chain of like grade and quality, or sliders of like grade and quality in or affecting commerce as "commerce" is defined in the amended Clayton Act or Federal Trade Commission Act do forthwith cease and desist from:

Discriminating directly or indirectly in the price of finished zippers of like grade and quality, zipper chain of like grade and quality, or sliders of like grade and quality as between customers on the same functional level where respondent YKK is in competition

with any slide fastener manufacturer in the sale of finished zippers, zipper chain, or sliders or with any assembler in the sale of finished zippers. For the purposes of this Order, assemblers, jobbers and users are on different functional levels.

II

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating departments and divisions engaged in the offering for sale, sale, distribution, marketing, or promotion of finished zippers, zipper chain and sliders.

III

It is further ordered, That respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate organization that may affect compliance obligations arising out of this Order, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

IV

It is further ordered, That respondent shall within sixty (60) days after service on it of this Order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with this Order.

Complaint

IN THE MATTER OF
MILES LABORATORIES, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF
THE CLAYTON ACT

Docket C-3071. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires an Elkhart, Indiana manufacturer and seller of various non-prescription health care products, among other things, to cease failing to make its advertising and promotional allowances available on proportionally equal terms to all customers, both direct and indirect. The order also requires the company to notify all its customers, as specified, of its advertising and promotional programs, and of the availability of usable and economically feasible alternatives. Respondent is further required to distribute a special written notice informing customers of the modification in its promotional programs and provide its sales personnel with a copy of the order.

Appearances

For the Commission: *Randall S. Leff.*

For the respondent: *Franklin Breckenridge*, in-house counsel, Elkhart, Ind. and *James M. Johnstone*, *Kirkland & Ellis*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 41, *et seq.*) and subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

PARAGRAPH 1. Respondent, Miles Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1127 Myrtle St., Elkhart, Indiana.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, sale and distribution of adult vitamins, pediatric vitamins and antacid products.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act and Federal Trade Commission Act, having sold

and shipped its products or caused them to be transported from its principal place of business in Indiana to customers located in other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of credits or sums of money, hereinafter referred to as promotional allowances, either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services or facilities, including advertising in various media such as newspapers, furnished by customers in connection with the offering for sale or sale of respondent's products.

PAR. 5. Respondent's promotional allowances discriminated against particular customers or classes of customers in that they were not available, in a practical business sense, on proportionally equal terms to all customers competing in the sale and distribution of respondent's products. Respondent failed to offer alternative terms and conditions to customers for whom respondent's basic promotional allowance plan is not usable and suitable.

PAR. 6. The acts and practices of respondent set forth in Paragraphs 4 and 5 above violate Section 5 of the Federal Trade Commission Act, as amended, and Section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein contemplated.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Miles Laboratories, Inc., a corporation, and the respondent having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton and Federal Trade Commission Acts; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and

having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Miles Laboratories, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and the principle place of business located at 1127 Myrtle St., in the City of Elkhart, State of Indiana.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

A. *It is ordered*, That respondent, Miles Laboratories, Inc., a corporation, and its officers, directors, agents, representatives and employees, and its successors and assigns, directly or indirectly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of adult vitamins, pediatric vitamins, antacid products, topical antiseptics such as Bactine, or other nonprescription health care products, except diagnostics, environmental control products, steroid products, aluminum acetate products, acne treatment products, medicated paste bandages and colloidal bath products (hereinafter referred to as "Respondent's Covered Products") in or affecting commerce, as "commerce" is defined in the Clayton Act, as amended, or the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer as compensation or in consideration for any advertising or promotional services or any other service or facility furnished by or through such customer in connection with the handling, sale or offering for sale of any of Respondent's Covered Products, unless (1) such payment or consideration is made available on proportionally equal terms to all customers, including customers who do not purchase directly from respondent, who compete in the distribution or resale of Respondent's Covered Products; and (2) all

customers, including customers who do not purchase directly from respondent, who compete in the distribution or resale of Respondent's Covered Products are informed, in writing, in the manner provided in Paragraph I B, of (a) the terms and conditions of the promotional program or plan under which such payments are made, including the services or facilities to be furnished and the methods by which performance will be proved; and (b) the availability of usable and economically feasible alternative services or facilities which competing customers could provide and be paid for on proportionally equal terms if the furnishing of identical services or facilities would not be economically feasible and usable in a practical business sense by all competing customers.

B. *It is further ordered*, That respondent shall inform all customers of the terms and conditions of each of its advertising or promotional programs, the methods by which performance will be proved, and the availability of alternatives, as required by Paragraph I A, in the following manner:

1. Respondent shall cause copies of deal sheets or similar materials explaining the plan or program to be presented or delivered to each direct customer of respondent in sufficient time to enable each such customer to make an informed judgment whether to participate, and

2. At or about the same time respondent shall deliver sufficient copies of deal sheets or similar materials to respondent's wholesalers for presentation or distribution to each customer of such wholesalers that purchases any of Respondent's Covered Products. Respondent shall take steps, which need not include direct mailings, to insure that its indirect purchasing customers are informed of its advertising or promotional programs.

II

It is further ordered, That respondent shall within thirty (30) days after service upon it of this order notify each retailer that purchased less than \$5,000 of Respondent's Covered Products in 1979 of the availability of alternative methods of participation in respondent's advertising or promotional allowance programs by distributing a written notice in the form attached hereto as Exhibit A in the following manner:

- (1) Respondent's sales representatives will hand deliver sufficient copies of such notice to respondent's wholesalers for distribu-

tion to each customer of such wholesalers that purchases any of Respondent's Covered Products;

(2) Respondent will send such notice by direct mail to each retailer that buys Respondent's Covered Products directly from respondent and purchased less than \$5,000 of such products in 1979; and

(3) Respondent will notify independent pharmacies by placing such notice in PHARMALERT, a national coop mailing service for independent drug stores.

III

It is further ordered, That respondent shall deliver a copy of this order to cease and desist to all sales and sales management personnel employed on the date of service of this order in each of respondent's operating divisions that is engaged in the sale of Respondent's Covered Products within the United States.

IV

It is further ordered, That respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

Decision and Order

98 F.T.C.

Dear Retailer:

Miles has recently revised its promotional trade advertising policy to encourage greater participation in its promotions by smaller direct retailers and non-direct retailers. We are recognizing the fact that some accounts would prefer more flexibility in advertising performance requirements, and for this reason we feel our new trade advertising policy will better serve your needs. We anticipate the ultimate results will be a stronger promotional program for both you and Miles.

TRADE ADVERTISING PERFORMANCE REQUIREMENTS

To receive promotional advertising payments a qualifying performance must be rendered by a participating account employing their most used medium such as newspapers, radio, television, circulars, handbills, window/wall banners, in-store displays, feature pricing, etc.

Upon completion of the advertising performance, the retailer must submit his invoice (or paid wholesaler invoice) to Miles along with a Miles Certificate of Advertising Performance for advertising other than newspaper, radio and television. This form provides for a description of the advertising performance rendered by the account with the specific date(s) of performance. (See Attachment 1)

We look forward to your greater participation in Miles' promotions through your own creative advertising performance.

MILES LABORATORIES, INC.

ATTACHMENT 1

CERTIFICATE OF ADVERTISING PERFORMANCE (Non-Direct Retailers)

This is to certify that advertising performance was rendered on the following Miles Laboratories, Consumer Products Division brands and package sizes:

<u>Brand/Package Size(s)</u>	<u>Date(s) of Performance</u>	<u>Regular Price</u>	<u>Feature Price</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Performance rendered on the above brands was my normal and most frequently employed form of advertising and price featuring to my customers. (Check form of advertising)

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Decision and Order

- Newspaper (tearsheet attached)
- Radio (script/affidavit attached)
- Television (script/affidavit attached)
- Home delivered Circular/Handbill (attached)
- Window/Wall Banner (attached)
- In-Store Extra Off-shelf Display (Describe)

Other (describe) _____

Attached is my original paid wholesaler invoice to verify promotional purchases of the above ad featured Miles Brands.

Retailer's Name _____

Address _____

City _____ State _____ Zip Code _____

Authorized Signature for Retailer

(Title)

Send to MILES LABORATORIES, INC.

Dept. "G"

P. O. Box 340

Elkhart, IN 46515

Complaint

98 F.T.C.

IN THE MATTER OF
ZALE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING
ACTS

Docket C-3072. Complaint, Aug. 4, 1981—Decision, Aug. 4, 1981

This consent order requires, among other things, that a Dallas, Texas retailer cease, in connection with the extension of open end credit, failing to comply with the billing error resolution procedures required by the Fair Credit Billing Act. The firm is required to send a prescribed "Billing Complaint Form" to specified customers and upon receipt of such form, investigate each billing error claim and either refund or credit the amount in error, or provide the customer with proof that the claim was incorrect; take reasonable steps to correct any erroneous credit report; and pay all unpaid credit balances which existed after April 1, 1975, plus daily interest. The order also requires the firm to include a specified disclosure on all future periodic statements which reflect a credit balance, and pay all credit balances upon written request, or automatically after 7 months if no request has been made.

Appearances

For the Commission: *David Pender, George Zweibel and Rachel Garson.*

For the respondent: *Charles Stewart, Vice-President and Associate General Counsel, Zale Corp.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and its implementing Regulation Z, duly promulgated by the Board of Governors of the Federal Reserve System, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Zale Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Regulation Z, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 3000 Diamond Park Drive, Dallas, Texas.

PAR. 2. Respondent is now, and for some time last past has been, engaged directly and through its subsidiaries in the advertising,

