

Complaint

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IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION,
Docket No. 8318

BRISTOL-MYERS COMPANY, Docket No. 8319

PLOUGH, INC., Docket No. 8320

STERLING DRUG, INC., Docket No. 8321

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

*Dockets 8318, 8319,¹ 8320, 8321. Complaints, Mar. 14, 1961—
Decisions, Apr. 7, 1965*

Order withdrawing complaints against four major drug manufacturers which charged them with false and misleading advertising of their analgesic preparations, rescinding earlier orders to submit special reports, and denying one respondent's motion for prehearing discovery on grounds of mootness.

COMPLAINT ²

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 American Home Products 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 American Home Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 20 East 40th Street in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of a preparation which comes within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said preparation, the formula thereof and directions for use are as follows:

¹ Amended and Supplemental Complaint, *In the Matter of Bristol-Myers Co.*, Docket 8319, dated July 25, 1961.

² *In the Matter of American Home Products Corporation*, Docket No. 8318.

Designation: "Anacin."

Formula: Acetophenetidin three (3) grains per tablet, aspirin, caffeine.

Directions: One (1) to two (2) tablets with water. Repeat if necessary, one (1) tablet every three (3) hours.

PAR. 3. Respondent caused the said preparation, when sold, to be transported from its place of business in the State of New York 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 preparation 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 said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said Anacin by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines, and other advertising media, and by means of television and radio continuities broadcast over networks through stations located in various States of the United States, and in the District of Columbia, and by means of other radio and television continuities broadcast over stations having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said Anacin; and has disseminated, and caused the dissemination of, advertisements concerning said Anacin 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all-inclusive, of the statements and representations contained in said advertisements and television and radio broadcasts disseminated as hereinabove set forth are the following:

Mere aspirin or even aspirin with buffering contains * * * no special medication to relax nervous tension. But Anacin is a *combination* of medically proven ingredients, including special medication, which relieves pain incredibly fast, also relaxes nervous tension and releases painful pressure on nerves.

* * * * *

Better than aspirin or aspirin with buffering for TENSION HEADACHES

Most headaches are caused by tension that presses on nerves.

Anacin contains *special medication* that * * * relaxes tension * * *. This special medication is *not* obtainable in aspirin or any buffered aspirin.

Ladies Home Journal, February 1961.

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Video: Audio:
 Title: "Anacin." But * * *

Pop on three lines of bubbles. * * * Anacin has a combination of ingredients.
 Pain, nerves and muscles
 gradually stop action.

Pain lines out. To * * * relieve pain fast * * *

Nerves out. * * * calm jittery nerves * * * fast.

Muscles out. * * * relax tension fast!

Match diss. to live woman. Woman: (sigh of complete relief) What relief!
 * * * * *
 Wipe to split screen. Title: Announcer: Remember, aspirin even with buffer-
 "Aspirin with Buffering" on ing has no special ingredient to relax the
 left. One stream of bubbles tension.
 to pain area in head. Title:
 "Anacin" on right. Three
 streams of bubbles. Nothing
 in head.
 * * * * *
 Block wipe to package, with Anacin * * * to relax tension as it relieves the
 titles: "Relax the Tension," pain.
 "Relieve the Pain."

Lose titles. Zoom "Fast" out Anacin for fast * * * fast * * * fast relief!
 of pkg. Three times.
 "Truth or Consequences" Show, National Broadcasting Company
 television network, August 26, 1960.
 * * * * *
 Pop on title, "Anacin" with Anacin of the four leading headache remedies
 three streams of bubbles to has special ingredients to * * *
 three panels [panels are
 titled "Pain," "Depression"
 and "Tension"]. Action in
 each immediately slows
 down.

Pain panel greys down. relieve pain * * *.

Word "Fast" pops on in place fast.
 of pain panel.

Depression panel greys down. Help overcome depression * * *.

Word "Fast" grows and pops fast.
 off depression panel.

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Video: Tension panel greys down. Audio: Relax tension * * *.

Word "Fast" grows and pops fast.
off tension panel.

* * * * *
Cut to include read (sic) projection screen, on which is split screen of two outline heads. Title on left: "Aspirin with buffering." Single stream of bubbles to first panel which is greyed down. Title on right: "Anacin" with three streams of bubbles to three panels all grayed down.

X-out left half of screen. no special ingredient for tension. Take Anacin. * * *.

* * * * *
Cut to pkg. pop on word "Fast" in sync with audio. Anacin for fast * * *

Pop on second word "Fast" nearer camera than first. fast * * *

Zoom both words "Fast" onto pkg. incredibly fast relief.

Sugar Bowl Football Game, National Broadcasting Company
television network, January 2, 1961.

PAR. 6. Through the use of said advertisements, and other similar thereto not specifically set out herein, respondent has represented, and is now representing, directly and by implication:

1. That Anacin acts with such incredible speed as to provide relief of pain faster than any other analgesic preparation available and offered for sale to consumers.
2. That Anacin relaxes tension.
3. That Anacin helps overcome depression.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. There is no significant difference between the rate of speed with which Anacin provides relief of pain and the rate of speed with which other analgesic preparations available and offered for sale to consumers provide relief of pain.
2. Anacin will not relax tension.

3. Anacin will be of no benefit in the treatment of depression.

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, within the intent and meaning of the Federal Trade Commission Act.

AMENDED AND SUPPLEMENTAL COMPLAINT³

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 Bristol-Myers Company, 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bristol-Myers Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 630 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of two preparations which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent for said preparations, the formulas thereof and directions for use are as follows:

(1) Designation: "Bufferin"

Formula:—Each Bufferin tablet contains five (5) grains of aspirin and Bristol-Myers' brand aluminum glycinate and magnesium carbonate known as "Di-Alminate."

Directions:—For simple headaches, discomforts of colds, neuralgias, menstrual pain and minor muscular aches, one (1) or two (2) tablets, taken one (1) to six (6) times daily as needed. For temporary relief of minor arthritic pain two (2) tablets six (6) times daily as needed.

(2) Designation: "Excedrin"

Formula:—Each tablet contains:

Acetophenetidin	2¼ grs.
Salicylamide	2 grs.
Aspirin	2¼ grs.
Caffeine	1 grs.

Directions:—Adults take two (2) tablets with water. Repeat every three (3) hours with one or two (1 or 2) tablets as needed or follow directions of your physician. Dosage should not exceed eight (8) tablets per day. Children six to twelve (6-12) one half (½) the adult dose.

³ In the Matter of Bristol-Myers Company, Docket No. 8319.

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PAR. 3. Respondent causes the said preparations when sold, to be transported from its place of business in the State of New York 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 said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said Bufferin and Excedrin by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines, and other advertising media, and by means of television and radio continuities broadcast over networks through stations located in various States of the United States, and in the District of Columbia, and by means of other radio and television continuities broadcast over stations having sufficient power to carry such broadcasts across State lines, 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, but not all-inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

(1) Bufferin

And to relieve headache, body ache and to lower fever, take Bufferin. Bufferin adds special ingredients to its aspirin that rush the pain reliever into your system. For millions Bufferin acts *twice as fast as aspirin*.

* * * * *
Take Bufferin. The fast one. Good Housekeeping Magazine, February 1961.

Video:

Scene of night street. Shot from rear of moving car. Super: "Bristol-Myers".

Audio:

Anner: Tonight's episode of Peter Gunn is brought to you by Bristol-Myers, makers of * * *.

Bufferin bottle, package.

Bufferin. For faster relief of headaches, neuralgia, painful cold miseries, take Bufferin.

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Video:

Super on cue: "Twice as fast."

Audio:

Bufferin works twice as fast as aspirin for millions, thanks to its exclusive Speed Ingredient, Di-Alminate.

"Peter Gunn" Show, American Broadcasting Company
television network, September 12, 1960.

1. (Open on) Dark screen with title: "What's the Greatest Cause of Headache?" Anncr: (VO) What's the greatest cause of headache? * * *
2. (Wipe to) Reveal woman feeding baby in high chair. Child spills milk. Super "Tension" up from zero. It's Tension! Sound: Ticking as of clock. It starts low and builds till we reach the clock shot in scene #3.
3. (Cut to) Child falling off tricycle. Super "Tension" up again. Tension!
4. (Cut to) Woman in kitchen burning clothes on ironing board. Super "Tension" zooms up again. Tension!
5. (Cut to angle shot of) Same woman in bed, tossing, turning. Clock in foreground. On word, "Suddenly," she puts hand to head. When things go wrong, Tension can build up and up! * * * Suddenly * * * you've got a miserable headache!
6. (Diss to angle shot of) Woman on edge of bed, holding neck. Nerves and muscles tighten!
7. (Diss to angle shot of) Woman standing beside bed, holding stomach. Stomach feels uneasy * * * queasy! Sound: Ticking out.
8. (Diss to) Dark gray background. Bufferin bottle in center of screen. It moves to left of screen, reducing in size as it goes. Snap in first: "Relieves." Then in order: "Headache, Tight Nerves, Jittery Stomach." You need Bufferin! Bufferin relieves headache, tight nerves, jittery stomach—fast! Look * * *

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- Video:
9. (Diss to) Three acid containers against med. gray wall. As each of first two tablets drop, super name under tube, but take it off as soon as it has been read. On "As You See," pop on arrow pointing to competitive tubes where tablets are lying inactive. Then remove arrow after "Happening."
- Bufferin tablet falls into righthand glass. It starts to disintegrate at once. Super: "Bufferin," and leave it on. Super on cue over Bufferin container: "Fights headache." Then replace with "Twice as Fast."
10. (Zoom to) Close shot of Bufferin container, after dropping "Bufferin" super. Tablet now disintegrating very profusely. Put "Bufferin" super back again at end of zoom. Then super on cue: "Calms Stomach."
11. (Zoom back) We glimpse the three tubes again momentarily.
12. (Diss to) Woman in bed, now relaxed and sleeping happily. Super: "Headache Relieved," "Stomach Calmed," "Nerves Relaxed."
13. (Diss to) Bufferin bottle, package and two tablets. Suggestion of bathroom tile background.
- Audio:
- Here's the most expensive aspirin * * * and this combination-of-ingredients product, in ordinary stomach acid. As you see, not much is happening!
- But instantly you see Bufferin's pain-reliever start into solution to fight your tension headache! For millions, Bufferin works twice as fast as aspirin.
- And spreading quickly—to calm your jittery stomach—are tiny particles of Bufferin with Di-Alminate.
- Only Bufferin adds these stomach-soothing anti-acids to aspirin!
- Headache relieved * * * stomach calmed * * * and nerves relaxed!
- When stress and strain cause headache pain * * * take two Bufferin!

"Candid Camera" Show, Columbia Broadcasting System
television network, March 19, 1961.

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(2) Excedrin:

For headache, arthritis, sinus, cramps: New extra-strength pain reliever
Excedrin combats cause of pain.

* * * * *

The symptom: Pain

Microscopic tissue cells surround nerves, joints, passages. Swelling of tissue is the immediate cause of most pain.

The immediate cause: Swelling

When tissues swell and nerves are squeezed you feel pain. Swelling may occur anywhere. Pain is only its symptom.

The treatment: Excedrin

Excedrin is a multi-action compound to simultaneously reduce swelling—relieve pain—make you feel “good all over.”

Detroit (Michigan) Free Press Roto,
 October 11 and November 8, 1959.

Swelling: the immediate cause.

When tissue swells the nerve is squeezed and stretched—you feel pain. This swelling may occur in the head, at joints, around passages, anywhere.

Swelling is the immediate cause of most pain.

Excedrin: combats the cause.

Doesn't just dull senses, give pain special treatment (see nerve diagram).

Reduces tissue swelling, relieves pain.

Detroit (Michigan) Free Press Roto,
 February 21, 1960.

Video:	Audio:
Head shot of statue	Pain strikes * * *
Cut in on angle	Man recoils * * *
Cut closer more angle	Agonized * * *
ECU of hand on head	Demoralized * * *
ECU cut to other statues head	Why? * * *
Dolly back slowly	What * * * is the cause of pain.
Zoom to full length statue	Your body * * *
Animate nervous system	has a network of nerves. And only nerves feel pain.
Nerves spread out around body	each nerve cell is surrounded by tissue
Move into statue dissolve to tissues	And when tissues swell,
Show swelling, squeezing, stretching	nerves are squeezed * * * stretched * * * * * * This is the immediate cause of most pain.
Pop on lab dots animate up then pop on Bristol-Myers	From Bristol-Myers * * *

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Video:	Audio:	
Lab changes to white bar with "Excedrin and Extra Strength Pain Reliever" zoom up.	comes Excedrin, the new extra-strength pain-reliever to combat the cause of pain * * *	
Pkg. forms around shape	Excedrin * * * combines more kinds of pain-relievers * * * contains more quantity of active ingredient.	
Dissolve out pkg. to black pop on two tablets equaling three tablets.	In fact two Excedrin equal three ordinary pain tablets * * * yet so safe you need no prescription.	
Reverse pain sequence above super Excedrin as tissues reduce logo zooms back.	Excedrin simultaneously reduces swelling * * * relieves pain * * *	
Tissue cells back to normal, Excedrin fades out.	makes you feel "good all over" * * *	
Cut to statue holding head.	Now for relief of headache, pain,	
ECU of statue eyes and nose. CU of cramps situations (and muscular aches).	sinus, cramps * * *	
* * * * *		
Package and title dissolve to pkg. Zoom extra strength pain reliever off box.	* * * take Excedrin * * * The new Extra-Strength pain reliever to combat the cause of pain."	
	Station WTMJ-TV, Milwaukee, Wisconsin; Station WXYZ-TV, Detroit, Michigan; Station WTOL-TV, Toledo, Ohio; Station WANE-TV, Ft. Wayne, Indiana, on or about May 14, 1960.	
* * * * *		
Bring on 3rd quarter, title: Tension Reliever.	A tension-reliever to relax you * * *	
Quickly animate 4th quarter into full pie title: Anti-depressant.	An anti-depressant to restore you.	
Pop on: 50% stronger.	In fact, Excedrin tablets are 50% stronger than aspirin	
* * * * *		

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:

1. That Bufferin provides relief from pain twice as fast as aspirin.
2. That Bufferin will relieve tension.

3. That Excedrin:

- a. Is an extra-strength pain reliever, is fifty per cent (50%) stronger than aspirin, and that two (2) Excedrin tablets equal three (3) ordinary pain tablets.
- b. Will combat the cause of pain by reducing the swelling of tissue.
- c. Will relieve tension.
- d. Will act as an anti-depressant.

PAR. 7. The said advertisements, were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. There is no significant difference between the rate of speed with which Bufferin provides relief of pain and the rate of speed with which aspirin provides relief of pain.
2. Bufferin will not relieve tension.
3. Excedrin:
 - a. Is not an extra-strength pain reliever, is not fifty per cent (50%) stronger than aspirin, and two (2) Excedrin tablets do not equal three (3) ordinary pain tablets in analgesic effect.
 - b. Will not reduce the swelling of tissue or otherwise combat the cause of pain.
 - c. Will not relieve tension.
 - d. Will not act as an anti-depressant.

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, within the intent and meaning of the Federal Trade Commission Act.

COMPLAINT⁴

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 Plough, 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 Plough, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business

⁴In the Matter of Plough, Inc., Docket No. 8320.

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located at 3022 Jackson Avenue in the city of Memphis, State of Tennessee.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of a preparation which comes within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said preparation, the formula thereof and directions for use are as follows:

Designation: "St. Joseph Aspirin"

Formula: Each tablet contains five (5) grains of aspirin.

Directions: (Take) one (1) or two (2) tablets with water. May be repeated every four (4) hours. If pains persist, or are unusually severe, see physician.

PAR. 3. Respondent causes the said preparation when sold, to be transported from its place of business in the State of Tennessee 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 preparation 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 said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said St. Joseph Aspirin by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and magazines, and other advertising media and by means of television and radio continuities broadcast over networks through stations located in various States of the United States and in the District of Columbia, and by means of other radio and television continuities broadcast over stations having sufficient power to carry such broadcasts across State lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said St. Joseph Aspirin; and has disseminated, and caused the dissemination of, advertisements concerning said St. Joseph Aspirin 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all-inclusive of the statements and representations contained in said advertisements and television

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and radio broadcasts disseminated as hereinabove set forth are the following:

Ready to go to work *faster than other leading pain relief tablets!* * * * St. Joseph Aspirin * * * is ready to go to work faster than all three other leading pain relief tablets.

Ladies Home Journal, February 1961.

For the * * * fastest relief from headaches, pains and aches of colds and flu * * * millions have found * * * All they need is * * * St. Joseph Aspirin * * *.

St. Joseph Aspirin * * * *is ready to go to work faster than any other pain reliever tested.*

Ladies Home Journal, March 1959.

Scientific Disintegration Test Proves Which Pain Relief Tablet is the Fastest

* * * * *

When you have a headache, cold, fever or muscle pain, you want relief—fast. St. Joseph Aspirin is ready to go to work faster to ease your pain and distress—*faster than all three other leading pain relief tablets!*

The Birmingham (Alabama) News, January 18, 1960.

Scientific tests prove that St. Joseph Aspirin * * * actually starts to work faster than all three other leading pain relief tablets.

Radio Station KNUZ, Houston, Texas, March 7, 1960.

PAR. 6. Through the use of said advertisements, and other similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that St. Joseph Aspirin provides relief of pain faster than any other analgesic preparation available and offered for sale to consumers.

PAR. 7. The said advertisements were and are misleading, in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, there is no significant difference between the rate of speed with which St. Joseph Aspirin provides relief of pain and the rate of speed with which other analgesic preparations available and offered for sale to consumers provide relief of pain.

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, within the intent and meaning of the Federal Trade Commission Act.

COMPLAINT⁵

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 Sterling Drug, Inc.,

⁵ In the Matter of Sterling Drug, Inc., Docket No. 8321.

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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 Sterling Drug, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1450 Broadway in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of two preparations which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designations used by respondent for said preparations, the formulas thereof and directions for use are as follows:

(1) Designation: "Bayer Aspirin"

Formula: Each tablet contains five (5) grains of aspirin.

Directions: Take one (1) or two (2) tablets with water three (3) or four (4) times daily as required.

(2) Designation: "Bayer Aspirin for Children"

Formula: Each tablet contains one-and-one-quarter ($1\frac{1}{4}$) grains of aspirin.

Directions: Under three (3) years, as prescribed by physician; three (3) to six (6) years, two (2) to four (4) tablets; six (6) to twelve (12) years, four (4) tablets. Dose may be repeated every three (3) hours but not more than three (3) times in one (1) day.

PAR. 3. Respondent causes the said preparations, when sold, to be transported from its place of business in the State of New York 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 said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said Bayer Aspirin and Bayer Aspirin for Children by the United State mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines, and other advertising media, and by means of television and radio continuities broadcast over networks through stations located

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in various States of the United States, and in the District of Columbia, and by means of other radio and television continuities broadcast over stations having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said Bayer Aspirin and Bayer Aspirin for Children; and has disseminated, and caused the dissemination of, advertisements concerning said Bayer Aspirin and Bayer Aspirin for Children 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, but not all-inclusive, of the statements and representations contained in said advertisements and television and radio broadcasts disseminated as hereinabove set forth are the following:

(Bayer Aspirin)

* * * Bayer is ready to go to work *instantly*, for the fastest pain relief you can get.

National Broadcasting Company,
Television Network, December 3, 1960.

(Bayer Aspirin for Children)

Bayer Aspirin enters the stomach as thousands of tiny flakes, to bring the fastest, gentlest relief your child can get from a headache or the pains and fever of a cold.

Good Housekeeping magazine, February 1961.

(Bayer Aspirin and Bayer Aspirin for Children)

BAYER
BRINGS FASTEST RELIEF!
. . . the fastest, most gentle to the stomach relief you can get from the aches, pains and fever of a cold or flu!

Look magazine, February 14, 1961.

PAR. 6. Through the use of said advertisements, and other similar thereto not specifically set out herein, respondent has represented, and is now representing, directly and by implication:

(1) That Bayer Aspirin provides relief of pain faster than any other analgesic preparation available and offered for sale to consumers.

(2) That Bayer Aspirin for Children provides relief of pain faster than any other children's analgesic preparation available and offered for sale to consumers.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements"

as that term is defined in the Federal Trade Commission Act. In truth and in fact:

(1) There is no significant difference between the rate of speed with which Bayer Aspirin provides relief of pain and the rate of speed with which other analgesic preparations available and offered for sale to consumers provide relief of pain.

(2) There is no significant difference between the rate of speed with which Bayer Aspirin for Children provides relief of pain and the rate of speed with which other children's analgesic preparations available and offered for sale to consumers provide relief of pain.

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, within the intent and meaning of the Federal Trade Commission Act.

OPINION OF THE COMMISSION ⁶

On March 14, 1961, the Commission issued four complaints charging respondents therein with dissemination of false and misleading advertising in connection with their sale of analgesic products. On June 25, 1962, the Commission, being of the view that an investigation should be conducted to determine whether other firms in the industry were falsely advertising their analgesic preparations and, further, that the proceedings with respect to these four complaints should be suspended during such investigation, directed that the four cases be placed upon the suspense calendar until further notice.

On December 22, 1964, Bristol-Myers Company, respondent in Docket No. 8319, filed a motion "to dismiss the within proceeding with prejudice due to failure of the Commission to proceed with reasonable dispatch to conclude said proceeding, as required by Section 6(a) of the Administrative Procedure Act." In the alternative, respondent Bristol-Myers has moved that the Commission grant it leave to engage in certain discovery, by deposition and interrogatory, and to suspend its duty to respond to a recent Commission "Order to Submit Special Report" until after the completion of such discovery. Complaint counsel oppose the motion to dismiss the proceeding "with prejudice" and move in the alternative that the complaint be dismissed "without prejudice." At the same time, complaint counsel have filed substantially identical motions to dismiss the complaints in the other three proceedings that have been suspended. Respondents

⁶ *In the Matters of American Home Products Corp.*, Docket No. 8318, *Bristol-Myers Company*, Docket No. 8319, *Plough, Inc.*, Docket No. 8320, *Sterling Drug, Inc.*, Docket No. 8321.

