

IN THE MATTER OF
AMERICAN HOME PRODUCTS CORPORATION, ET AL.

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

Docket 8918. Complaint, Feb. 23, 1973—Final Order, Sept. 9, 1981

This order requires, among other things, a New York City manufacturer of Anacin, Arthritis Pain Formula (APF), and other non-prescription drug products to cease misrepresenting that Anacin will relieve tension, nervousness and depression; or that it will enable users to cope with ordinary stresses of everyday life. Should the company make any comparative efficacy claims for Anacin or APF, it would be required to disclose that the analgesic ingredient in the product is aspirin. The order also prohibits misrepresentations concerning the extent or results of product testing; and bars any unsubstantiated performance claim unless accompanied by a conspicuous disclosure that such claim has not been proven. The company is further precluded from representing that its products contain any unusual or special ingredient, when, in fact, such ingredient is commonly used in similar products. Additionally, the order prohibits the C.T. Clyne Company, Inc., an advertising agency, from knowingly making unsubstantiated "superior performance" or "unusual ingredient" claims for Anacin, APF or for any other non-prescription internal analgesic product.

Appearances

For the Commission: *Melvin H. Orlans, James H. Skiles, W. Benjamin Fisherow, Ira Nerken, Judith A. Neibrief and Richard A. Bloomfield.*

For the respondents: *Samuel W. Murphy, Jr., John J. McGrath, Jr., Donald J. Frickel, and E. Thomas Sullivan, Donovan Leisure Newton & Irvine, Washington, D.C., for American Home Products Corporation, and Irving Scher and Deborah M. Lodge, Weil, Gotshal & Manges, Washington, D.C., for The C.T. Clyne Company, Inc.*

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 American Home Products Corporation, a corporation, (hereinafter referred to as "Amho"), and Clyne Maxon, Inc., a corporation, (hereinafter referred to as "Maxon"), hereinafter referred to as respondents, have 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. For purposes of this complaint the following definitions shall apply:

1. *Commerce* means commerce as defined in the Federal Trade Commission Act.

2. *False advertisement* means false advertisement as defined in the Federal Trade Commission Act.

PAR. 2. 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 685 Third Ave. in the City of New York, State of New York.

Respondent Clyne Maxon, 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 office and place of business located at 245 Park Ave. in the City of New York, State of New York. [2]

PAR. 3. Respondent Amho. Corporation is now, and has been for more than one year last past, engaged in the manufacturing, advertising, offering for sale, sale and distribution of non-prescription internal analgesic preparations which fall within the classification of drugs, as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondent for said preparations, the active ingredients thereof and directions for use are as follows:

1. *Designation:* "Anacin"
Active Ingredients (One Tablet):
 Acetylsalicylic Acid
 Caffeine Anhydrous

Dosage: One to two tablets with water.
 Repeat if necessary, one tablet
 every 3 hours. For children under
 6 consult a doctor.
2. *Designation:* "Arthritis Pain Formula"
Active Ingredients (One Tablet):
 Acetylsalicylic Acid (micro-fine)
 Aluminum Hydroxide, Dried Gel
 Magnesium Hydroxide, NF

Dosage: Convenient daily schedule for adults is one or two tablets first thing in the morning; then repeat one or two tablets as needed at lunch, dinner and bed-time. Do not exceed 8 tablets in any 24 hour period. Not recommended for children.

PAR. 4. Respondent Maxon is now, and for some time last past has been, the advertising agency of respondent Amho, and now, and for some time last past, has prepared and placed for publication, and has caused the dissemination of, advertising material, including but not limited to the advertising referred to herein, to promote the sale of "Arthritis Pain Formula", which comes within the classification of "drug," as the term "drug" is defined in the Federal Trade Commission Act. [3]

In the course and conduct of its business, respondent American Home Products Corporation causes the said products, when sold to be shipped from its plant and facilities in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent American Home Products Corporation maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce.

PAR. 5. In the conduct of its business at all times mentioned herein, respondent Amho Corporation has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of non-prescription internal analgesic products.

In the conduct of its business at all times mentioned herein, respondent Clyne Maxon, Inc. has been in substantial competition, in commerce, with other corporations, firms, and individuals in the advertising business.

PAR. 6. In the course and conduct of their business, as aforesaid, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said products by the United States mail and by various means in commerce, including, but not limited to, advertisements inserted in magazines and other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, 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 products, and has disseminated, and caused the

dissemination of, advertisements concerning said products 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 drugs in commerce.

PAR. 7. Among and typical of the statements and representations contained in said advertisements as hereinabove mentioned are those relating to the product "Anacin" contained in two (2) television commercials' story-boards and one newspaper advertisement which have been reproduced, attached to this complaint, and made a part hereof,* and the following: [4]

A. For "Anacin"

1. Turns Off Headache Pain, So Relaxes Its Tension, Helps Lift Its Depression-Fast

In 22 seconds after entering your bloodstream this special fortified formula is speeding relief to your nervous headache. It promptly relieves the pain, so relaxes its tension and helps lift its depression. You can bounce back fast—able to carry on and do your work. This effective headache relief is Anacin (R)—a special fortified combination of ingredients and only Anacin has this formula. Anacin Analgesic Tablets contain the medication doctors recommend most for headache pain. In fact, Anacin gives you more of it than any leading headache tablet. Next time—try medically proven Anacin Tablets.

2. When Nervous Tension And Fatigue Bring On "Housewife Headache" . . .

The busy mother and homemaker has many repetitious tasks she must perform daily to make life pleasant for her family. And it's understandable how tensions and fatigue can build up during the day and result in what is now known as "housewife" headache. For this type of headache you need strong yet safe relief. So next time take Anacin (R). Anacin gives you 100% more of the strong pain-reliever doctors recommend most for headaches than the other leading extra-strength tablet. Minutes after taking Anacin, your headache goes, so does its nervous tension and fatigue. Anacin lets you feel better all over—able to carry on. Despite its strength, Anacin is safe taken as directed. It doesn't leave you depressed or groggy. Next time take Anacin Tablets! [5]

3. What's Best To Take For A Nervous Tension Headache?

Why not the strong pain-reliever doctors recommend most? You'll find it in Anacin (R). Anacin is a special fortified formula that turns off headache pain in minutes, so . . . relaxes its nervous tension and relaxes its painful pressure on nerves. Anacin lets you feel better all over.

4. Takes The "Pressure-Pain" Out Of Your Nervous Headache In Minutes.

. . . so relaxes its nervous tension, releases painful pressure on nerves . . . you feel great again.

* Exhibits not reproduced because of poor quality.

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The pressures of today's hectic world often give people today's nervous tension. And nervous tension causes the most common headache of all. Tension presses on nerves and tiny blood vessels in your head, then brings on a "painful pressure" headache. You want the quick strength of Anacin (R) for relief.

Anacin is a special fortified formula that turns off headache pain in minutes, so relaxes its tension, releases painful pressure on nerves. Helps you feel great again. And the soothing effect continues for hours.

Anacin gives you 100% more of the specific pain-reliever doctors recommend most for headaches—than the other leading extra-strength tablet. Powerful Anacin helps relieve a painful pressure headache but doesn't dull your senses. Smooth, gentle acting too, next time take Anacin Tablets.

5. New Clinical Study Indicates Anacin Treats Headaches As Effectively As The Most Widely Prescribed Pain-Relief Compound . . . yet has fewer side effects and is more economical.

6. Compared To The Other Extra-Strength Tablet: Gives You *Twice As Much Of The Pain-Reliever Doctors Recommend Most For Headaches* And twice as many people now use it! . . . Anacin gives real fast relief from tension headache pain, so its tension goes—you function better and do a better job. [6]

7. *Survey Of Doctors Of Internal Medicine Report: Twice As Many Doctors Prefer This Extra-Strength Pain-Reliever For Headaches.* And Another Medical Research Report Proves This Same Tablet Relieves Nervous Tension Headaches As Effectively As The Leading Prescription Pain-Reliever.

Replies from over 1600 doctors who specialize in internal medicine showed twice as many preferred the formula of extra-strength Anacin for headache pain over that of the other leading extra-strength tablet. These doctors certainly know their pain-relievers and this was verified by another medical report that proved Anacin gives the same powerful pain relief from headaches as the leading prescription. Yet Anacin needs no prescription. And costs far less. Extra-strength Anacin Tablets work fast. Headache goes in minutes so its nervous tension goes, too. Anacin lets you do a better job—lets you function better. Despite its strength Anacin is not narcotic. Not habit-forming. It makes good sense to take fast acting, extra-strength Anacin (R)—the pain-reliever preferred by twice as many doctors.

8. The Most Exciting Headache News In Years!

Results of doctor's tests in treating tense, nervous headaches now made public.

If you are one of millions who get tense, nervous headaches—these latest tests by doctors should be of the utmost importance.

Whitehall Laboratories who make world-famous Anacin (R) Tablets have always known Anacin is a powerful, fast-acting pain reliever. Anacin is a special fortified combination of ingredients. Millions of sufferers must consider Anacin superior because it's America's largest selling analgesic.

Having the greatest confidence in the high quality of relief Anacin offers, the makers of Anacin decided to compare its effectiveness for headaches with that of the leading pain-relief prescription of doctors . . . [7]

The results showed Anacin is just as effective to give complete relief from nervous headaches as the expensive, leading pain-relief prescription. Tests verified beyond a

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doubt that Anacin has the same pain-relief power for headaches as this prescription for which doctors wrote 21 million prescriptions last year . . .

An advantage of Anacin is that it is not a narcotic. Not habit forming. You can take Anacin without getting dizzy or an upset stomach . . .

So next time you get a nervous headache—you owe it to yourself to take Anacin—proved in doctors' tests to be equally effective for headache relief as the most powerful, most widely prescribed pain reliever. Yet Anacin needs no prescription and is far more economical. .

B. For "Arthritis Pain Formula"

1. Arthritis Sufferers:

Wake Up Tomorrow Morning Without All That Stiffness! New Pain Formula. 50% stronger than a regular aspirin. So you take it less often. Yet so gentle you can take it on an empty stomach . . . a new formula for arthritis minor pain that (1) is so strong you can take it less often and still wake up in the morning without all the pain's stiffness and (2) is so gentle you can take it on an empty stomach. This means you get both extra medication and extra protection; extra medication because each tablet contains 50% more pain reliever than regular or buffered aspirin tablets. Extra protection because each tablet contains two antacids and is micronized (which means the tablet particles are so fine the pain reliever is more readily absorbed). Called Arthritis Pain Formula, it was specially developed by the makers of Anacin (R) to give arthritis sufferers an easier, less upsetting way to wake up without all that early morning stiffness and enjoy hours of relief.

PAR. 8. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:
[8]

A. By respondent Amho for "Anacin"

1. That Anacin contains more pain-dulling ingredients per tablet than any other non-prescription internal analgesic product on the market.

2. That Anacin's analgesic ingredient is unusual, special, and stronger than aspirin (acetylsalicylic acid).

3. That Anacin contains more than twice as much of its analgesic ingredient as any other analgesic product on the market.

4. That within approximately 22 seconds after taking Anacin a person may expect relief from headache pain.

B. By respondents Amho and Maxon for "Arthritis Pain Formula"

1. That Arthritis Pain Formula's analgesic ingredient is unusual, special, and stronger than aspirin (acetylsalicylic acid).

2. That Arthritis Pain Formula will eliminate all pain, stiffness

and discomfort usually experienced by arthritis sufferers in the morning.

PAR. 9. In truth and in fact:

A. For "Anacin"

1. There are other analgesic products on the market which contain as much or more pain dulling ingredients per tablet than does Anacin.

2. Anacin's analgesic ingredient is ordinary aspirin (acetylsalicylic acid).

3. Anacin does not contain more than twice as much of its analgesic ingredient as all other analgesic products on the market. [9]

4. Relief from headache pain is not obtained within approximately 22 seconds after taking Anacin.

B. For "Arthritis Pain Formula"

1. Arthritis Pain Formula's analgesic ingredient is aspirin (acetylsalicylic acid).

2. Arthritis Pain Formula will not eliminate all pain, stiffness or discomfort usually experienced by arthritis sufferers in the morning.

PAR. 10. Further, through the use of the advertisements referred to in Paragraph Seven above and others similar thereto but not specifically set out herein, it has been represented and is being represented, directly and by implication:

A. By respondent Amho that it has been established that a recommended dose of Anacin is more effective for the relief of pain than a recommended dose of any other non-prescription internal analgesic.

B. By respondents Amho and Maxon that it has been established that Arthritis Pain Formula will cause gastric discomfort less frequently than any other non-prescription internal analgesic.

PAR. 11. In truth and in fact, neither of said representations referred to in Paragraph Ten has been established, for reasons including, but not limited to, the existence of a substantial question, recognized by experts qualified by scientific training and experience to evaluate the efficacy and safety of such drugs, as to the validity of such representations.

PAR. 12. Further, through the use of the advertisements referred to in Paragraph Seven above and others similar thereto but not

specifically set out herein, it has been represented and is being represented, directly and by implication:

A. By respondent Amho that a recommended dose of Anacin is more effective for the relief of pain than a recommended dose of any other non-prescription internal analgesic.

B. By respondents Amho and Maxon that Arthritis Pain Formula will cause gastric discomfort less frequently than any other non-prescription internal analgesic. [10]

PAR. 13. At the time respondents made the representations referred to in Paragraph Twelve above, there existed a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, concerning the validity of such representations.

PAR. 14. Furthermore, respondents made the representations referred to in Paragraph Twelve above without disclosing the existence of a substantial question, as alleged in Paragraph Thirteen above, as to the validity of each representation. In light of the representations made, the existence of such a substantial question is a material fact, which, if known to consumers, would be likely to affect their consideration of whether or not to purchase such products. Thus respondents have failed to disclose material facts.

PAR. 15. Further, through the use of the advertisements referred to in Paragraph Seven above, and others similar thereto but not specifically set out herein, respondent Amho did represent and is representing, directly and by implication, that a recommended dose of Anacin relieves nervousness, tension, stress, fatigue and depression and will enable persons to cope with the ordinary stresses of everyday life.

PAR. 16. In truth and in fact, there existed at the time of the representations referred to in Paragraph Fifteen above no reasonable basis for making said representations in that respondent had no competent and reliable scientific evidence to support such representations.

PAR. 17. Further, through the use of the advertisements referred to in Paragraph Seven above and others similar thereto but not specifically set out herein, respondent Amho has represented and is now representing, directly and by implication, that certain scientific tests or studies conducted by or on behalf of respondent Amho prove that Anacin is as effective for the treatment or relief of headache pain as the leading prescription analgesic product and more effective for the treatment or relief of such pain than any other non-prescription internal analgesic product.

PAR. 18. At the time respondent made the representations referred to in Paragraph Seventeen, there existed a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, concerning the validity, significance or interpretation of such tests or studies as they related to such representations. [11]

PAR. 19. Furthermore, respondent made the representations referred to in Paragraph Seventeen above without disclosing the existence of a substantial question, as alleged in Paragraph Eighteen above, as to the validity of each representation. In light of the representations made, the existence of such a substantial question is a material fact, which, if known to consumers, would be likely to affect their consideration of whether or not to purchase such products. Thus respondent has failed to disclose material facts.

PAR. 20. Further, through the use of the advertisement referred to in Paragraph Seven, item (A)(7), above, and others similar thereto but not specifically set out herein, respondent Amho has represented and is now representing, directly and by implication, that:

1. Twice as many specialists in internal medicine prefer Anacin for the treatment or relief of headache pain to any other non-prescription internal analgesic product.
2. More physicians recommend Anacin for the treatment or relief of headache pain than any other non-prescription internal analgesic product.
3. Such recommendation or preference constitutes convincing proof that Anacin will treat or relieve headache pain more effectively than any other non-prescription internal analgesic product.

PAR. 21. In truth and in fact, neither the design of the survey cited by respondent Amho, nor the responses to said survey, provides a reasonable basis for the representations referred to in Paragraph Twenty above.

PAR. 22. Further, respondent Amho marketed and advertised Anacin, and respondents Amho and Maxon marketed and advertised Arthritis Pain Formula, without disclosing in the advertising for such products that such products contain aspirin and that Anacin contains caffeine.

PAR. 23. In truth and in fact, aspirin and caffeine are well-known, commonplace substances, widely available in many products. Moreover, the use of aspirin or caffeine may be injurious to health and may cause undesirable side effects. Thus, respondents have failed to disclose material facts which, if known to certain consum-

ers, would be likely to affect their consideration of whether or not to purchase such products. [12]

PAR. 24. The advertisements referred to in Paragraph Seven above as alleged in Paragraphs Nine, Eleven, Fourteen, Nineteen, and Twenty-Three constituted and now constitute false advertisements.

PAR. 25. The making of representations as alleged in Paragraphs Thirteen, Sixteen, Eighteen, and Twenty-One constituted and now constitutes unfair or deceptive acts or practices in commerce.

PAR. 26. The use by respondents of the aforesaid deceptive representations, and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' drugs by reason of said erroneous and mistaken belief.

PAR. 27. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the false advertisements as aforesaid were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

INITIAL DECISION BY

MONTGOMERY K. HYUN, ADMINISTRATIVE LAW JUDGE

SEPTEMBER 1, 1978

PRELIMINARY STATEMENT

On February 23, 1973, the Federal Trade Commission ("Commission") issued a complaint charging American Home Products Corporation ("American Home") and Clyne Maxon, Inc. with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended (15 U.S.C. 45 and 52), [2]in connection with certain advertisements for Anacin and Arthritis Pain Formula ("APF"). Similar complaints were issued at the same time against Bristol-Myers Company (Docket No. 8917) and Sterling Drug Company (Docket No. 8919), in connection with certain advertisements for certain over-the-counter ("OTC") internal analgesic products marketed by these firms.

On May 29, 1973, respondents filed their respective answers to the Complaint, each denying that it had violated the Federal Trade

Commission Act. Administrative Law Judge William K. Jackson, originally assigned to this proceeding, entered a Prehearing Order, dated April 4, 1974, setting forth the issues of fact and law to govern the adjudicatory proceeding. This case was assigned to me upon Judge Jackson's retirement, effective January 1, 1975. By Order dated January 7, 1976, the Prehearing Order of April 4, 1974 was modified in certain respects.

The parties were allowed extensive pretrial discovery. Numerous prehearing conferences were held in order to simplify the issues, to resolve disputes related to discovery and generally to expedite the trial preparation of the parties.

Based on the complaint and answer and prehearing orders, the following issues are matters for determination in this proceeding:

(a) Whether the challenged advertisements represented that:

(i) Anacin contains more pain-dulling ingredients per tablet than any other non-prescription internal analgesic product on the market (Comp. ¶ 8(A)(1)).

(ii) Anacin's analgesic ingredient is unusual, special, and stronger than aspirin (acetylsalicylic acid) (Comp. ¶ 8(A)(2)).

(iii) Anacin contains more than twice as much of its analgesic ingredient as any other analgesic product on the market (Comp. ¶ 8(A)(3)).

(iv) Within approximately 22 seconds after taking Anacin a person may expect relief from headache pain (Comp. ¶ 8(A)(4)).

(v) Arthritis Pain Formula's analgesic ingredient is unusual, special, and stronger than aspirin (acetylsalicylic acid) (Comp. ¶ 8(B)(1)). [3]

(vi) Arthritis Pain Formula will eliminate all pain, stiffness and discomfort usually experienced by arthritis sufferers in the morning (Comp. ¶ 8(B)(2)).

(vii) A recommended dose of Anacin is more effective for the relief of pain than a recommended dose of any other non-prescription internal analgesic (Comp. ¶ 12(A)).

(viii) Arthritis Pain Formula will cause gastric discomfort less frequently than any other non-prescription internal analgesic (Comp. ¶ 12(B)).

(ix) A recommended dose of Anacin relieves nervousness, tension, stress, fatigue and depression (Comp. ¶ 15).

(x) A recommended dose of Anacin will enable persons to cope with the ordinary stresses of everyday life (Comp. ¶ 15).

(xi) It has been established that a recommended dose of Anacin is

more effective for the relief of pain than a recommended dose of any other non-prescription internal analgesic (Comp. ¶ 10(A)).

(xii) It has been established that Arthritis Pain Formula will cause gastric discomfort less frequently than any other non-prescription internal analgesic (Comp. ¶ 10(B)).

(b) Whether the representations in paragraph (a) (xi) and (xii) above, if made, have been established (Comp. ¶ 11).

(c) Whether there existed at the time of the alleged representations set forth in paragraph (a) (vii) and (viii), a substantial question, recognized by qualified experts, as to the validity of said representations (Comp. ¶ 13).

(d) Whether there existed at the time of the alleged representations set forth in paragraph (a) (xi) and (xii), a substantial question, recognized by qualified experts, as to the validity of said representations (Comp. ¶ 11). [4]

(e) Whether the existence of a substantial question, if established, was a material fact of which the failure to disclose constituted an unfair or deceptive advertising practice (Comp. ¶ 14).

(f) Whether the alleged representations set forth in paragraph (a)(ix) and (x), if made, were based on a reasonable basis (Comp. ¶ 16).

(g) Whether American Home, through advertising, represented that certain scientific tests proved that Anacin is as effective for the treatment or relief of headache as the leading prescription analgesic product and is more effective for the treatment or relief of such pain than any other non-prescription internal analgesic product (Comp. ¶ 17).

(h) Whether there existed a substantial question, recognized by qualified experts, concerning the validity, significance or interpretation of the tests referred to in paragraph (g) as they relate to such representations (Comp. ¶ 18).

(i) Whether the existence of a substantial question, if established in relation to paragraph (h), was a material fact of which the failure to disclose constituted an unfair or deceptive advertising practice (Comp. ¶ 19).

(j) Whether the alleged advertisement referred to in paragraph 7, item (A)(7), of the Complaint represented that:

(i) Twice as many specialists in internal medicine prefer Anacin for the treatment or relief of headache pain to any other non-prescription internal analgesic product.

(ii) More physicians recommend Anacin for the treatment or relief of headache pain than any other non-prescription internal analgesic product.

(iii) Such recommendation or preference constitutes convincing proof that Anacin will treat or relieve headache pain more effectively [5] than any other non-prescription internal analgesic product (Comp. ¶ 20).

(k) Whether the design of, or responses to, the survey referred to in paragraph 7, item (A)(7) of the Complaint provided a reasonable basis for the alleged representations in paragraph (j) (Comp. ¶ 21).

(l) Whether American Home marketed and advertised Anacin without disclosing in such advertising that Anacin contained aspirin and caffeine (Comp. ¶ 22).

(m) Whether respondents marketed and advertised Arthritis Pain Formula without disclosing in such advertising that APF contained aspirin (Comp. ¶ 22).

(n) Whether the use of aspirin or caffeine in customary or recommended doses in the products involved in this case can be injurious to health and cause undesirable side effects.

(o) Whether a significant number of certain consumers do not know that Anacin contains aspirin and caffeine and that Arthritis Pain Formula contains aspirin.

(p) Whether the failure to disclose in advertisements that Anacin contains aspirin and caffeine would be likely to affect the consideration of purchasing such product by certain consumers in the light of other information about the ingredients of such product, such as the labeling and packaging for such product.

(q) Whether the failure to disclose in advertisements that Arthritis Pain Formula contains aspirin would be likely to affect the consideration of purchasing such product by certain consumers in light of other information about the ingredients of such product, such as the labeling and packaging for such product.

(r) Whether the presence of aspirin and caffeine in Anacin is a material fact in light of the challenged advertising or material with respect to the consequences which may result from the [6] use of said product under the conditions prescribed in said advertising or under such conditions as are customary or usual.

(s) Whether the presence of aspirin in Arthritis Pain Formula is a material fact in light of the challenged advertising or material with respect to the consequences which may result from the use of said product under the conditions prescribed in said advertising or under such conditions as are customary or usual.

(t) Whether the use by respondents of the representations referred to in paragraph 25 of the Complaint, and the advertisements referred to in paragraph 24 of the Complaint, has had and

now has the tendency and the capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true, and into the purchase of substantial quantities of Anacin and Arthritis Pain Formula by reason of said erroneous and mistaken belief (Comp. ¶ 26).

(u) Whether the alleged advertising representations, if made, have caused the purchase of substantial quantities of Anacin and Arthritis Pain Formula by reason of erroneous and mistaken belief.

(v) Whether the alleged advertising representations, if made, are sufficiently likely to have continuing injurious effects upon consumers and/or competitors, so as to warrant corrective advertising.

(w) Whether the representations involved in this proceeding were made by respondents in good faith compliance with the applicable legal standards in effect at the time the representations were made.

By Order dated February 16, 1977, a joint hearing was ordered with respect to certain common documents and witnesses for the presentation of complaint counsel's cases-in-chief in the three companion OTC internal analgesic cases (Docket Nos. 8917, 8918 and 8919). Joint evidentiary hearings commenced on June 6, 1977 and continued until August 15, 1977. The separate evidentiary hearings for the presentation of complaint counsel's case-in-chief in this case began on [7]November 1, 1977 and continued until December 19, 1977. My disposition of respondents' motion to dismiss the Complaint filed at the close of complaint counsel's case was deferred until completion of the defense hearings. Respondents commenced their defense on January 30, 1978 and continued until March 22, 1978. The evidentiary record was closed on April 13, 1978.¹ The parties filed simultaneously their proposed findings of fact, conclusions of law, order and supporting briefs and subsequent replies. An oral argument on the proposed findings was heard on July 7, 1978. Some 40 witnesses, including 27 expert witnesses, testified. Transcripts of hearings for the joint and separate hearings number some 11,600 pages. Some 400 documentary exhibits, including numerous copy tests, penetration and image studies, and medical-scientific studies were received in evidence.

The proposed findings and conclusions submitted by the parties and their arguments in support thereof have been given careful consideration by me and to the extent not adopted by this Initial Decision, in the form proposed or in substance, are rejected as not

¹ By orders dated May 3 and June 28, 1978, the Commission extended the due date of this Initial Decision to September 1, 1978.

