

Complaint

IN THE MATTER OF

THE MENTHOLATUM COMPANY

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

*Docket 8644. Complaint, Aug. 28, 1964—Decision, Dec. 16, 1966**

Order requiring a Buffalo, N.Y., manufacturer of "Mentholatum M.P.O." pile ointment to cease falsely representing in its advertising that its product will shrink, avoid need for surgical treatment on, heal, cure, or remove hemorrhoids or effect any other cure beyond temporary relief.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Mentholatum Company 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 The Mentholatum 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 1360 Niagara Street in the city of Buffalo, State of New York.

PAR. 2. Respondent The Metholatum Company is now, and for some time last past has been, engaged in the sale and distribution of a preparation offered for the treatment of piles or hemorrhoids and coming within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

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

Designation: "Mentholatum M.P.O." *Medicated* Pile Ointment.

Formula: The active ingredients for "Mentholatum M.P.O." *Medicated* Pile Ointment are as follows:

Benzocaine; Hexachlorophene; Ephedrine sulfate, lanolin, in an exclusive prescription-type base that is temperature-stable.

Directions: Apply freely night and morning and after each bowel movement. Use scientific applicator for internal hemorrhoids. Lubricate before use

*Modified on Dec. 15, 1970.

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and thoroughly cleanse after. In case of bleeding, a physician should be consulted. Keep all medicine out of the reach of children.

PAR. 3. Respondent The Mentholatum Company causes the said preparation, when sold, to be transported from its place of business located at 1360 Niagara Street, Buffalo, 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 preparation 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 in the District of Columbia, and in various States of the United States, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and has disseminated, and caused the dissemination of, advertisements concerning said preparation 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 of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Clinical Progress Report:

NEW PAINLESS MEDICATION FOR HOME THERAPY OF HEMORRHOIDS

New M.P.O. combines fast-acting ingredients in a prescription-type ointment to shrink piles—relieve pain and itch.

Famous Mentholatum Laboratories have developed a modern, home therapy for hemorrhoids that can bring relief without surgery or injections. New M.P.O.—medicated pile ointment—starts relief from pain and itching in seconds. This soothing medication acts to shrink hemorrhoids and promote healing.

In the exact words of the two doctors who conducted recent clinical tests of Mentholatum M.P.O., they say, "We are quite pleased with the results." In reporting on the treatment of 30 patients, the results were "good to excellent in 25 cases, fair or poor in only 5 who had more severe hemorrhoids."

RELIEF STARTS IN SECONDS—the instant you apply M.P.O. its anes-

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thetic and vaso-constrictor start to work. This soothing, painless medication quickly relieves tormenting pain and stops the embarrassing itch.

HELPS PROMOTE HEALING—M.P.O.'s exclusive temperature-stable ointment concentrates medication right on inflamed tissue—not beyond as suppositories sometimes do. Its Ephedrine Sulfate works quickly to reduce swelling and shrink piles.

FIGHTS INFECTIONS—Hexachlorophene, the famous germ-killer used by physicians, acts to relieve bacteria-caused itching and to fight infectious germs.

New M.P.O. takes the fear out of hemorrhoid therapy. Don't suffer another day before you try Mentholatum M.P.O.—the painless medication that acts to shrink hemorrhoids without cutting or injections. Available without prescription at all drugstores.

Progress Report: New Formula For Home Therapy of Hemorrhoids New Metholatum M.P.O. offers a non-surgical treatment to reduce hemorrhoids—relieve pain, itch.

Special Formulation

- . . . shrink piles.
- . . . promote healing.
- . . . new development

M.P.O. offers non-surgical Treatment to Shrink Piles . . . plus Fast-Acting Relief for Pain and Itching.

- . . . works to shrink hemorrhoids, help clear them up.
- . . . New M.P.O.—medicated ointment—actually acts to shrink piles and helps clear them up.

Famous Mentholatum Laboratories have developed a modern, home therapy for hemorrhoids that can bring relief without surgery or injections.

New M.P.O. takes fear out of hemorrhoidal therapy.

New Advance in Home Therapy for Hemorrhoids.

- . . . the latest development in the non-surgical relief of hemorrhoids.
- . . . acts to shrink hemorrhoids without cutting or injections.
- . . . quickly relieves tormenting pain
- . . . acts to shrink hemorrhoids and promote healing

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 the use of "Mentholatum M.P.O." *Medicated Pile Ointment* will:

1. Reduce or Shrink piles;
2. Eliminate surgery as a treatment for piles;
3. Heal, cure or clear-up piles:
4. Relieve all pain attributed to or caused by piles.
5. Stops itching.

PAR. 7. In truth and in fact the use of "Mentholatum M.P.O." *Medicated Pile Ointment* will not:

1. Reduce or shrink piles;
2. Eliminate surgery as a treatment for piles;

3. Heal, cure or clear-up piles;
4. Relieve all pain attributed to or caused by piles;
5. Stops itching;
6. Afford any relief or have any therapeutic effect upon the condition known as piles or upon any of the symptoms or manifestations thereof in excess of affording temporary relief of minor pain or minor itching associated with piles.

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

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

OPINION OF THE COMMISSION

DECEMBER 16, 1966

BY JONES, *Commissioner*:

I

The complaint in this matter, issued on August 28, 1964, charged that respondent violated Sections 5 and 12 of the Federal Trade Commission Act by making false representations in advertising its ointment, sold under the name of "'Mentholatum M.P.O.' Medicated Pile Ointment," for the treatment of hemorrhoids or piles.¹ The complaint alleged, and respondent in its answer admitted, that it maintained a course of trade in said preparation in commerce within the meaning of the Federal Trade Commission Act.

Paragraph Five of the complaint set forth a series of statements which were alleged to be typical of the claims made in respondent's advertisements. Among the statements quoted are the following:

Famous Mentholatum Laboratories have developed a modern, home therapy for hemorrhoids that can bring relief without surgery or injections. New M.P.O.—medicated pile ointment—starts relief from pain and itching in seconds. This soothing medication acts to shrink hemorrhoids and promote healing.

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

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RELIEF STARTS IN SECONDS—the instant you apply M.P.O. its anesthetic and vaso-constrictor start to work. This soothing, painless medication quickly relieves tormenting pain and stops the embarrassing itch.

HELPS PROMOTE HEALING—M.P.O.'s exclusive temperature-stable ointment concentrates medication right on inflamed tissue—not beyond as suppositories sometimes do. Its Ephedrine Sulfate works quickly to reduce swelling and shrink piles.

New M.P.O. takes the fear out of hemorrhoid therapy. Don't suffer another day before you try Mentholum M.P.O.—the painless medication that acts to shrink hemorrhoids without cutting or injections. Available without prescription at all drugstores.

Respondent in its answer admitted so much of Paragraph Five of the complaint as alleged that the statements quoted therein were among the statements made by respondents in advertisements but denied that they were typical (Answer, Par. 5).

Paragraph Six of the complaint charged that through the use of these advertisements and others respondent had represented that use of M.P.O. will: (1) reduce or shrink piles; (2) eliminate surgery as a treatment for piles; (3) heal, cure or clear up piles; (4) relieve all pain attributed to or caused by piles and (5) stop itching. Respondent denied each allegation in this paragraph (Answer, Par. 6).

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

The complaint in this matter was issued simultaneously with four other complaints also charging misrepresentations in the advertising of hemorrhoidal preparations, namely: *Humphreys Medicine Company, Incorporated*, Docket 8640 [p. 1502 herein], *American Home Products Corporation*, Docket 8641 [p. 1524 herein], *E. C. DeWitt & Co., Inc.*, Docket 8642 [p. 1647 herein], and *Grove Laboratories, Incorporated*, Docket 8643 [71 F.T.C. 822]. Hearings in the *American Home Products* case took place

in April and May 1965, and the initial decision in that case was rendered on October 22, 1965. Complaint counsel appealed. On January 12, 1966, before argument of his appeal, complaint counsel moved in each of the other four cases to suspend hearings pending the issuance of the Commission's decision in *American Home Products*. This motion was denied by the Commission on March 16, 1966, and respondents in each of these four cases moved for reconsideration. On April 26, 1966 [69 F.T.C. 1179], the Commission entered an order directing the examiner to proceed with the hearings in each of these cases unless the parties desired to enter into a stipulation providing essentially that their cases may be disposed of on the basis of the record and findings in the *American Home Products* case. On June 17, 1966, respondent and complaint counsel filed a stipulation in accordance with the provisions of the Commission's order of April 26, 1966.² The stipulation provided that the Commission may issue such order as it deems necessary in the public interest on the basis of the facts stipulated by the parties and that the respondent waived any intervening steps before the hearing examiner. The parties further stipulated that the advertisements in the case had no significantly different effect upon the reader from the effect of the advertisements in *American Home Products*; that the effect of the use of respondent's preparation is not significantly different from the use of American Home Products' preparations; and that, to the extent that respondent's advertisements differ significantly from those in *American Home Products*, the Commission may, in its order disposing of this proceeding, include appropriate provisions to take into consideration such differences.

Attached to this stipulation are the texts of two similar advertisements, stated in the stipulation to be "representative of respondent's advertising claims." One of these advertisements reads in full as follows:

HEMORRHOIDS? Make this 3-day test!

New M.P.O. *must* relieve pain faster and longer than the preparation you are now using or we will gladly refund your purchase price in full.

If you seek *more* relief than you may now be getting, join the thousands of hemorrhoid (pile) sufferers now turning to new M.P.O. Developed by famous Mentholatum Laboratories, M.P.O. works in these five ways:

1. *Helps ease pain faster.* You get more medically accepted pain-relieving ingredients than the preparation you may now be using . . . to help reduce pain and discomfort.

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

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2. *Helps shrink swollen tissues.* M.P.O. quickly releases the proven vaso-constrictor, Ephedrine Sulfate.

3. *Helps relieve embarrassing itch.* M.P.O.'s medication is homogenized for faster absorption, faster action.

4. *Helps make relief last longer.* M.P.O.'s more temperature-stable base holds medication in place for prolonged action.

5. *Helps fight danger in infection.* Proven germ-killer, Hexachlorophene, combats bacteria.

Test it yourself for the next three days. If not satisfied that M.P.O. helps you more than the preparation you're now using, return unused portion to the Mentholatum Co., Buffalo, N.Y., for refund. Available in stainless ointment or suppositories at drug counters.

The other advertisement states in part as follows:

You get more medically accepted pain-relieving ingredients, including Benzocaine, than in the preparation you may now be using.

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

II

DISCUSSION OF ISSUES

A. *Representations Made by Respondent in Its Advertisements.*

Respondent is charged with representing that its product will (1) reduce or shrink hemorrhoids, (2) eliminate surgery as a treatment for hemorrhoids; (3) heal, cure or clear up hemorrhoids; (4) relieve all pain attributed to or caused by hemorrhoids and (5) stop itching.

In evaluating the meaning of respondent's advertisements we will consider not only the advertisements annexed to the stipulation between the parties but also to the statements quoted in the complaint which respondent has admitted were made by it in its advertisement. Respondent denied that the statements alleged in the complaint were typical. However, we are not compelled to determine whether the ads are typical but only whether they contain false or misleading statements. The advertisements were conceded to have been made, and if they contain false or misleading representations, issuance of an order is proper even though

there may have been other advertisements of respondent which did not contain these representations.

In *American Home Products* we found that respondent had represented that its preparation would "reduce or shrink hemorrhoids," "avoid the need for surgery as a treatment for hemorrhoids," "eliminate all itch due to or ascribed to hemorrhoids," "relieve all pain attributed to or caused by hemorrhoids," and "heal, cure or remove hemorrhoids, and cause hemorrhoids to cease to be a problem." In Par. 2(a) of the stipulation executed by the parties, it is provided that the advertisements in the instant case "had no significantly different effect upon the reader from the effect of the advertisements in *American Home Products*." Accordingly, on the basis of this stipulation alone, we could conclude that respondent's advertisements represent that its ointment will shrink hemorrhoids and relieve all pain. However, there is no need to rely exclusively on parties' stipulation for this conclusion since the advertisements speak for themselves and our own independent examination of them enables us to determine whether the complaint allegations as to the representations made in these advertisements may be sustained.

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

Respondent claims in the advertisements that its preparation "acts to shrink hemorrhoids" and that "[i]ts Ephedrine Sulfate works quickly to reduce swelling and shrink piles," thus directly representing, as alleged, that M.P.O. will reduce or shrink piles. Other advertising claims made by respondent, while literally specifying only shrinkage of "swollen tissues," also have the effect of creating in the mind of the hemorrhoid sufferer that his hemorrhoids will be shrunk. These advertisements state that respondent's medication "Helps shrink swollen tissues" and "quickly releases the proven vaso-constrictor, Ephedrine Sulfate." Since a "vaso-constrictor" is an agent which causes constriction of blood vessels (Webster's New International Dictionary, Second Edition), the clear implication of this statement is that the hemorrhoids or blood vessels will be shrunk, not merely that the overlying tissue will be reduced in size. Furthermore, in our opinion, any member of the public who reads a representation that a hemorrhoidal preparation will help shrink swollen tissue is unlikely to make any technical distinction between this representation and the representation that the product will shrink hemorrhoids. Ac-

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cordingly we conclude that respondent's claims in its advertising are equivalent to direct representations that its products will shrink hemorrhoids.

(2) Respondent's claims respecting elimination of surgery as a treatment of hemorrhoids

Respondent advertises that M.P.O. "can bring relief without surgery or injections." This, in our opinion, clearly constitutes a representation that it will "eliminate surgery as a treatment for piles" as alleged in Paragraph Six (2) of the complaint.

(3) Respondent's claims respecting healing, curing or clearing up of hemorrhoids

Respondent maintains in its advertising that its preparation "actually acts to shrink piles and helps clear them up"; "can bring relief without surgery or injections"; "acts to shrink hemorrhoids and promote healing" and "helps promote healing." While the word "healing" is in certain cases coupled with the word "promote," the implication remains that through the use of M.P.O. one's hemorrhoids may be healed. An individual with hemorrhoids would undoubtedly assume that if M.P.O. promoted healing, use of this medication will within a reasonable period of time lead to the healing of his hemorrhoids. Therefore, in our opinion, these statements when viewed in the context of the entire advertisement clearly convey the message to the hemorrhoidal sufferer that M.P.O. will heal hemorrhoids.

(4) Respondent's claims respecting pain

Respondent promises in its advertising that its product "must relieve pain," "quickly relieves tormenting pain," "helps ease pain faster" and "contains more pain-relieving ingredients, including Benzocaine, than the preparation you may now be using." Respondent's claims are unequivocal and do not permit even an inference that the relief actually afforded may be partial or temporary. The reference to "benzocaine," a local anesthetic (Webster's New International Dictionary, Second Edition), implies that the preparation will produce anesthesia or paralysis of the sensory apparatus in the affected area (*Id.*), thus effecting a total absence of pain or other feeling. Furthermore, the representations pertaining to shrinking and healing referred to above would also tend to cause the reader to believe that the symptoms, including pain, would be eliminated when the hemorrhoid has been reduced

in size and healed. Accordingly, we conclude that the statements in respondent's advertisements constitute representations that its product will relieve all pain attributed to or caused by hemorrhoids.

(5) Respondent's claims respecting itching

In its advertisements respondent states that M.P.O. "relieves embarrassing itch." In our opinion this unqualified statement promises complete relief from the itching due to hemorrhoids, and that the average reader would be under the impression that if he used M.P.O. his itching would stop. Moreover, the claims respecting healing and shrinkage and the references to benzocaine, a local anesthetic, imply that entire relief will be afforded from all symptoms including itching.

B. Deceptive Nature of Respondent's Claims

The parties have stipulated that the facts applicable to this case support the stipulation that the effect of the use of respondent's preparation is not significantly different from the effect of American Home Products' preparations (Stip., Par. 2(b)). Accordingly, the findings of fact and conclusions reached in *American Home Products* with respect to the efficacy of Preparation H, drawn from the record and Findings of Fact in that case, are equally applicable to M.P.O. It is in the light of these findings and conclusions, therefore, that the allegations in Paragraph Seven must be analyzed. In its answer respondent has admitted that M.P.O. will not eliminate surgery as a treatment for piles and will not eliminate all pain attributed to or caused by piles. Therefore, our discussion will be confined to the remaining issues relating to the efficacy of M.P.O.

(1) Ability of M.P.O. to reduce or shrink hemorrhoids

Paragraph Seven (1) of the complaint alleges that, contrary to respondent's representations, M.P.O. will not reduce or shrink hemorrhoids.

Respondent advertises that M.P.O. "acts to shrink piles" and "helps shrink swollen tissues." We have concluded that these representations amount to a claim, and will be understood by the hemorrhoidal sufferer as a claim, that his hemorrhoids will be reduced in size. Hemorrhoids are by definition veins located underneath the mucuous membrane of the rectum and the skin of the anal canal (F. 10). The evidence in the record is that hemorrhoi-

dal preparations such as M.P.O. may have some effect upon edema or swelling in the tissue overlying hemorrhoids (F. 25(c), 26) but that they cannot reduce the size of the hemorrhoidal veins (F. 25(b), 26). The record also demonstrates, however, that this product can have no beneficial effect when the swelling is due to thrombosis (F. 25(c), 26). Thus, even if we were to assume that some reduction of swelling is effected by respondent's preparation, not all types of swelling will be affected in this way, and furthermore, the reduction which will occur will not be of the hemorrhoid itself but only of the surrounding area and thus will not be of the type implicitly promised by respondent's advertising. Accordingly, we find that respondent's representations with respect to shrinkage of hemorrhoids are in all respects false and misleading.

(2) Ability of M.P.O. to stop itching

It is alleged in Paragraph Seven (5) of the complaint that, in contrast to respondent's claims in its advertising, M.P.O. will not "stop itching." According to the record applicable to this case itching is not a common symptom of hemorrhoids, and the itching thought to be caused by hemorrhoids is usually the result of some other condition (F. 19). Where the itching is caused by hemorrhoids, M.P.O., through the lubricants which it contains, may possibly relieve dryness and surface irritation and thereby provide some temporary relief from some types of itching associated with hemorrhoids (F. 25(e), 26). However, it cannot eliminate all itching caused by or associated with hemorrhoids (F. 25(e), (f), 26). Therefore, respondent's claims to this effect are false.

(3) Ability of M.P.O. to heal hemorrhoids

Paragraph Seven (3) of the complaint alleges that, contrary to respondent's representations, M.P.O. will not heal, cure or clear up piles. The record applicable to this case demonstrates that surgical removal is the only means by which hemorrhoids can be permanently cured (F.22). Although certain symptoms may be ameliorated by other means (F. 24, 25) and may disappear spontaneously (F. 21), unless the underlying vascular condition is corrected, the patient will be subject to recurring episodes of symptoms (F. 21). Since M.P.O. cannot affect the underlying dilated veins it cannot heal or cure hemorrhoids or cause them to be cleared up or cease to be a problem (F. 25(a), 26).

C. *Alleged Absence of Other Therapeutic Benefits of M.P.O.*

In addition to the allegations that respondent's affirmative representations with respect to its product are false, the complaint also alleged that M.P.O. will not "[a]fford any relief or have any therapeutic effect upon any of the symptoms or manifestations thereof in excess of affording temporary relief of minor pain or minor itching associated with piles" (Complaint, Paragraph Seven (6)).

As we have noted it is clear from the record that M.P.O. cannot heal hemorrhoids. The record is also clear that while M.P.O. may in some cases provide some temporary relief from two symptoms of hemorrhoids, namely, pain and itching, it can provide no relief from the symptoms of hemorrhoids and that it can have no other therapeutic effect upon hemorrhoids (F. 25(f), 26). Accordingly, we conclude that the allegation in Paragraph Seven (6) of the complaint should be sustained.

III

THE ORDER

The parties have stipulated that the Commission may issue such order as it deems necessary in the public interest, taking into consideration any significant differences between respondent's advertising and those of *American Home Products* (Stip., Pars. 4 and 6).

In determining what order is necessary to ensure that respondent's misrepresentations respecting the efficacy of its drug preparation will not occur again, it is of primary importance to consider the segment of the public which is most likely to be particularly affected by these misrepresentations.

Our mandate under the law was graphically expressed by Judge Clark when he emphasized that "the law is not 'made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking and the credulous.'" *Charles of the Ritz Distributing Corporation v. Federal Trade Commission*, 143 F. 2d 676, 679 (2nd Cir. 1944).

The need for protection of the public becomes particularly acute where misrepresentations are made with respect to health claims and the efficacy of drugs since the appeal of such representations falls most poignantly on those persons who are in distress, frequently the aged and the infirm. Moreover, today, with Medicare a reality, many people may be consulting doctors for the first

time in their lives. They will be learning that aches and pains and discomforts of all kinds may be symptoms of diseases which they had never heard of before or never before associated with their own distress. Consequently, advertised claims of drug efficacy will have increasing relevance to this segment of our population and will offer hope of relief to millions in our population who may have previously ignored such advertising not realizing their possible application to their own conditions. Accordingly, it becomes of even greater importance today to make sure that representations respecting health claims and relief of distress are absolutely accurate and do not contain promises, impressions, or even highly veiled suggestions of efficacy which are in any sense false or misleading. It is with these basic principles in mind that we must fashion the type of prohibitive provisions which are necessary to be included in the order in this case.

A. *Product Application of the Order*

The order proposed by complaint counsel provided that it was to be applicable to M.P.O. "or any other preparation of *substantially similar composition or possessing substantially similar properties*" (emphasis added). As we noted in our Opinion in *American Home Products* with respect to Preparation H, under such an order the respondent could easily replace the ingredients in its product with those that are not "substantially similar" or which did not possess "substantially similar properties" and be exempt from the order even though such substitute product may be equally ineffective in relieving symptoms of hemorrhoids (*American Home Products* Opinion, pp. 1623-1625).³ And, as we further pointed out in *American Home Products*, determination of whether or not the new ingredients were "substantially similar" or possessed "substantially similar properties" "would be difficult of enforcement and would only be productive of controversy and probably litigation" (*American Home Products*, Opinion, p. 1623). Consequently, we are entering an order in the instant case, comparable to that entered in *American Home Products*, which is applicable to all preparations which may be sold by respondent for relief or treatment of hemorrhoids or its symptoms regardless of whether they contain the same or different ingredients from those contained in M.P.O. Finally, as we pointed out in detail in

³ It is apparent from the nature of the ingredients in respondent's preparation (F. 3) that they in all likelihood are replaceable by other ingredients which might have no different effect on hemorrhoids and yet be wholly outside the order if it applied only to M.P.O. or other preparations containing similar ingredients.

our opinion in the *American Home Products* case, this provision in no way hinders respondent from developing a truly efficacious remedy for hemorrhoids which might enable it to make some of the claims which this order now prohibits it from making. In this situation respondent need only apply to the Commission for a modification of the order as specifically provided for in the order which we are entering.

B. *Respondent's Representations Respecting the Efficacy of
M.P.O.*

The order which we are entering prohibits respondent from representing directly or by implication that its product will reduce or shrink hemorrhoids; eliminate surgery as a treatment for hemorrhoids; heal, cure or clear up hemorrhoids; afford any relief from pain and itching, in excess of providing some temporary relief in some cases of pain and itching; or have any other effect on hemorrhoids or its symptoms. In addition, we are specifically prohibiting respondent from referring to its "proven vaso-constrictor, Ephedrine Sulphate" in its advertising. Since reference to the purported vaso-constrictor implies shrinkage of hemorrhoids, its continued use would have the effect of negating the prohibition on claims of shrinkage and therefore must be disallowed. We have similarly specifically prohibited respondent from referring in its advertisements to the ingredient "benzocaine" which respondent uses to emphasize the purported pain-relieving qualities of its medication. As we noted above, reference to this term implies total elimination of all pain. In view of our findings and conclusions that M.P.O. will not relieve all pain, any use of this term would therefore be wholly false and misleading. We have found that respondent's product will at best only afford some temporary relief in some cases of pain associated with some types of hemorrhoids. If this temporary relief is due to benzocaine, it would be redundant to permit respondent to single this ingredient out for special mention in its advertisement in addition to making the permitted disclosure respecting temporary relief for some cases of pain and would serve only to confuse and mislead the reader or hearer. To the extent singling such an ingredient out for special emphasis conveyed an impression different from this disclosure, it would be false and misleading. Accordingly, we have prohibited use of this word. Furthermore, in view of the likelihood that reference to any single ingredient may convey the impression that such ingredient is of special importance

in the treatment or relief of hemorrhoids, we have provided that respondent may not refer to any other ingredient either singly or in combination unless each such ingredient is effective in the treatment or relief of hemorrhoids or any of its symptoms and unless the specific effect thereof is expressly and truthfully set forth.

Respondent lays great stress upon the purported ability of its product to offer greater relief from hemorrhoids and its symptoms than other hemorrhoidal preparations. For example, it claims that "M.P.O. *must* relieve pain faster and longer than the preparation which you are now using." These representations that M.P.O. is more effective than other hemorrhoidal preparations on the market contradict the terms of respondent's stipulation herein in which it has agreed that the effect of use of its product is not significantly different from the use of the preparation of American Home Products, one of the major producers of hemorrhoidal preparations. In our opinion there is no possible justification for permitting respondent to continue to represent that its products are more effective than those of other companies, which would include American Home Products, when it has conceded that such is not the case. Therefore, we have ordered respondent to cease from claiming that its product is more effective in the treatment or relief of hemorrhoids or its symptoms than other preparations sold for the treatment or relief of hemorrhoids. If respondent develops a preparation which is in fact more effective than one or more other preparations, it may petition the Commission for the modification of the order permitting an accurate comparison with such other preparation or preparations.

FINDINGS OF FACT, CONCLUSIONS AND ORDER

FINDINGS OF FACT

A. *Respondent and Its Product*

1. Respondent The Mentholatum 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 1360 Niagara Street in the city of Buffalo, State of New York (Complaint, Par. 1; Answer, Par. 1).

2. Respondent The Mentholatum Company is now, and for some time last past has been, engaged in the sale and distribution of a preparation offered for the treatment of piles or hemor-

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rhoids and coming within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act (Complaint, Par. 2; Answer, Par. 2).

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

Designation: "Mentholatum M.P.O." Medicated Pile Ointment.

Formula: The active ingredients for "Mentholatum M.P.O." Medicated Pile Ointment are as follows:

Benzocaine; Hexachlorophene; Ephedrine sulfate, lanolin, in an exclusive prescription-type base that is temperature-stable.

Directions: Apply freely night and morning and after each bowel movement. Use scientific applicator for internal hemorrhoids. Lubricate before use and thoroughly cleanse after. In case of bleeding, a physician should be consulted. Keep all medicine out of the reach of children.

(Complaint, Par. 2; Answer, Par. 2.)

4. Respondent The Mentholatum Company causes the said preparation, when sold, to be transported from its place of business located at 1360 Niagara Street, Buffalo, 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 (Complaint, Par. 3; Answer, Par. 3).

B. Stipulation Entered Into by Parties Hereto

5. The parties hereto entered into a Stipulation, filed on June 17, 1966, providing as follows:

1. The proceedings are herein submitted to the Commission for disposition on the basis of the record in the *American Home Products Corporation*, Docket No. 8641, and such other facts and records as provided for herein; and

2. IT IS FURTHER STIPULATED

(a) That the Advertising of The Mentholatum Company has no significantly different effect upon the reader than the effect of the advertisements in the *American Home Products* case.

(b) The effect of the use of Respondent's preparation is not significantly different from the use of the preparation of *American Home Products*.

3. Attached hereto is copy representative of Respondent's advertising claims for inclusion in the record.

4. To the extent that the Respondent's advertisements differ significantly to those in *American Home Products*, the Commission may, in its order dispos-

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ing of the proceedings, include appropriate provisions to take into consideration such differences.

5. The undersigned waive any further intervening procedures before the Hearing Examiner.

6. The Commission may, on the basis of the Stipulation, the attached advertisements and the record in American Home Products, issue such Order as it deems necessary to the Public interest.

7. The Commission is to issue its Order disposing of such proceeding concurrently with the Order setting forth its final decision in American Home Products.

8. The record on which the Commission is to make its disposition of such proceeding and for the purpose of judicial review is limited to the record at the time the Stipulation is filed, the Stipulation with the attached advertisements and the record in American Home Products.

Attached to this stipulation (hereinafter referred to as "Stip.") are copies of two advertisements.

C. Representations Made

6. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparation 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 in the District of Columbia, and in various States of the United States, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and has disseminated, and caused the dissemination of, advertisements concerning said preparation 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 (Complaint, Par. 4; Answer, Par. 4).

7. Among the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Famous Mentholum Laboratories have developed a modern, home therapy for hemorrhoids that can bring relief without surgery or injections. New M.P.O.—medicated pile ointment—starts relief from pain and itching in seconds. This soothing medication acts to shrink hemorrhoids and promote healing

RELIEF STARTS IN SECONDS—the instant you apply M.P.O. its anesthetic and vaso-constrictor start to work. This soothing, painless medication quickly relieves tormenting pain and stops the embarrassing itch.

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HELPS PROMOTE HEALING—M.P.O.'s exclusive temperature-stable ointment concentrates medication right on inflamed tissue—not beyond as suppositories sometimes do. Its Ephedrine Sulfate works quickly to reduce swelling and shrink piles.

New M.P.O. takes the fear out of hemorrhoid therapy. Don't suffer another day before you try Mentholatum M.P.O.—the painless medication that acts to shrink hemorrhoids without cutting or injections. Available without prescription at all drugstores.

HEMORRHOIDS?**MAKE THIS 3-DAY TEST!**

NEW M.P.O. MUST RELIEVE PAIN FASTER AND LONGER THAN THE PREPARATION YOU ARE NOW USING OR WE WILL GLADLY REFUND YOUR PURCHASE PRICE IN FULL.

If you seek more relief than you may now be getting, join the thousands of hemorrhoid (pile) sufferers now turning to new M.P.O. Developed by famous Mentholatum Laboratories, M.P.O. works in these five ways:

1. Helps ease pain faster. M.P.O. contains more medically accepted pain-relieving ingredients than the preparation you may now be using . . . to help reduce pain and discomfort.
2. Helps shrink swollen tissues. M.P.O. quickly releases the proven vasoconstrictor, Ephedrine Sulfate.
3. Helps relieve embarrassing itch. M.P.O.'s medication is homogenized for faster absorption, faster action.
4. Helps make relief last longer. M.P.O.'s more temperature-stable base holds medication in place for prolonged action.
5. Helps fight danger of infection. Proven germ-killer, Hexachlorophene, combats bacteria.

Test it yourself for the next three days. If not satisfied that M.P.O. helps you more than the preparation you're now using, return unused portion to the Mentholatum Co., Buffalo, N.Y., for refund. Available in stainless ointment or suppositories at drug counters.

You get more medically accepted pain-relieving ingredients, including Benzocaine, than the preparation you may now be using.

(Complaint, Par. 5; Answer, Par. 5; Stip. [attachments].)

D. Meaning of Respondent's Representations

8. In *American Home Products Corporation*, Docket 8641, we found that through the use of American Home Products Corporation's advertisements, said respondent has represented and is now representing, directly and by implication, that the use of Preparation H Ointment and Suppositories, and each of them, will:

- (a) Reduce or shrink hemorrhoids;¹
- (b) Avoid the need for surgery as a treatment for hemorrhoids;
- (c) Eliminate all itch due to or ascribed to hemorrhoids;

¹ The words "hemorrhoids" and "piles" are synonymous (See Finding 11, *infra*) and will be used interchangeably herein.

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- (d) Relieve all pain attributed to or caused by hemorrhoids;
- (e) Heal, cure or remove hemorrhoids, and cause hemorrhoids to cease to be a problem.

(*American Home Products Corporation*, Docket 8641, Finding of Fact 7.²)

9. Through the use of the advertisements set forth in paragraph 7 hereof, and others similar thereto not specifically set out therein, respondent has represented and is now representing, directly and by implication, that the use of Mentholatum M.P.O. Medicated Pile Ointment will:

- (a) Reduce or shrink hemorrhoids;
- (b) Avoid the need for surgery as a treatment for hemorrhoids;
- (c) Eliminate all itch due to or ascribed to hemorrhoids;
- (d) Relieve all pain attributed to or caused by hemorrhoids;
- (e) Heal, cure or remove hemorrhoids, and cause hemorrhoids to cease to be a problem.

(Stip., Par. 2(a).)

E. General Medical Facts Pertaining to Hemorrhoids and Their Treatment

10. "Hemorrhoids" are masses of dilated weak-walled veins located underneath the mucous membrane of the lower portions of the rectum and under the skin of the anal canal and the peri-anal area (A.H.P. Tr. 193, 255, 340, 413, 414, 478, 543, 606, 709, 817, 838, 867, 892).³

11. The terms "hemorrhoids" and "piles" are synonymous (A.H.P. Tr. 117, 193, 255, 340, 414, 478-479, 543, 607 and 709).

12. "Internal hemorrhoids" are hemorrhoids occurring above the pectinate line and are covered by mucosa. "External hemorrhoids" are hemorrhoids occurring below the pectinate line and are covered by skin (A.H.P. Tr. 193, 199, 232, 236, 255-257, 262, 342, 420, 421, 486, 548, 549, 608, 609, 817, 838, 867 and 892).

13. An "external thrombotic hemorrhoid" is a blood clot under the surface of the skin located in the immediate vicinity of the anal opening (A.H.P. Tr. 117). It is also referred to as an "anal hematoma" (A.H.P. Tr. 719) or a "perianal thrombosis" (A.H.P. Tr. 549).

14. A "prolapse" or "prolapsing hemorrhoid" is an internal

² The paragraphs of the Findings of Fact in *American Home Products* are hereinafter referred to as "A.H.P. —."

³ The references are to the transcript in *American Home Products*.

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hemorrhoid which, due to laxity of the rectum is enabled to fall outside the anal canal and protrudes to the surface (A.H.P. Tr. 199).

15. Hemorrhoids develop in a human being largely because of the fact that he stands in an upright position. In such a position a column of blood is formed from the splenic to the superior hemorrhoidal vein. The hemorrhoidal veins do not have valves to support the weight of this column of blood. The resulting pressure causes the hemorrhoidal veins to dilate (A.H.P. Tr. 594, 231). Hemorrhoids tend to be hereditary (A.H.P. Tr. 144, 231). Other factors leading to the development of hemorrhoids are abnormally long periods of standing, straining, difficulty with bowel movement, impacted stool, pregnancy and cirrhosis of the liver (A.H.P. Tr. 231-232, 144).

16. The most common symptom of internal hemorrhoids is bleeding (A.H.P. Tr. 256, 393, 479). The other principal symptom of internal hemorrhoids is prolapse (A.H.P. Tr. 256). Pain rarely occurs in internal hemorrhoids since the sympathetic nervous system which services the region above the pectinate line where hemorrhoids are located does not contain sensory nerve fibers (A.H.P. 266, 294, 342-343). Pain, however, may occur in infrequent cases of severe complicated internal hemorrhoids as the result of spasm or strangulation caused by prolapse or as the result of the involvement of tissues beyond the pectinate line (A.H.P. Tr. 342, 415, 631-632, 723).

17. The most common symptoms of external hemorrhoids are pain and swelling (A.H.P. Tr. 256, 742). Pain in external hemorrhoids is frequently caused by an external thrombotic hemorrhoid (A.H.P. Tr. 503). Other causes of pain in external hemorrhoids are inflammation, swelling and ulceration (A.H.P. Tr. 174, 267, 358, 519). Pain may also result from infection. However, this cause of pain is a relatively infrequent occurrence since the rectal and anal area is relatively highly resistant to infection (A.H.P. Tr. 520) and thus infection occurs very rarely as a symptom of hemorrhoids (A.H.P. Tr. 315).

18. Swelling, as distinguished from the dilation of the hemorrhoidal veins, may be a symptom of hemorrhoids as well as a possible cause of pain in external hemorrhoids. Swelling usually results either from a blood clot or thrombosis, which causes distension in the tissue overlying the hemorrhoid, or from edema, which is the accumulation of serous fluid in the interfibrillar spaces in such tissue (A.H.P. Tr. 144, 550).

19. Itching is not a common symptom of internal or external hemorrhoids (A.H.P. Tr. 129, 265, 618-619, 727). The itching thought to be caused by hemorrhoids is usually the result of some other condition such as fungus infection or idiopathic pruritis (A.H.P. Tr. 326, 502, 504, 347, 618-619, 727). The itching which is caused by hemorrhoids is usually the result of discharge from a prolapsed internal hemorrhoid (A.H.P. Tr. 318, 425, 618-619), or healing of an external hemorrhoid (A.H.P. Tr. 265, 502).

20. The symptoms of hemorrhoids can be confused with other conditions such as fissure, fistula, peri-anal or peri-rectal abscess, hypertrophic papillae, papillitis, cryptitis, polyps, proctitis, ulcerative colitis, pruritis ani and carcinoma (cancer). Any of these conditions can co-exist with hemorrhoids and it is not uncommon to find such a situation (A.H.P. Tr. 114-115, 196-197, 205, 259-260, 347-349, 483-484, 545-546, 612-613, 714-715).

21. The symptoms of hemorrhoids often disappear spontaneously within short periods of time, which may range from several days to two weeks (A.H.P. Tr. 119, 264, 324, 355, 361, 424, 875, 1613). However, the underlying pathology, namely, the vascular dilation, will persist unless corrected and will be subject to recurring episodes of symptoms (A.H.P. Tr. 516, 214).

22. Surgical removal is the only means by which hemorrhoids can be permanently cured (A.H.P. Tr. 118-119, 195, 200-202, 262-263, 352, 422, 487, 550, 554, 623, 719-723, 830). However, surgery does not effect a complete cure in every case (A.H.P. Tr. 150). Surgery may not be advisable or necessary in every case. Surgery may be contra-indicated in cases in which the patient's general medical condition is such that the danger of anesthesia and surgery outweigh the possible benefits to be derived (A.H.P. Tr. 226). Surgery is also not advisable for a simple, uncomplicated hemorrhoid (A.H.P. Tr. 169). Although hemorrhoids may be uncomfortable they are rarely a very serious medical problem, so that a patient, if he chooses to avoid surgery or should avoid it for medical reasons, can go through life without having his hemorrhoids removed (A.H.P. Tr. 135).

23. The symptoms of simple, uncomplicated, internal hemorrhoids of small size can frequently be ameliorated by injectional therapy. This consists of the injection of a sclerosing solution into the hemorrhoid itself which causes scar tissue to form which cuts off the blood vessel feeding the hemorrhoid (A.H.P. Tr. 145, 200, 262-263, 353). A further treatment which has been used within the last several years is the baron ligation method

whereby a ligature of rubber is placed around internal hemorrhoids as another means of cutting off blood circulation to the hemorrhoid (A.H.P. Tr. 200-201, 488).

24. In cases on which surgery, injectional therapy or the baron ligation method are not used, a so-called "conservative" course of treatment may be prescribed. The measures used in such a course of treatment include cleanliness, altering of the diet to eliminate irritative foodstuffs, control of the bowels to ensure a smooth, soft stool, warm baths, witch hazel, boric acid, local anesthetic, ointments, suppositories, avoidance of standing and manual reinsertion of prolapse (A.H.P. Tr. 120, 202, 306, 356-357, 684-686). Ointments and suppositories contain lubricants which may protect the anal and rectal canal against the passage of hard, dry stool. Such lubricants may also serve to relieve dryness and soften the skin as well as provide a psychological advantage; many people derive mental relief from the fact that some sort of treatment is applied (A.H.P. Tr. 203-204, 279, 313, 355, 358, 362-363, 525, 555, 557).

F. Conclusions re Effect of Mentholatum M.P.O. Medicated Pile Ointment

25. In *American Home Products* we reached the following conclusions with respect to the effect of Preparation H Ointment and Suppositories on hemorrhoids and its symptoms based on citations set forth below:

(a) Preparation H will not avoid the need for surgery where it is indicated, or heal, cure or remove hemorrhoids, or cause hemorrhoids to cease to be a problem (A.H.P. 25, 26, 28, 29; A.H.P. Initial Decision, p. 1602; conceded by respondent on appeal (A.H.P. 31)).

(b) Preparation H cannot reduce the size of hemorrhoidal veins (A.H.P. Tr. 128-129, 173-174, 212-213, 276, 369-370, 436-437, 500, 563-564, 629-630, 740, 1497, 1668) (A.H.P. 32).

(c) Preparation H may possibly, through the lubricants which it contains, temporarily protect inflamed surface areas from the passage of hard, dry stool and thereby have some effect upon edema or swelling in the tissue overlying hemorrhoids (A.H.P. Tr. 202, 1471, 1570, 1668. But cf. Tr. 128-129, 463, 684, 742-743). However, where swelling is due to thrombosis (A.H.P. Tr. 264), it will have no beneficial effect (A.H.P. Tr. 503) (A.H.P. 33).

(d) Preparation H may in some cases afford some temporary relief against some types of pain associated with hemorrhoids

(A.H.P. Tr. 131, 207, 279, 372-373, 439-440, 503, 566, 632-633, 744). Through the lubricants which it contains, this medication may protect inflamed surface areas against the passage of hard, dry stool and thereby temporarily relieve some pain caused by ulceration or from edema or swelling resulting from such inflammation (A.H.P. Tr. 174, 212-213, 358, 493, 525. But cf. Tr. 128-129, 463, 684, 742-743). Preparation H can, however, have no effect upon pain due to thrombosis (A.H.P. Tr. 295, 358, 503) or due to spasm or strangulation caused by prolapsing internal hemorrhoids (A.H.P. Tr. 631-632) (A.H.P. 34).

(e) Through the lubricants which it contains, Preparation H may possibly relieve dryness and surface irritation and thereby provide some temporary relief from some types of itching associated with hemorrhoids (A.H.P. Tr. 131, 215, 279-280, 373-374, 439-440, 503-504, 566, 633-634, 741) (A.H.P. 35).

(f) Except for the effects set forth in A.H.P. 33, 34, 35, as well as possible psychological effects (see A.H.P. 28), Preparation H will not have any beneficial effect in the treatment or relief of hemorrhoids or any of its symptoms (A.H.P. Tr. 131, 215, 279, 315-316, 372-373, 424, 439-440, 503-504, 566, 632-633, 682-683, 744; Answer, Par. 3) (A.H.P. 36).

26. We hereby enter findings with respect to the effect of Mentholum M.P.O. Medicated Pile Ointment on hemorrhoids and its symptoms and manifestations identical to the findings with respect to Preparation H set forth in paragraph 25 hereof (Stip., Par. 2(b); Answer, Par. 7).

CONCLUSIONS RE ALLEGATIONS IN COMPLAINT

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent.

2. Through the use of the advertisements set forth in paragraph 7 hereof and others similar thereto not specifically set out therein, respondent has represented and is now representing, directly and by implication, that the use of Mentholum M.P.O. Medicated Pile Ointment, will:

- (a) Reduce or shrink hemorrhoids;
- (b) Avoid the need for surgery as a treatment for hemorrhoids;
- (c) Eliminate all itch due to or ascribed to hemorrhoids;
- (d) Relieve all pain attributed to or caused by hemorrhoids;
- (e) Heal, cure or remove hemorrhoids, and cause hemorrhoids to cease to be a problem.

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3. Mentholatum M.P.O. Medicated Pile Ointment will not:

- (a) Reduce or shrink hemorrhoids;
- (b) Avoid the need for surgery as a treatment for hemorrhoids;
- (c) Heal, cure or remove hemorrhoids and cause hemorrhoids to cease to be a problem;
- (d) Eliminate all itch or pain due to or ascribed to hemorrhoids or afford any relief from pain or itching associated with hemorrhoids in excess of affording some temporary relief in some cases of pain and itching associated with some types of hemorrhoids; or
- (e) Afford any other type of relief or have any other therapeutic effect upon hemorrhoids or upon any of the symptoms or manifestations thereof.

4. Therefore, the advertisements referred to in paragraph 7 hereof 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; and the dissemination of said false advertisements constituted, and now constitutes, unfair and deceptive practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

ORDER

I. *It is ordered*, That respondent The Mentholatum Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act:

A. In connection with the offering for sale, sale or distribution of Mentholatum M.P.O. Medicated Pile Ointment or any other product offered for sale for the treatment or relief of hemorrhoids or piles or any of its symptoms which:

1. Represents directly or by implication that the use of such product will:

- (a) Reduce or shrink hemorrhoids or hemorrhoidal tissue or membranes or reduce or shrink swelling associated with hemorrhoids;
- (b) Avoid the need for surgery as a treatment for hemorrhoids or hemorrhoidal symptoms:

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- (c) Heal, cure, remove or clear up hemorrhoids;
- (d) Afford any relief from pain or itching attributed to or caused by hemorrhoids in excess of affording some temporary relief in some cases of pain and itching associated with some types of hemorrhoids;
- (e) Afford any other type of relief or have any other therapeutic effect upon the condition known as hemorrhoids or upon any of the symptoms or manifestations thereof.

2. Contains any reference (a) to the words "Ephedrine Sulphate," or to any word such as "vaso-constrictor" which implies that said product will shrink or reduce hemorrhoids; or (b) to the word "benzocaine" or to any other word such as "anesthetic" which implies that said product will provide relief from pain or itching associated with hemorrhoids in excess of affording some temporary relief in some cases of pain and itching associated with some types of hemorrhoids.

3. Contains any reference to any other ingredient either singly or in combination unless each such ingredient is effective in the treatment or relief of hemorrhoids or any of its symptoms and unless the specific effect thereof is expressly and truthfully set forth.

4. Makes any claim that said product is more effective in the treatment or relief of hemorrhoids or any of its symptoms than other preparations sold for the treatment or relief of hemorrhoids.

B. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondent's preparation or preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph I(A) hereof.

II. In the event that respondent at any time in the future markets any preparation for the treatment or relief of hemorrhoids or any of its symptoms for which it desires to make any of the representations now prohibited under Paragraph I(A) of this order, it may petition the Commission for a modification of the order. Such petition shall be accompanied by a showing that the representation is not false or misleading within the meaning of

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the Federal Trade Commission Act, and, if such has been the case, that the specific representation has been approved by the Secretary of the Department of Health, Education and Welfare under the provisions of the Federal Food, Drug and Cosmetic Act as it is presently constituted or as it may hereafter be amended.

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 to cease and desist.

FINAL ORDER

The parties having entered into a stipulation filed on June 17, 1966, providing, *inter alia*, that: the case was submitted to the Commission on the record in Docket 8641, *American Home Products Corporation* [p. 1524 herein] and such other facts and records as provided for in said stipulation; that the advertisements in the case had no significantly different effect upon the reader from the effect of the advertisements in *American Home Products*; that the effect of the use of respondent's preparation is not significantly different from the use of American Home Products' preparation; that to the extent that respondent's advertisements differ significantly from those in *American Home Products*, the Commission may, in its order disposing of this proceeding, include appropriate provisions to take into consideration such differences; that respondent waives any intervening steps before the hearing examiner; that the Commission may, on the basis of this stipulation, the advertisements attached thereto and the record in *American Home Products*, issue such order as it deems necessary in the public interest and that the record on which the Commission is to make its disposition of this proceeding is limited to the record at the time this stipulation is filed; and the Commission having rendered its decision and issued its Opinion herein;

Now therefore, on the basis of said stipulation and attachments, the pleadings herein and the record in Docket 8641, *American Home Products Corporation* [p. 1624 herein], it is hereby

Ordered, That the attached Findings of Fact, Conclusions and Order be and they hereby are entered and issued by the Commission in final disposition of this proceeding.

Complaint

IN THE MATTER OF

TITUS PACIFIC CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS
LABELING ACTS

Docket C-1150. Complaint, Dec. 16, 1966—Decision, Dec. 16, 1966

Consent order requiring a San Francisco, Calif., importer and wholesaler of wool products, including wool blankets, to cease misrepresenting the fiber content of its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Titus Pacific Corporation, a corporation, and Lothar Steinberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Titus Pacific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

Individual respondent Lothar Steinberg is an officer of said corporate respondent and participants in the formulation, direction and control of the acts, policies and practices of said corporation, including the acts and practices hereinafter referred to.

Respondents are importers and wholesalers of wool products with their office and principal place of business located at 9 First Street, San Francisco, California.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a) (1) of the Wool Products