ORDER DENYING PETITION TO MODIFY DECISION AND ORDER

This matter is before the Commission upon respondents' petition to modify decision and order, filed September 6, 1968, and complaint counsel's answer in opposition thereto, filed October 4, 1968.

Pursuant to the terms of a consent agreement, the Commission, on February 19, 1964 [64 F.T.C. 892], issued an order to cease and desist in this matter, dealing with false and misleading advertising by petitioners of their paint and coating products.[1] Subsequent to a compliance investigation resulting in a finding that petitioners have violated the terms of the order to cease and desist, the matter was certified to the Attorney General of the United States on July 12, 1967, for the purpose of requesting the recovery of civil penalties from petitioners. On May 9, 1968, the United States Attorney for the District of New Jersey filed a complaint against defendants (petitioners herein) in the United States District Court for the District of New Jersey, among others to recover civil penalties for violations of the Commission's cease and desist order. Defendants (petitioners) obtained an adjournment of the penalty proceeding until November 18 for the reason that defendants (petitioners) had filed this Petition to Modify Decision and Order presently before the Commission.

Petitioners did not file their petition for modification with the Commission until almost a full four months after the complaint in the civil penalty proceeding for violation of the order had been filed. Furthermore, petitioners had every opportunity between May 9, 1964, the date the cease and desist order became effective, and May 9, 1968, the date the complaint in the civil penalty proceeding was filed, during which to petition the Commission for modification of the order. Coming at the present time, the petition for modification is inopportune and does not present an adequate showing on the merits. For those reasons it will be denied. The correct time to file such a petition is before the Commission has asked the Attorney General to seek the recovery of civil penalties and not four months after the complaint in such a proceeding has been filed.

Furthermore, although it is not necessary to deal with this question at this time, it is pointed out that § 3.72(b)(2) of the Commission's Rules of Practice provides that the modification of an order to cease and desist requires either changed conditions of fact or law or that the requested modification be in the public interest. A review of the exhibits attached to the petition persuades us that neither of these requirements has been met. The information contained in these exhibits is substantially the same as, and does not add anything to, the information before the Com-

[1] On June 13, 1962, petitioners submitted a letter of discontinuance involving the same practices, the terms of which petitioners failed to adhere to.

mission at the time it determined to issue its decision and order. Accordingly,

It is ordered, That respondents' petition to modify the decision and order be, and it hereby is, denied.

AVON PUBLICATIONS, INC., ET AL.

Docket 6911. Order, Oct. 28, 1968

Order reopening proceedings for purpose of determining whether The Hearst Corporation is successor to respondents in this case.

The Commission on August 17, 1967, having issued its order to show cause why its order to cease and desist dated October 21, 1958 [55 F.T.C. 619], should not be reopened and modified, and having caused said show cause order to be served upon The Hearst Corporation, and

The Hearst Corporation by its counsel on September 27, 1967, having filed its special answer moving that such service be set aside as invalid on the ground that movant is not a respondent in nor a party to the proceeding, and counsel for the Commission on December 15, 1967, having filed their Motion to Vacate Show Cause Order, and

The Commission being informed by the pleadings that all of the assets of the corporate respondents were acquired and operated by movant Hearst and being of the opinion that the record is insufficient to support any conclusion as to whether said movant is the successor to respondents, and

It therefore appearing that the pleadings raise a substantial factual issue requiring hearings for the receipt of evidence in support of and in opposition to that issue, pursuant to § 3.72(b)(3) of the Commission's Rules of Practice for Adjudicative Proceedings,

It is ordered, That said proceedings be, and they hereby are, reopened and this matter be assigned to a hearing examiner for the receipt of such testimony and evidence as may be offered in support of and in opposition to the factual issue as to whether The Hearst Corporation is the successor to any of the corporate respondents in these proceedings.

Commissioner MacIntyre abstained from this action of the Commission but without prejudice to his participation in future actions and decisions of the Commission regarding this matter.

THE J. B. WILLIAMS COMPANY, INC., ET AL.

Docket 8547. Order, Oct. 28, 1968

Order directing a public hearing on the question whether the advertising of "Geritol" by respondents is violating the cease and desist order.

ORDER DIRECTING PUBLIC HEARING CONCERNING COMPLIANCE WITH ORDER TO CEASE AND DESIST

Respondents, J. B. Williams Company, Inc., and Parkson Advertising Agency, Inc., have filed a report purporting to show their compliance with the order to cease and desist entered in Docket No. 8547 [68 F.T.C. 481]. A review of that report indicates that advertising for the product Geritol, principally television commercials, prepared by respondents and shown or published since the cease and desist order became final, may not comply with the order. In particular, such review raises the question whether in such commercials the affirmative disclosures required by the Commission's order have been obscured and their purpose thwarted, and whether the overall impression created by respondents' advertising continues to be the false and misleading one that Geritol is a remedy for tiredness in more than a small minority of persons, that relief will be experienced in a very short time, and that tiredness is a generally reliable indication of iron deficiency or iron deficiency anemia. Compliance with the Commission's order requires that respondents' advertising not mislead the viewer or reader; in essence, if Geritol is advertised as a remedy for tiredness, the overall impact of the advertisement must be to convey to the consumer accurately, succinctly, and unequivocally the facts that tiredness is not a reliable symptom of iron deficiency or iron deficiency anemia, that even if he is tired his tiredness is probably not attributable to iron deficiency or iron deficiency anemia, and that Geritol will probably not help or be of any value to him.

The Commission, having reviewed the report of compliance and having tentatively concluded therefrom that respondents may not be acting in compliance with the order entered in Docket No. 8547 [68 F.T.C. 481], believes that it should resolve this matter by viewing and considering in a hearing the television commercials in question. Accordingly,

It is ordered, That respondents deliver to the Secretary of the Commission, as soon as practicable, the films of all advertisements shown on local or national television since the effective date of the final order to cease and desist; and

It is further ordered, That a public hearing be held at 10 a.m.

on November 7, 1968, in Room 532, Federal Trade Commission Building, Washington, D.C., at which time the television commercials will be viewed by the Commission in the presence of respondents' counsel and their chief executive officers. Immediately thereafter, the Commission will hear argument directed to the question whether respondents, by disseminating any of such commercials, have violated the order to cease and desist.

KOPPERS COMPANY, INC.