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It is further ordered, That respondent within sixty (60) days after the issuance 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.

IN THE MATTER OF
CHEMWAY CORPORATION

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

Docket C-1945. Complaint, June 14, 1971—Decision, June 14, 1971

Consent order requiring a Wayne, N.J., manufacturer of toothbrushes to cease misrepresenting that any of its toothbrushes will prevent infectious diseases of the oral cavity and using any chemical substance on its brushes unless it can adequately demonstrate that no harm to the user is involved.

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 Chemway Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that 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 Chemway 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 Fairfield Road in the city of Wayne, State of New Jersey.

PAR. 2. Respondent Chemway Corporation is now and for some time last past has been engaged in the sale and distribution of Dr. West's "Germ Fighter" toothbrush.

PAR. 3. Respondent Chemway Corporation causes said product, when sold, to be transported from its place of business located in the

State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintains a course of trade in said product 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 business and for the purpose of inducing the purchase of Dr. West's "Germ Fighter" toothbrush, respondent has advertised said Dr. West's "Germ Fighter" toothbrush by means of TV broadcasts transmitted by stations located in the District of Columbia, and in various States of the United States having sufficient power to carry such broadcasts across State lines, in which certain representations were made with respect to Dr. West's "Germ Fighter" toothbrush, for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of such product.

PAR. 5. Among and typical of the representations contained in said advertising is the following:

Citizens, throw away your toothbrushes. They're crawling with germs, things like Staphylococcus Aureus and Streptococcus Pyogenes. As soon as you crack a toothbrush out of its plastic case, the collection starts. And by the time you brush a few times there may be millions of germs * * * Buy the Germ Fighter toothbrush by Dr. West's. It's treated with a compound that inhibits the growth of germs at least four months.

PAR. 6. Through the use of said advertisements and others similar in nature, but not specifically set out herein, respondent has represented, and does now represent, directly or by implication, that the antibacterial property of the Dr. West's "Germ Fighter" toothbrush is of medical significance in the mitigation or prevention of infectious diseases of the oral cavity.

PAR. 7. In truth and in fact, the antibacterial property of Dr. West's Germ Fighter toothbrush is of no medical significance in killing germs likely to cause infectious diseases of the oral cavity, and use of such product has no significant effect in the mitigation or prevention of infectious diseases of the oral cavity.

Therefore, the advertisements referred to in Paragraphs Four and Five above were and are false, misleading and deceptive.

PAR. 8. The nylon bristles and handle of the Dr. West's "Germ Fighter" toothbrush have been treated with a solution of phenylmercuric acetate, which may be leached off and ingested during normal brushing. The placing of such product on the market which has little or no recognized therapeutic benefit and which may constitute a

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danger to the consumer by adding to the body's burden of mercury is an unfair trade practice.

PAR. 9. Respondent at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of toothbrushes of the same general kind and nature as that sold by respondent.

PAR. 10. The use by respondent of the aforesaid advertisements and the false, misleading and deceptive representations used in connection therewith has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a pe-

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riod of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent Chemway 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 Fairfield Road, Wayne, New Jersey.

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

ORDER

I

It is ordered, That Chemway Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Dr. West's Germ Fighter toothbrush, or any other dental product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product is effective in the mitigation or prevention of infectious diseases of the oral cavity.

2. Incorporating phenylmercuric acetate or any other chemical substance onto any such product or selling any such product containing any such substance unless respondent can show through adequate and well-controlled studies that use of the product in the ordinary and intended manner does not constitute a danger to the user.

II

It is further ordered, That respondent, Chemway Corporation, instruct each of its direct customers that they have an opportunity to return their stock of Dr. West's Germfighter toothbrushes in exchange for an equal number of untreated brushes.

III

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate

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respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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