

the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Chairman Kirkpatrick not participating.

IN THE MATTER OF
CENCOR, INC., ET AL.

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

Docket C-2265. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring, among other things, a Kansas City, Mo., company engaged in advertising and selling personal income tax preparation services to cease failing to disclose conditions of its guarantees, misrepresenting that it will reimburse customers for all payments they may be required to make over their initial tax payment, failing to disclose that respondent will not assume liability for additional taxes levied against the taxpayer, misrepresenting that legal representation will be provided to customers whose tax returns are audited, misrepresenting the magnitude or frequency of refunds received by its customers, and misrepresenting that respondent's personnel are tax experts. Respondent is further required to deliver a copy of the order and a returnable form of intention to each of its franchisees.

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 CenCor, Inc., and CenCor Services, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing

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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 CenCor, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1003 Walnut Street, in the city of Kansas City, State of Missouri.

Respondent CenCor Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1003 Walnut Street, in the city of Kansas City, State of Missouri.

PAR. 2. Respondent CenCor Services, Inc., is now, and for some time last past has been, engaged in the advertising, offering for sale and sale of personnel income tax preparation services.

Respondent CenCor Services, Inc., is a wholly-owned subsidiary of, and is managed, directed and controlled by, respondent CenCor, Inc.

Respondents sell their aforesaid products and services directly and through various corporate subsidiaries, affiliates, and franchisees hereinafter referred to for convenience as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other commercial paper and printed materials in connection with said income tax preparation services, to be sent by United States mail from respondents' place of business in the State of Missouri to their local offices and franchises and purchasers of respondents' products and services located in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondents and their representatives have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. For the purpose of disseminating such advertisements, respondents and their representatives have employed television and radio commercial broadcasts, newspaper and periodical insertions, direct mail literature and point of sale promotional materials.

Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

1. Radio and Television:

Personal attention is more important than ever * * * Attention that you will get from the well-trained, friendly people at CenCor. And CenCor guarantees that they'll go with you in case of a government audit and pay any penalties resulting from an error they may make.

With all the changes in tax forms and regulations, you need the personal attention of CenCor's well trained staff * * * and the assurance of the CenCor guarantee.

At CenCor, they check and recheck every return they prepare * * * yes, CenCor takes-the-time to do your return right and for as little as \$5 and up. CenCor's accuracy assures that you'll get every allowable deduction and that you'll pay no more than you should.

Jack Linkletter for CenCor, the Income Tax Service that takes-the-time to assure accuracy * * * last year 60% of CenCor's customers got refunds.

2. Newspaper and direct Mail.

CenCor has the knowledge of all changes in tax forms and regulations—CenCor will accompany you in case of audit

CENCOR GUARANTEE

If we make any errors in the preparation of your return that result in any penalty or interest, we will pay that penalty or interest.

CENCOR TAX SERVICE

"Where accuracy is Guaranteed"

CENCOR INCOME TAX takes the time

Last year OVER 60% of CENCOR's customers received refunds. Where you have your income tax prepared *does* make a difference.

CenCor accuracy means you get every allowable deduction and pay no more than you should.

100% Guaranteed Accuracy by our Experienced staff.

Our guarantee of accuracy, up-to-date knowledge of the latest changes in all Federal and State forms and regulations, plus our assistance in the event your return is selected for an audit, provides you with the finest personal Income Tax Service available.

Our guarantee of accuracy is your assurance of the best work. If we should make an error in the preparation of your return, CenCor will pay any resulting penalty or interest and will accompany you in the event of an audit.

Last year over 60% of CenCor's Tax Service customers received a refund and this year, with all of the complex changes, it is even more important that you seek professional help. All of our well-trained tax people are courteous professionals.

Just one of the many advantages is that from NOW UNTIL APRIL 1ST, CENCOR WILL PREPARE YOUR TAX RETURNS *Right in your own Home*. All it takes is a telephone call to your Century Finance office or to the nearest CenCor Tax office, and a specially-trained tax expert will be on his way to see you.

With all these changes, you will want more than ever, the security of CenCor's Guarantee of Accuracy and our special year around service at no extra cost,

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this includes preparation and revision of estimates and our offer to appear with you at Internal Revenue Service in the event your return is selected for an audit. Over 60% of CenCor's tax clients received tax refunds last year.

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents and their representatives have represented, and are now representing, directly or by implication, that:

1. Respondents will reimburse the taxpayer for any payments the taxpayer may be required to make in addition to his initial tax payment, if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. If the customers' tax return is audited, respondents and their representatives will provide representation, without charge, by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service.

3. The percentage of respondents' tax preparation customers who receive refunds is demonstrably greater than the percentage of the tax paying public at large who receive refunds.

4. Respondents' and their representatives' tax preparation personnel are tax experts or professionals or unusually competent in the preparation of tax returns and the rendering of tax advice.

PAR. 7. In truth and in fact:

1. Respondent and their representatives do not reimburse the taxpayer for all payments he is required to make in addition to his initial tax payment if such additional payments result from an error made by respondents and their representatives in the preparation of the tax return.

2. Respondents and its representatives do not provide representation by persons qualified and certified by, and enrolled to practice before, the Internal Revenue Service to their customers, in instances where the customer's tax return is audited.

3. The percentage of respondents' tax preparation customers who receive refunds is not demonstrably greater than the percentage of the taxpaying public at large who receive refunds.

4. Respondents' and their representatives' tax preparing personnel are not tax experts or professionals or unusually competent in the preparation of tax returns and the rendering of tax advice.

Therefore, the statements and representations set forth in Paragraphs Five and Six hereof were, and are, false, misleading and deceptive.

PAR. 10. In the course of conduct of their business, and at all times mentioned herein, respondents and their representatives have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 11. The use by respondents and their representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' and their representatives' income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents and their representatives as herein alleged were and are all to the prejudice and injury of the public and of respondents' and their representatives' 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 respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the

procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent CenCor, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1003 Walnut Street, city of Kansas City, State of Missouri.

Respondent CenCor Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1003 Walnut Street, city of Kansas City, State of Missouri.

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

ORDER

It is ordered, That respondents CenCor, Inc., and CenCor Services, Inc., corporations, and their officers, and respondents' agents, representatives, employees and successors and assigns directly or through any corporate or other device, or through their franchisees or any other person, partnership or corporation authorized by respondents to engage in the commercial preparation of income tax returns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondents will reimburse their customers for all payments the customer may be required to make in addition to his initial tax payment, in instances where such additional payments result from an error by respondents in the preparation of the tax return; *Provided, however*, nothing herein shall prevent truthful representations that respondents will reimburse their customers for interest or penalty payments resulting from respondents' errors.

3. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not assume the liability for additional taxes assessed against the taxpayer.

4. Representing, directly or by implication, that respondent will provide legal representation to customers whose tax returns are audited; or misrepresenting, in any manner, the type or manner of assistance provided by respondent to customers whose returns may be audited.

5. Representing, directly or by implication, that the percentage of respondents' customers who receive tax refunds is demonstrably greater than the percentage of the tax paying public at large who receive refunds; or misrepresenting, in any manner, the magnitude or frequency of refunds received by respondents' tax preparation customers.

6. Representing, directly or by implication, that respondents' tax preparation personnel are tax experts or professionals or unusually competent in the preparation of tax returns and the rendering of tax advice; or misrepresenting, in any manner, the competence or ability of respondents' tax preparation personnel.

It is further ordered, That:

(a) respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees and any other persons, partnerships or corporations authorized by the respondents to engage in the commercial preparation of income tax returns.

(b) respondents provide each person so described in Paragraph (a) above with a form returnable to the respondents clearly stating his intention to be bound by and to conform his business practices to the requirements of this order;

(c) respondents inform each person so described in Paragraph (a) above that the respondents shall not authorize, grant a franchise to, or continue the authorization or franchise of, any third party to engage in the commercial preparation of income tax returns, unless such third party agrees to and does file notice with the respondents that it will be bound by the provisions contained in this order;

(d) if such third party will not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not authorize, grant a franchise to, or continue the authorization or franchise of, such third party to engage in the commercial preparation of income tax returns;

(e) respondents inform the persons described in Paragraph (a) above that the respondents are obligated by this order to discontinue the authorization, or terminate the franchise, of persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each said person described in Paragraph (a) above conform to the requirements of this order; and that

(g) respondents discontinue the authorization or franchise of persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own the deceptive acts or practices prohibited by this order.

It is further ordered, That the respondents herein shall, prior to January 15, 1973, send a letter to the last known address of each of its customers and the customers of its franchisees for the most recent past year, clearly and accurately explaining (1) the terms, conditions and limitations of respondent's policy regarding its responsibility for, or obligation resulting from errors attributable to respondent in the preparation of tax returns; and, (2) the type or manner of assistance provided by respondent to customers whose returns may be audited.

It is further ordered, That respondents herein shall notify the Commission at least 30 days prior to any proposed change in the structure of the corporate respondents 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 respondent corporation which may affect compliance obligations arising out of this order.

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

It is further ordered, That the respondents herein shall within 60 days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

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

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

Docket C-2266. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring a New York City seller and distributor of a stimulant type product, and its advertising agencies, among other things, to cease disseminating any advertisement which represents the use of any such products will solve an individual's sexual, marital, or personality problems; advertising as a stimulant, any product which contains caffeine unless the caffeine

content is expressed in terms of the number of average cups of ordinary coffee, clearly and conspicuously, in immediate conjunction with a statement of active ingredients; representing any non-prescription drug as new when such product has been distributed for six months or more.

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 J. B. Williams Company, Inc., a corporation, Della Femina, Travisano & Partners, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, 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. Respondent the J. B. Williams Company, 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 767 Fifth Avenue in the city of New York, State of New York.

Respondent Della Femina, Travisano & Partners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 625 Madison Avenue in the city of New York, State of New York.

Respondent Parkson Advertising Agency, 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 767 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent the J. B. Williams Company, Inc., is now, and for some time last past has been engaged in the sale and distribution of a stimulant type product designated "Vivarin" which falls within the classification of "drug," as said term is defined in the Federal Trade Commission Act. Each tablet of said product consists of 200 mg of caffeine alkaloid and 150 mg of dextrose in a base containing various excipients. The dosage recommended on the product package is 1 tablet every 4 hours as needed.

Respondent Della Femina, Travisano & Partners, Inc., was the advertising agency of the J. B. Williams Company, Inc., that prepared and created the print advertisement referred to herein to promote the sale of the said "Vivarin."

Respondent Parkson Advertising Agency, Inc., is now and for some time last past has been the advertising agency of the J. B. Williams Company, Inc., and now and for some time last past has prepared the television commercials, and placed for publication, and caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said "Vivarin."

PAR. 3. Respondent the J. B. Williams Company, Inc., causes the said product when sold, to be transported from its place of business in one State of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent the J. B. Williams Company, Inc., maintains, and at all times mentioned herein has maintained, 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 their said businesses, respondents the J. B. Williams Company, Inc., and Parkson Advertising Agency, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning the said "Vivarin" 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 magazines and other advertising media, and by means of television broadcasts transmitted by television 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 product; and have disseminated, and caused the dissemination of, advertisements concerning said product 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 product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the advertisements and the statements and representations set forth therein, disseminated as aforesaid, but not all inclusive thereof, are the following:

A. In print advertisements:

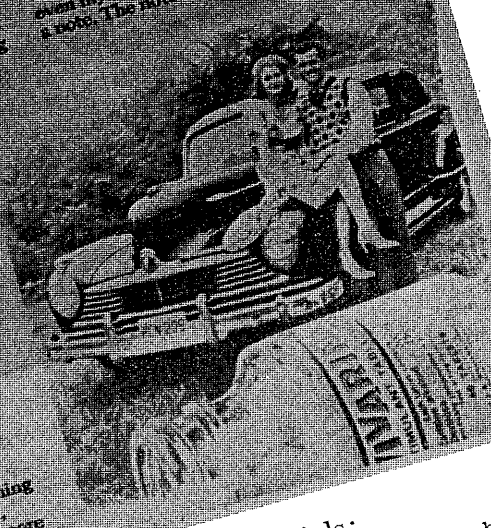
"One day it dawned on me that I was boring my husband to death."

When you're married as long as I am, you can reach a point where you start taking your husband for granted. Good old dependable Jim I used to rely on, and I guess that's how he was beginning to think of me, too. Good old dependable Barbara. It was horrible.

One day it dawned on me that I was boring my husband to death. It was true. It was true to admit it—but it was true. I wasn't that I didn't love Jim, but often by the time he came home at night I was feeling dull, tired and drowsy. And so Jim would look at television and, for the most part, act like I wasn't even there. And I wasn't like I wasn't even there.

I decided that I had to do something. I had seen an advertisement for a tablet called Vivarin. It said that Vivarin was a non-habit forming stimulant tablet that would give me a quick lift. Last week there were a couple of evenings when I felt that I needed Vivarin. So, on those days, I took a Vivarin tablet at 5:00 p.m., just about an hour before Jim came home, and I found time to pretty up a little, too. It worked.

All of a sudden Jim was coming home to a more exciting woman. We talk to each other a lot more than we have in years—like we used to when we first were married and we'd take long rides in the old car just to be together and talk. And after dinner I was wide awake enough to do a little bit more than just look at television. And the other day—it wasn't even my birthday—Jim sent me flowers with a note. The note began: "To my new wife..."



B. In the audio portion of television commercials:

1. When you begin to tire out and you're feeling pooped try the brand new stimulant—Vivarin! Vivarin is new and effective too. Yet it's gentle to your system. What a lift for you! When you face so many of those tiresome chores. When you've had too much of a job outdoors. If at times you feel YU-U-UK. Here's the stimulant to know. Give yourself a lift with new Vivarin. Vivarin.
2. When you feel tired—even after a normal night's sleep—do you ever wonder if there's a good way—a quick way to get a safe lift? Yes there is. This advertisement in Reader's Digest tells you all about it. Vivarin taken as directed. Vivarin contains one of the most effective, safe stimulants known. And Vivarin is gentle to your system. So, when you begin to feel tired! And want to feel brighter, take Vivarin. It gives you a quick lift, taken as directed. And it is safe!

PAR. 6. Through the use of said advertisements, and others similar thereto, not specifically set out herein, disseminated as aforesaid, respondents have represented directly or by implication that the use of

"Vivarin" will make one more exciting and attractive, improve one's personality, marriage and sex life, and will solve marital and other personal problems.

PAR. 7. In truth and in fact, the use of Vivarin will not make one more exciting and attractive, improve one's personality, marriage and sex life, and will not solve marital and other personal problems. The active stimulative ingredient of Vivarin is caffeine which acts as a stimulant on the central nervous system, the same effect produced by drinking coffee, also a caffeine product.

Furthermore, in said advertisements and others similar thereto respondents have failed to disclose the material fact that the primary active ingredient contained in "Vivarin" is caffeine, the amount of which contained therein is approximately equivalent to that amount of caffeine contained in two average cups of ordinary coffee.

Therefore, the advertisements referred to in Paragraph Five hereof were, and are, false and misleading in material respects and constituted and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations set forth in Paragraphs Five and Six hereof were, and are false, misleading and deceptive.

PAR. 8. Further, certain of said advertisements describe Vivarin as "new" and/or "brand new." The use of the terms "new" and/or "brand new" to describe a stimulant product containing as its stimulative ingredient caffeine, an ingredient previously widely available in many forms, including tablet form and such familiar beverages as coffee, was and is false, misleading and deceptive.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices, and the dissemination of the aforesaid "false advertisements" by respondents the J. B. Williams Company, Inc., and Parkson Advertising Agency has had, and now has, the capacity and tendency to mislead members of the consuming public into erroneous and mistaken beliefs about the nature and effectiveness of said products and that said statements and representations were, and are true, and into the purchase of substantial quantities of the product of respondent the J. B. Williams Company, Inc., by reason of said erroneous and mistaken beliefs.

PAR. 10. The aforesaid acts and practices of respondents, including the dissemination of "false advertisements" by respondents the J. B. Williams Company, Inc., and Parkson Advertising Agency, Inc., as herein alleged, were, and are, all to the prejudice and injury of the public and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent the J. B. Williams Company, 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 767 Fifth Avenue in the city of New York, State of New York.

Respondent Della Femina, Travisano & Partners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 625 Madison Avenue in the city of New York, State of New York.

Respondent Parkson Advertising Agency, 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 767 Fifth Avenue in the city of New York, State of New York.

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

ORDER

I

It is ordered, That respondents, the J. B. Williams Company, Inc., a corporation, Della Femina, Travisano & Partners, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, their successors and assigns and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the product designated "Vivarin" or any other stimulant drug product or any calimative drug product, including sleep-inducers, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that:

(a) The use of any such product will solve an individual's marital, sexual or personality problems.

(b) The use of any such product will improve an individual's personality or make it more exciting or will improve an individual's physical appearance, marriage or sex life.

Provided however, That in advertisements of sleep inducers this paragraph shall not prohibit representations that, by providing the user with a good night's sleep, such products can help the user to feel rested and look better. This paragraph shall not preclude the Commission from challenging these representations as unlawful in a future proceeding under Section 5(b) of the Federal Trade Commission Act.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 above.

II

It is further ordered, That respondents, the J. B. Williams Company, Inc., a corporation, Della Femina, Travisano & Partners, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, their successors and assigns and respondents' officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from:

1. Advertising, as a stimulant, "Vivarin" or any other drug product which contains caffeine unless the caffeine content, ex-

pressed in terms of the number of average size cups of ordinary coffee, is clearly and conspicuously disclosed with a statement in immediate conjunction therewith that caffeine is the primary active ingredient, or one of the primary active ingredients if such product contains more than one active ingredient.

2. 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, which contains statements which are inconsistent with, negate or contradict the affirmative disclosure required by Paragraph 1 above, or which in any way obscures the meaning of such disclosure.

III

It is further ordered, That respondents, the J. B. Williams Company, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, their successors and assigns and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing, directly or by implication, that any non-prescription drug product is new, has new ingredients or is new in its therapeutic effectiveness when such product has been distributed for six months or more or when it is substantially similar in composition and therapeutic effectiveness to another product advertised for the same therapeutic effect which has been distributed for at least six months. (For the purpose of this provision "distributed" shall not include distribution in areas representing not more than 15% of the population.)

Provided however, Respondents may represent that any such product has not been previously sold, advertised or manufactured by respondent the J. B. Williams Company, Inc., if such is the case.

IV

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

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

Complaint

81 F.T.C.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, each file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

BATTLE CREEK DEVELOPMENT CO., ET AL.

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

Docket C-2267. Complaint, Aug. 3, 1972—Decision, Aug. 3, 1972.

Consent order requiring a St. Paul, Minnesota, company of operating a number of retail jewelry stores to cease, among other things, using the words "Sale" or "... Surplus Stock Sale" unless the price of such merchandise being offered for sale constitutes a significant reduction in price; misrepresenting the usual or regular selling price of respondent's merchandise; misrepresenting the amount of savings available to purchasers; representing respondent's credit terms are lenient and that credit is available regardless of ability to pay or legal age status; representing that products contain or are made or composed, in whole or in part, of a gold quantity, weight, or fineness not actually used or contained therein; and representing that any article of merchandise is guaranteed, without disclosing the nature, conditions and extent of said guarantee.

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 Battle Creek Development Co., a corporation, and Cortland J. Silver and James B. Seaton, individually and as officers of said corporation, 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. Battle Creek Development Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 748 South Mississippi Boulevard, St. Paul, Minnesota.

Respondents Cortland J. Silver and James B. Seaton are officers of said corporation. Respondent Cortland J. Silver now and for some time last past controls and respondent James B. Seaton for some time