

IN THE MATTER OF
BENTON & BOWLES, INC.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2403. Complaint, May 22, 1973—Decision, May 22, 1973.

Consent order requiring a New York City advertising agency, among other things to cease misrepresenting the medicinal or therapeutic qualities of a non-prescription internal analgesic product, "Vanquish," and misrepresenting certain scientific facts with regard to the product in advertising.

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 Benton & Bowles, Inc., a corporation, 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. For purposes of this complaint the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act.
2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act.

PAR. 2. Respondent Benton & Bowles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal

place of business located at 909 Third Avenue, in the city of New York, State of New York.

PAR. 3. Respondent Benton & Bowles, Inc., for all times relevant to this complaint has been an advertising agency of Sterling Drug Inc., and for all times relevant to this complaint, has prepared and placed for publication advertising material, including but not limited to the advertising referred to herein, to promote the sale of "Vanquish," a non-prescription internal analgesic preparation, manufactured by Sterling Drug Inc., which comes within the classification of a drug as the term "drug" is defined in the Federal Trade Commission Act.

PAR. 4. The designation, directions for use and active ingredients for Vanquish are as follows:

Active Ingredients:

Aspirin

Caffeine

Acetaminophen

Magnesium Hydroxide

Aluminum Hydroxide (Dried Gel)

Dosage: 2 caplets with water. Can be repeated every 4 hours if needed, up to 12 caplets per day.

PAR. 5. In the course and conduct of its business, respondent Benton & Bowles, Inc., has disseminated, and caused the dissemination of, certain advertisements concerning the said drug by the United States mails and by various means in commerce, including but not limited to, advertisements inserted in magazines, 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 drugs and have disseminated, and caused the dissemination of, advertisements concerning said drugs by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said drugs in commerce.

PAR. 6. Typical of the statements and representations made in the advertisements, but not all inclusive thereof, are the following:

A. (3 tablets are shown with 1 caplet of Vanquish)

For your headache pain, here are your major choices. This leading extra strength product has no buffers. This leading buffered product has no extra strength. This leading pain reliever has strength but no buffers. Of all the

leading pain relievers you can buy, only Vanquish gives you extra strength and gentle buffers. Vanquish. The choice.

B. When you get a headache we think you should take Vanquish. And we'll show you why in a head to head comparison. This is Vanquish. It gives you extra strength and gentle buffers. And its the only leading pain reliever that does. This is a leading extra strength product. It has no buffers. And there are no buffers in this other extra strength product either. This leading buffered product comes without extra strength. We think your headache deserves extra strength and you deserve gentle buffers.

C. Vanquish is different. It gives you proven effectiveness of Aspirin as in this tablet plus extra medication as in these. But it also includes two gentle buffers *** with Vanquish the only one.

PAR. 7. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication by respondent Benton & Bowles, Inc., that it has been established that:

A. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

B. Because Vanquish contains "gentle buffers" it will result in less gastric discomfort than any other non-prescription internal analgesic not containing buffers.

PAR. 8. In truth and in fact neither of said representations has been established. There exists, rather, a substantial question recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug as to the validity of such representations.

PAR. 9. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication by respondent Benton & Bowles, Inc., that:

A. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

B. Vanquish will cause gastric discomfort less frequently than any other non-prescription internal analgesic not containing buffers.

PAR. 10. At the time respondent made the representations in Paragraph Nine above, there existed a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug as to the validity of such representations.

PAR. 11. Respondent Benton & Bowles, Inc., advertised Vanquish without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are

well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine by persons with certain medical conditions can be injurious to health. In addition, the use of aspirin in large quantities or with frequency by some persons may cause undesirable side effects. Thus, respondent has failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 12. The advertisements referred to in Paragraph Six above were, and are, misleading in material respects, as alleged in Paragraphs Eight, Ten and Eleven and constituted and now constitute false advertisements.

PAR. 13. The use by respondent of the aforesaid deceptive statements, representations, or claims, and the dissemination of the aforesaid false advertisements has had and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements, representations, or claims were and are true and into the purchase of substantial quantities of said drug by reason of said erroneous and mistaken belief.

PAR. 14. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Benton & Bowles, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination of false advertisements, as aforesaid, 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 or deceptive acts or 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 respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order,

an admission by the respondent 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 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 considered the agreement and having provisionally 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 Benton & Bowles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 909 Third Avenue, New York City, New York.

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 respondent Benton & Bowles, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any controlled corporation, wholly-owned subsidiary or division in connection with the advertising, offering for sale, sale or distribution of Vanquish in the United States, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents, directly or by implication, that a recommended dose of Vanquish is more effective in relief of pain than a recommended dose of any aspirin or buffered aspirin.

2. Represents, directly or by implication, that

Vanquish will cause gastric discomfort less frequently than any aspirin or buffered aspirin.

3. Fails to disclose that Vanquish contains aspirin and caffeine.

B. Disseminating, or causing the dissemination of, any advertisement by any means which contains statements which are inconsistent with, negate or contradict any disclosures required by subparagraph A above, or in any way obscure the meaning of such disclosure;

C. 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 subparagraphs A(1) and A(2) above or fails to include the disclosures required in subparagraph A(3) above.

II

It is further ordered, That respondent Benton & Bowles, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any controlled corporation, wholly-owned subsidiary, or division, in connection with the advertising, offering for sale, sale or distribution of any non-prescription internal analgesic product in the United States do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents directly or by implication, that a claim concerning the comparative performance, the comparative effectiveness, or the comparative freedom from side effects of such product has been established, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such claim, unless the respondent can establish that it neither knew nor had reason to know of the existence of such substantial question; or

2. Refers to the ingredients aspirin or caffeine by any word or words other than their common, or usual name,

unless (a) it is clearly and conspicuously disclosed that such word or words refer to aspirin or caffeine, and, (b) it is clearly and conspicuously disclosed that the only active analgesic ingredient in such product is aspirin and the only stimulant ingredient in such product is caffeine, if such is the case; or

3. Fails to disclose that the product contains aspirin or caffeine, if such is the case, *Provided, however*, That Paragraphs A(2) and (3) of Part II of this order shall not take effect or be binding unless or until order provisions embodying these same disclosure requirements become final with respect to Sterling Drug Inc., co-respondent joined in the complaint issued in [File No.] 722 3221.

B. Disseminating, or causing the dissemination, of, any advertisement by any means, which contains statements which are inconsistent, with, negate or contradict any disclosures required by Paragraph A above, or in any way obscure the meaning of such disclosures;

C. 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 A(1) and A(2) above, or which fails to disclose the disclosures required in Paragraph A(2) and A(3) above.

D. Making any representation, directly or by implication, concerning the comparative performance, the comparative effectiveness, or the comparative freedom from side effects of such product, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such analgesic products, as to the validity of such representation, unless the respondent can establish that it neither knew nor had reason to know of the existence of such substantial question.

E. Making any statement or representations, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, unless there exists competent and reliable evidence to provide a reasonable basis for such representations. Notwithstanding the foregoing it shall be a complete defense in any enforcement proceeding instituted hereunder for said

respondent to establish it neither knew nor had reason to know that said evidence was not competent and reliable.

F. *Provided, however*, That Paragraphs A(1) and D of part II of the order shall not take effect or be binding unless or until an order provision embodying the "Standard" set forth in Paragraphs A(1) and D, or any modification thereof, becomes final with respect to Sterling Drug Inc., co-respondent joined in the complaint issued in [File No.] 722 3221. *Provided further*, That should said order against Sterling Drug Inc., contain a standard different or modified in any respect from the "Standard" set forth in said paragraphs, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs. For the purpose of this Paragraph F the "Standard" shall mean "when there exists a substantial question, recognized by experts, qualified by scientific training and experience to evaluate the safety and efficacy of such non-prescription internal analgesic product." Furthermore, the defense of "knew or had reason to know" as set forth in Paragraphs A(1) and D of this order shall not be revised or modified or otherwise affected, even though the standard finally utilized is different or modified in any respect from the "Standard" set forth in said paragraphs.

G. *Provided further*, That the proscriptions of this order shall apply only to claims for the prevention, treatment, or relief of pain, but not to claims for the relief of minor pain or discomfort that is incidental to the elimination, by the product, of an underlying condition causing such minor pain or discomfort, such as a cough or stuffy nose.

III

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

It is further ordered, That respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.
