

Order

87 F.T.C.

IN THE MATTERS OF

BRISTOL-MYERS COMPANY, ET AL. — DOCKET 8917
AMERICAN HOME PRODUCTS CORPORATION, ET AL. —
DOCKET 8918
STERLING DRUG INC., ET AL. — DOCKET 8919

Order, May 4, 1976.

Denial of motion by American Home Products to dismiss complaint or suspend proceeding; and rejection of administrative law judge's certification with respect to Dockets 8917 and 8919 as to whether continued proceedings are in the public interest.

Appearances

For the Commission: *H. Robert Field, Thomas J. Donegan, Jr., Lynne C. McCoy, David O. Bickart and Leroy M. Yarnoff.*

For the respondents: *Weil, Guttman & Davis*, New York City for Bristol-Myers. *Cahill, Gordon, Sonnett, Reindel & Ohl*, Washington, D.C. for Ted Bates & Company, Inc. *Donovan, Leisure, Newton & Irvine*, Washington, D.C. for American Home Products. *Paul, Weiss, Rifkind, Wharton & Garrison*, New York City for Young & Rubicam, Inc. *Bergson, Borkland, Margolis & Adler*, Washington, D.C.

ORDER DENYING RESPONDENT AMERICAN HOME PRODUCTS
CORPORATION'S MOTION TO DISMISS COMPLAINT OR SUSPEND
PROCEEDING

The administrative law judge has certified to the Commission respondent American Home Products Corporation's motion to dismiss the complaint, due to changed circumstances, or, in the alternative, to suspend the proceeding pending the publication of a Food and Drug Administration ("FDA") monograph covering internal analgesics. Respondent argues that this proceeding is no longer in the public interest in view of the Commission's proposal of a trade regulation rule for over-the-counter drug advertising that would prohibit claims in advertising which FDA does not permit in labeling. 40 F. R. 52631 (Nov. 11, 1975).¹

The Commission, however, does not believe that it would be in the public interest to terminate this proceeding or suspend it pending final

¹ The administrative law judge, *sua sponte*, has certified the question whether continued proceedings in two companion cases, Dkts. 8917 and 8919, are in the public interest. Since respondent Bristol-Myers (Dkt. 8917) has stated that it neither supports nor opposes the instant motion, (see Respondent Bristol-Myers' Statement Regarding Certification of Motion of American Home Products Corporation to Dismiss the Complaint or in the Alternative Suspend the Proceeding Due to Changed Circumstances, and of Similar Questions in the Two Companion Analgesic Proceedings 2), and none of the other respondents in Dkts. 8917 and 8919 have responded to the law judge's certification, the Commission will confine its decision to the motion filed in Dkt. 8918.

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promulgation of a rule which might address some of the claims included in the complaint. Accordingly,

It is ordered, That the aforesaid motion be, and it hereby is, denied;

It is further ordered, That the aforesaid certification with respect to Dkts. 8917 and 8919 be, and it hereby is, rejected.

Complaint

87 F.T.C.

IN THE MATTER OF

SOUND ALIKE MUSIC CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2817. Complaint, May 10, 1976—Decision, May 10, 1976*

Consent order requiring a Los Angeles, Calif., seller and distributor of tape products, among other things to cease using, in connection with their tape products, deceptive and misleading advertisements, labels, packages and promotional materials which misrepresent performers as original artists. The order further requires respondents to disclose in advertising and on packaging either the name of the actual recording artist or that their tape products are not original artist recordings, and to furnish, for a seven-year period, copies of the order to all retailers and distributors who purchase respondents' products.

*Appearances*For the Commission: *Robert H. Wyman.*For the respondents: *Eugene J. Weiss*, Beverly Hills, Calif.

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 Sound Alike Music Corporation, a corporation, and Richard Taxe, individually and as an officer of said corporation, hereinafter sometimes 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. For the purposes of this proceeding, the following definitions shall apply:

Original Artist: The original artist is the person who originally recorded and made popular the song(s) or album in question, or with whom the public generally identifies the song(s) in question.

Sound Alike Recording: A sound alike recording is a recording of a hit song(s) or a hit album recorded by one other than the original artist and performed in the style and manner of the original artist.

Compilation of Hits: A compilation of hits is a tape product featuring a variety of songs originally recorded and made popular by various artists.

Tape Products: Tape products include tape cartridges or tape