

IN THE MATTER OF
HUDSON PHARMACEUTICAL CORPORATION

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

Docket C-2860. Complaint, Jan. 13, 1977 — Decision, Jan. 13, 1977

Consent order requiring a Borough of West Caldwell, N.J., manufacturer and distributor of children's vitamin supplements, among other things, to cease inducing the dissemination of or disseminating any advertisements relating to vitamin supplements or preparations designed primarily for use by children where such advertisements are directed to children.

Appearances

For the Commission: *Jonathan A. Sheldon.*

For the respondent: *Jerry S. Cohen, Kohn, Savett, Marion & Graf,*
P.C., Philadelphia, Pa.

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 Hudson Pharmaceutical Corporation, 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. Respondent Hudson Pharmaceutical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 21 Henderson Drive, Borough of West Caldwell, State of New Jersey.

PAR. 2. Respondent Hudson Pharmaceutical Corporation is now and has been engaged in the packaging, advertising, offering for sale, sale and distribution of vitamin supplements designed for use by children, including vitamin supplements designated "Spider-Man Vitamins" and "Spider-Man Vitamins with Iron." These vitamin supplements are purchased for the use of children.

PAR. 3. In the course and conduct of its business, respondent Hudson Pharmaceutical Corporation now transports and has transported and has caused said vitamin supplements to be transported from its plant and facilities to purchasers in various states other than the state of origin. Respondent Hudson Pharmaceutical Corporation

maintains, and at all times herein has maintained, a substantial course of trade in said vitamin supplements in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

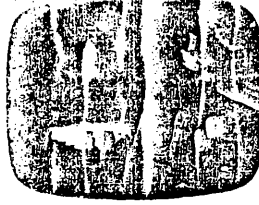
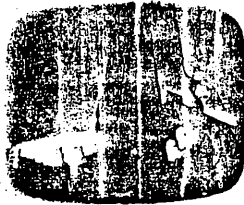
PAR. 4. In the further course and conduct of its business, respondent at all times mentioned herein has been and is now in substantial competition in commerce with individuals, firms and corporations in the sale and distribution of their respective products or services.

PAR. 5. In the further course and conduct of its business, and for the purpose of inducing the sale of the said vitamin supplements, respondent has prepared advertisements of said vitamin supplements and caused them to be broadcast by television stations located in at least one State of the United States and having sufficient power to transmit such broadcasts across state lines.

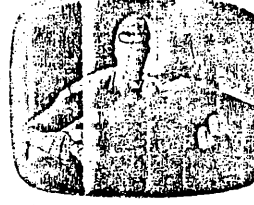
In addition, also in the further course and conduct of its business and for the purpose of inducing the sale of said vitamin supplements, respondent has prepared advertisements of said vitamin supplements and caused them to be published in newspapers distributed across state lines.

PAR. 6. Typical of the content of said advertisements, but not all-inclusive thereof, are the following storyboard of a television commercial and the following written portion of an advertisement in a Sunday newspaper comic supplement:

SPIDER-MAN VITAMINS BY HUDSON
Starting Fall 1975
30 Sec.



(SFX: THWIP!)



Hi, I'm Spider-Man...



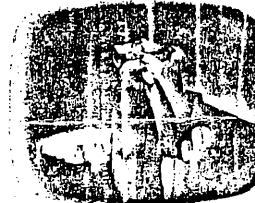
My "Spidersense" tells me that when your children don't eat properly... they may need daily vitamins.



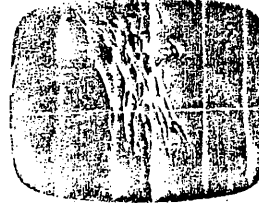
So, Hudson invented delicious, chewable



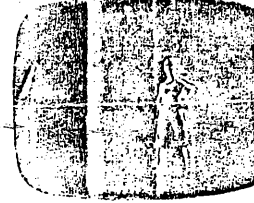
Spider-Man Vitamins!



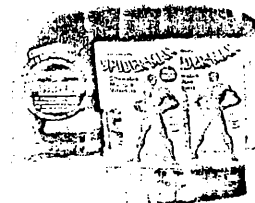
New super-hero vitamins



kids won't forget to take!



"Spidersense" reminds them!



Spider-Man Vitamins has the Parents' Choice Award!



For the Hudson drugstore near you, call 800-631-1145.

4

Wash. Post
10/12/15

TRY SPIDER-MAN

VITAMINS

FROM HUDSON®...

AND I'LL SEND YOU A GIANT SPIDER-MAN POSTER!



Chewable Multiple Vitamins

SPIDER-MAN VITAMINS...

the super-hero vitamins your kids WON'T forget to take!

TM

PARENTS' MAGAZINE

Hudson, one of America's leading suppliers of quality vitamins—is proud to offer these super-quality SPIDER-MAN VITAMINS that provide 10 essential vitamins daily that children may need. They're chewable, with a delicious flavor—kids say they like best! And you'll be glad to know they have the Parents' Magazine Guaranteed Seal. Now your kids won't forget their vitamins, folks—when they have SPIDER-MAN to remind them!

50¢

WORTH 50¢ CASH

WHEN YOU BUY 1 BOTTLE

(60 OR 100 TABLETS) OF

Hudson®

SPIDER-MAN VITAMINS

(REGULAR...OR WITH IRON)

50¢

TO REDEEM: You are authorized to act as our agent for the redemption of this coupon for cash up to the purchase price immediately on presentation to our retailer. We will reimburse you for the full face value of this coupon plus 10¢. If the consumer has complied with the terms of the other Hudson's offering, redemption of this SPIDER-MAN VITAMINS coupon may be made to Cash Co.

REDEMPTION: Hudson's Retail Corp., 21 Hudson Drive West, New York, N.Y. 10006

For the Hudson drug store nearest you phone toll free 300 548-6844

STORE COUPON

© 1975 Marvel Comics Group

NEW SPIDER-MAN VITAMINS from Hudson's are now at these fine drug stores.

PAR. 7. Respondent's aforesaid advertising is directed to children. (For the purposes of this complaint "children" shall mean persons under twelve (12) years of age.) Children are unqualified by age or experience to decide for themselves whether or not they need or should use multiple vitamin supplements in general or an advertised brand in particular; thus the directing of advertising of multiple vitamin supplements to children is in itself an unfair practice.

PAR. 8. Respondent's aforesaid advertising utilizes the endorsements of a hero figure, Spider-Man, who is known for his super-human strength and abilities and has a special appeal to children.

PAR. 9. The hero figure, Spider-Man, appears as the program character, "Spidey" on a popular children's television program, "The Electric Company."

PAR. 10. Respondent's aforesaid advertising is read or viewed by an audience a significant portion of which is composed of children.

PAR. 11. The use of a program character such as described in Paragraph Nine in television advertising viewed by an audience a significant portion of which is composed of children, has the tendency and capacity to blur for children the distinction between program content and advertising and to take advantage of the trust relationship developed between children and the program character.

PAR. 12. The use of such a hero figure as described in Paragraphs Eight, Nine and Eleven to endorse children's vitamin supplements in advertising read or viewed by such an audience as described in Paragraph Ten has the tendency and capacity to lead significant numbers of children to believe that the endorsed product has qualities and characteristics it does not have.

PAR. 13. Such advertising as described in Paragraphs Eight through Twelve has the tendency and capacity to induce children to take excessive amounts of vitamin supplements which may cause injury to their health.

Therefore, the acts or practices alleged in Paragraphs Five through Thirteen above are unfair or deceptive.

PAR. 14. The use by respondent of the said unfair or deceptive acts or practices has had and now has the tendency and capacity to induce a substantial portion of the purchasing public to purchase substantial quantities of the said vitamin supplements.

PAR. 15. 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 or deceptive acts or practices and unfair methods of competition in or affecting commerce in violation of Section 5 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, 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 Hudson Pharmaceutical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 21 Henderson Drive, Borough of West Caldwell, State of 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 Hudson Pharmaceutical Corporation and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, packaging, offering for sale, sale or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, of any vitamin supplement or

vitamin preparation designed primarily for use by children, do forthwith cease and desist from directly or indirectly disseminating, or causing the dissemination of, any advertisement for a vitamin supplement or vitamin preparation designed primarily for use by children where such advertisement is directed to children.

II

For purposes of this order, the term "children" shall mean persons under twelve (12) years of age.

III

For purposes of this order, the term "advertisement directed to children" shall be limited to:

A. Any advertisement, irrespective of the age composition of its actual audience, whose dominant appeal is to a child audience, instead of an adult audience, broadcast over any television network or television station, or appearing in any print media;

B. Any advertisement appearing on any television program, broadcast over any television network or television station, more than fifty percent (50%) of the audience of which is composed of children; or in any spot announcement during any program break in, or during the program break immediately preceeding or following, any television program more than fifty percent (50%) of the audience of which is composed of children.

For the purposes of this order the determination of whether a television program had an audience more than 50 percent of which is composed of children, and thus falls within the provisions of this subpart of this order, shall be based on information as to the audience composition of television programs by age group contained in the reports of major audience rating services;

C. Any advertisement broadcast over any television network or television station from 6 a.m. to 9:05 p.m. local time where the advertisement utilizes a hero figure, including but not limited to "Spider-Man," which has a special appeal for children, and which directly or indirectly endorses, demonstrates, uses, or appears in conjunction with the product. A depiction of the product's container or package on which a hero figure appears is not considered use of a hero figure for purposes of this order so long as the depiction of the container or package is limited to less than one-third of the size of the screen;

D. Any advertisement appearing in a comic book where the printed matter is directed primarily to children;

E. Any advertisement appearing in print media where 50 percent or more of the trim area of the advertisement or of a page of the advertisement consists of the depiction of a hero figure which has a special appeal for children, including but not limited to "Spider-Man;"

F. Any advertisement where the advertisement states it is addressed to children; or

G. Any advertisement sent through the mail addressed to children, or whose addresses include the names of children, or whose content is not sealed within an envelope.

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 corporation notify the Commission at least 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 change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall within sixty (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 complied with this order.

Order

89 F.T.C.

IN THE MATTER OF
BOISE CASCADE CORPORATION, ET AL.

Docket 8958. Interlocutory Order, Jan. 14, 1977

Commission declines to entertain motion for reconsideration by the full Commission of orders of Dec. 23, 1976, and Jan. 3, 1977, regarding extensions of time.

Appearances

For the Commission: *James C. Egan, Jr., Robert J. Enders and Roger L. Leifer.*

For the respondents: *Robert T. Johnson, Bell, Boyd, Lloyd, Haddad & Burns, Chicago, Ill., John K. Mallory, Jr., Cleary, Gottlieb, Steen & Hamilton, Washington, D.C., Frank Brewer, Portland, Ore., George J. Wade, Sherman & Sterling, New York City, Edwin S. Rockefeller, Bierbower & Rockefeller, Washington, D.C., Francis A. Kareken, Tacoma, Wash., Norman J. Wiener, Miller, Anderson, Nash, Yerke & Wiener, Portland, Ore., Edward T. Tate, Lee A. Rau and Joseph A. Rieser, Jr., Reed, Smith, Shaw & McClay, Washington, D.C. and Hammond E. Chaffetz, Kirkland & Ellis, Chicago, Ill.*

ORDER DENYING MOTION FOR RECONSIDERATION

On December 23, 1976, the Commission issued an order denying as unwarranted a motion filed by all respondents for a 60-day extension of time in which to file their appeal briefs from the initial decision and, instead, granting respondents 45 days after service of the initial decision in which to file. On January 3, 1977, the Commission rejected a separate request filed by respondent Willamette Industries, Inc., for a 60-day extension.

Respondent Willamette now moves that the Commission reconsider its January 3, 1977, order. Respondent renews and expands upon its claim that new counsel, retained to represent it on the appeal, require more time in which to familiarize themselves with the record.

It is determined that no reasons have been presented to warrant a modification of the original orders. Because this determination is properly issued in the name of the Commission pursuant to the delegation of functions published at 27 F. R. 481 (Jan. 17, 1962), the Commission declines to entertain the motion for reconsideration by the full Commission.

It is so ordered.