

IN THE MATTER OF
PARAMEDICAL SERVICES, INC. T/A PACIFIC
INTERNATIONAL, LTD., ET AL.

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

Docket C-2863. Complaint, Jan. 24, 1977 — Decision, Jan. 24, 1977

Consent order requiring a Wayne, Pa., distributor of a treatment method for nocturnal enuresis, and its Menlo Park, Calif., franchisee, among other things, to cease misrepresenting that the mechanical device used in their treatment method is unique. Further, respondents are required, three days before their contracts become binding, to give customers a written disclosure that the device is similar to those sold or rented by others.

Appearances

For the Commission: *Harold G. Sodergren.*

For the respondents: *William J. McLean, Thoits, Lehman, Hanna & Love, Palo Alto, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Paramedical Services, Inc., a corporation doing business as Pacific International, Ltd., and C.R.O., Ltd., a corporation, doing business as Pacific International—CRO, Ltd., and Robert C. Stearns, individually and as an officer of C.R.O., Ltd., 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 Paramedical Services, Inc. is a Delaware corporation, with its principal office at 224 County Line Road, Wayne, Pennsylvania.

Respondent C.R.O., Ltd. is an Oregon corporation with its principal office at 3210 Alpine Road, Menlo Park, California. It is now, and for some time last past has been a franchisee of respondent Paramedical Services, Inc.

Respondent Robert C. Stearns is an individual and an officer of C.R.O., Ltd. and was formerly general manager of respondent Paramedical Services, Inc. In such positions, respondent Stearns formulated, directed, and controlled the acts and practices of the

corporate respondents, including the acts and practices herein set forth, and now formulates, directs, and controls the acts and practices of C.R.O., Ltd., including the acts and practices hereinafter set forth. The address of respondent Stearns is the same as that of C.R.O., Ltd.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of a treatment method for nocturnal enuresis, or "bedwetting" (hereinafter referred to as "enuresis").

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the dissemination of certain advertisements concerning said treatment method by various means in and affecting commerce, including but not limited to newspaper, periodical and direct mail advertisements; have caused its device and program to be shipped from their places of business or sources of supply to their distributors, and to consumers, located in various States of the United States other than the state of origination; and have transmitted and received and caused to be transmitted and received, in the course of selling, delivering, soliciting advice, advising, and obtaining return of, their device and program, among and between the several States of the United States, contracts, invoices, letters, records, checks, and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such device and program in and affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, respondents have entered into oral or written distributor agreements with various firms and individuals (hereinafter referred to as "distributors") whereby such distributors agree to sell said program, directly or through representatives they engage, to consumers. Respondents have possessed, and now possess, the inherent authority to control the acts, practices and policies of its distributors, and/or do control, encourage, facilitate, implement and furnish the means, instrumentalities, services and facilities for, and condone, approve and accept the pecuniary and other benefits flowing from, the acts, practices and policies herein set forth, of said distributors, and respondents are therefore responsible for the acts and practices of said distributors (acts and practices of "distributors" include the acts and practices of dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives engaged by said distributors).

PAR. 5. Respondents and their distributors, for the purpose of inducing the purchase of respondents' treatment method, advertise

in magazines and newspapers which have substantial circulation to parents with young children, in order to solicit such parents to mail their names and addresses to respondents and their distributors to learn more about respondents' treatment method. The names and addresses of parents who respond to such advertisements are ordinarily sold or given by respondents to their distributors, and/or utilized by their distributors in contacting such parents and arranging for a sales presentation in the home of the consumer, during which they make additional statements and representations regarding respondents' treatment method. Respondents' and their distributors' representations to consumers are general and vague regarding the precise nature of their treatment method. Respondents' treatment method for nocturnal enuresis consists of: (1) a mechanical device of a type generally available at retail to consumers, which is designed to awaken the enuretic by sounding an alarm at the time bedwetting occurs; and (2) a training and consulting service to assist the consumer in utilizing the device to treat the enuretic. The training and consulting service is sold by respondents to consumers, together with the loan of the mechanical device, at a price of \$450-\$625. Essentially similar mechanical devices are sold or rented at retail for \$20-\$40.

PAR. 6. Typical of statements and representations made by respondents and their distributors regarding their treatment method are the following:

* * * Only one company, Pacific International, Ltd. ever made a serious and in-depth study of this sleep and over a period of many years perfected a procedure whereby they could teach a person to sleep in a normal way* * *. The Pacific International, Ltd. process is unique and controlled. They recognize that parents are not expert in analyzing the sleep patterns of their child and so are relatively helpless in attempting to assist their bedwetter* * *.

(Composite of opinions of "three eminent physicians" from p. 5 of pamphlet entitled BEDWETTING, WHAT ITS ALL ABOUT AND HOW TO END IT)

* * * * *

(Respondent) Stearns: Do you think our method of handling the problem is sound?

Jorge McGuinness, M.D.: Its the only one I know of that is really successful and makes any sense* * *. You treat the cause and you're the only one who does* * *. You've succeeded where everyone else has failed* * *.

(Excerpt from film disseminated by respondents and shown by distributors to prospective customers.)

* * * * *

C₁ (Salesman): Have you ever used any kind of a waking device? Now, this is a pad about that long, like that, and it goes in the bed, and it sets off an alarm or something like that. Have you ever heard of anything like that?

G (Father of Enuretic Child): Yes, a neighbor told me about one.

C: You haven't used anything like that?

Mrs. G (Mother of Enuretic Child): I thought that's what you folks have.

C: No, Mrs. Grant, we do not rely on any kind of a waking device. Now, we have a moisture-sensing device that we use in connection with our program. To gather information for our report cards, and you'll learn more about that on the film later on.

(Excerpt from respondents' authorized sales manual, p. 61.)

PAR. 7. By and through the use of the representations set forth in Paragraph Six, respondents and their distributors have represented and are representing that their mechanical device is unlike other mechanical devices utilized in treatment for enuresis.

PAR. 8. In truth and in fact, respondents' mechanical device is like other mechanical devices utilized in treatment for enuresis.

Therefore, said representations were and are, unfair, false, misleading and deceptive.

PAR. 9. The acts and practices of respondents, 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 or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 San Francisco Regional Office 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, as amended; 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Paramedical Services, Inc. is a Delaware corporation, with its principal office at 224 County Line Road, Wayne, Pennsylvania.

Respondent C.R.O., Ltd. is an Oregon corporation with its principal office at 3210 Alpine Road, Menlo Park, California. It is now, and for some time last past has been a franchisee of respondent Paramedical Services, Inc.

Respondent Robert C. Stearns is an individual and an officer of C.R.O., Ltd. and was formerly general manager of respondent Paramedical Services, Inc. In such positions, respondent Stearns formulated, directed, and controlled the acts and practices of the corporate respondents, including the acts and practices herein set forth, and now formulates, directs, and controls the acts and practices of C.R.O., Ltd., including the acts and practices hereinafter set forth. The address of respondent Stearns is the same as that of C.R.O., Ltd.

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 Paramedical Services, Inc., and C.R.O., Ltd., corporations, their successors and assigns, and their officers, and Robert C. Stearns, individually and as an officer of said C.R.O., Ltd., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through their "distributors" as hereinafter defined, in connection with the advertising, offering for sale or rental, contracting, sale or rental, or other promotion of any device or service for the cure, mitigation or treatment of nocturnal enuresis in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing directly or by implication that the mechanical device utilized by respondents is unlike all other mechanical devices utilized in treatment for nocturnal enuresis.

2. Failing to disclose the following *verbatim* to all persons

executing any agreement or other binding obligation to pay money or other consideration to respondents or respondents' distributors, or paying any money or other consideration to respondents or respondents' distributors:

Our treatment method for nocturnal enuresis consists of: (1) a mechanical device of a type similar to those sold or rented elsewhere, which is designed to awaken the enuretic by sounding an alarm at the time bedwetting occurs; and (2) a training and consulting service to assist you in utilizing the device to treat the enuretic.

Said disclosure shall be furnished in a single disclosure statement in no less than 10 point bold type, which shall not contain any promotional claims or other information not required by this order, at least three (3) business days prior to either the execution by any consumer of any agreement or any other binding obligation to pay money or other consideration to respondents or respondents' distributors, or the payment by such person of money or other consideration to respondents or respondents' distributors, whichever occurs first. Respondents shall retain for two years dated and signed acknowledgements (or return receipts for mailed disclosures) of receipt by consumers of said disclosure statement. *Provided however*, that said disclosure statement may be furnished at the time of the execution of an agreement with a consumer, where said agreement contains a three-day cooling-off period provision in compliance with the Federal Trade Commission's Trade Regulation Rule Regarding Cooling-Off Period for Door-to-Door Sales, 16 C F R 429.

It is further ordered, That respondents:

1. Deliver, or cause to be delivered, a copy of this order to each distributor. A "distributor," as that term is used throughout this order, is defined as: Any present or future dealer, franchisee, licensee, employee, salesman, agent, solicitor, independent contractor or other representative, who purchases from, or receives commissions or other income on purchases from, respondents.
2. Inform all distributors that the respondents are obligated by this order to discontinue dealing with those distributors who fail to comply with this order, under the circumstances set forth in subparagraph 4 of this paragraph.
3. Institute a program of continuing surveillance to reveal whether the business operations of each of said distributors conform to the requirements of this order.
4. Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any distributor, or by any of

such distributor's present and future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives, respondents shall within 24 hours notify such distributor by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said distributor upon receipt by respondents of actual knowledge of two (2) or more further violations of this order by such distributor, or by any of such distributor's present and future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives, within one-hundred and eighty (180) days of receipt of said Notice by such distributor. Respondents shall obtain from such distributor written acknowledgement of receipt of such Notice, which acknowledgement shall indicate the date of receipt of such Notice.

Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating two (2) or more violations of any provision of this order, within one-hundred and eighty (180) days following a distributor's receipt of the aforesaid "Notice," by a distributor, or by any of such distributor's present or future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives, respondents shall permanently discontinue dealing with such distributor.

Provided however, that for purposes of any compliance proceeding that may be instituted as to this order, respondents shall not be responsible for a violation of any provision of this order by a distributor or a distributor's present or future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives, except insofar as respondents fail to terminate said distributor as required by subparagraph 4 of this paragraph.

5. Maintain complete records for a period of no less than three years from the date of the incident, of any written or oral information received which indicates the possibility of a violation of this order by any respondent or distributor, or any of such distributor's present and future dealers, franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives; and maintain complete records of notifications of violations as required by subparagraph 4 of this paragraph, and of distributors' acknowledgements of receipt of such notifications. Any oral information received indicating the possibility of a violation of this order shall be reduced to writing, and shall include the name, address and telephone number of the informant, the name and address of the

distributor involved, the date of the communication, and a brief summary of the information received. Such records shall be available upon request to representatives of the Federal Trade Commission, at normal business hours upon reasonable advance notice.

It is further ordered, That the corporate respondents notify the Commission at least 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 said corporations which may affect compliance obligations arising out of the order.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include such respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents 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 have complied with this order.

Chairman Collier voted against acceptance on the ground that the order is ineffective and the matter is not of sufficient importance to warrant the further expenditure of public funds.

IN THE MATTER OF
EXXON CORPORATION, ET AL.

Docket 8934. Interlocutory Order, Jan. 31, 1977

With certain provisos Commission adopts paragraph nine of ALJ's Jan. 5, 1977, protective order.

*Appearances**

ORDER

The administrative law judge has certified to the Commission paragraph nine of his January 5, 1977, protective order. The certification requests that the Commission approve and adopt the order provision or take such other action as it may deem appropriate. The Commission has determined to adopt paragraph nine subject to the following provisos: 1) with respect to documents only portions of which have been designated as "confidential" pursuant to the protective order, the Commission's assurance of prior notification will extend only to those portions; 2) in the case of release of a document, or portion of a document, designated as "confidential," in response to an official request from a committee or subcommittee of Congress or to a court in response to compulsory process, the Congressional committee or subcommittee or the court will be advised that the party which supplied the document considers the material to be confidential and the party will be provided ten days' prior notice where possible, and in any event as much advance notice as can reasonably be given.

It is so ordered.

* For reasons of economy, the *Appearances* are not being reproduced herein. Information regarding *Appearances* may be obtained from the Public Reference Branch, Federal Trade Commission, Washington, D.C.