

Modified Order

IN THE MATTER OF
WARNER-LAMBERT COMPANYMODIFIED ORDER, IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8891. Final Order, Dec. 9, 1975 — Modified Order, July 20, 1978

This modified order to cease and desist is issued pursuant to a decision and judgment of the U.S. Court of Appeals for the District of Columbia, 562 F. 2d 749 (1977). The words "(c)ontrary to prior advertising" have been deleted from the disclosure statement required in Part III of the original order to cease and desist issued December 9, 1975, 41 FR 2381, 86 F.T.C. 1398.

MODIFIED ORDER TO CEASE AND DESIST

Respondent, having filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review of the Commission's cease and desist order issued herein on December 9, 1975; and the Court having rendered its decision and judgment on August 2, 1977, affirming and enforcing the Commission's order with modification of Part III; and the Supreme Court of the United States having denied on April 3, 1978, petitions for writs of certiorari filed by the parties:

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

ORDER

I

It is ordered, That respondent Warner-Lambert Company, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale or distribution of Listerine or any other non-prescription drug product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product will cure colds or sore throats;
2. Representing, directly or by implication, that any such product will prevent colds or sore throats;
3. Representing, directly or by implication, that users of any such product will have fewer colds than non-users.

II

It is further ordered, That respondent Warner-Lambert Company, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, offering for sale, sale, or distribution of Listerine or any other mouthwash product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product is a treatment for, or will lessen the severity of, colds or sore throats;
2. Representing that any such product will have any significant beneficial effect on the symptoms of sore throats or any beneficial effect on symptoms of colds;
3. Representing that the ability of any such product to kill germs is of medical significance in the treatment of colds or sore throats or the symptoms of colds or sore throats.

III

It is further ordered, That respondent Warner-Lambert Company, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from disseminating or causing the dissemination of any advertisements for the product Listerine Antiseptic unless it is clearly and conspicuously disclosed in each such advertisement in the exact language below that:

Listerine will not help prevent colds or sore throats or lessen their severity.

In print advertisements, the disclosure shall be displayed in type size which is at least the same size as that in which the principal portion of the text of the advertisement appears and shall be separated from the text so that it can be readily noticed. In television advertisements, the disclosure shall be presented simultaneously in both the audio and visual portions. During the audio portion of the disclosure in television and radio advertisements, no other sounds, including music, shall occur. Each such disclosure shall be presented in the language, e.g., English, Spanish, principally employed in the advertisement.

The aforesaid duty to disclose the corrective statement shall continue until respondent has expended on Listerine advertising a

sum equal to the average annual Listerine advertising budget for the period of April 1962 to March 1972.

IV

It is further ordered, That the allegations of Paragraphs Nine and Ten of the complaint be, and they hereby are, dismissed.

V

It is further ordered, That respondent 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 its structure 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 this order.

It is further ordered, That respondent shall, within sixty (60) days after the effective date of this order, file with the Commission a written report, setting forth in detail the manner and form of its compliance with this order.

Commissioner Pitofsky did not participate.

Interlocutory Order

92 F.T.C.

IN THE MATTER OF

AIRCO, INC.

Docket 9098. Interlocutory Order, July 20, 1978

This order grants complaint counsel's motion seeking court enforcement of a subpoena duces tecum issued to a third-party.

ORDER GRANTING COMPLAINT COUNSEL'S MOTION SEEKING
COURT ENFORCEMENT OF SUBPOENA DUCES TECUM ISSUED TO
AIR PRODUCTS AND CHEMICALS, INC.

The administrative law judge has certified to the Commission, pursuant to Rule 3.38(b), Complaint Counsel's Motion Seeking Court Enforcement of Subpoena Duces Tecum Issued to Air Products and Chemicals, Inc. ("Air Products"), a third party to these proceedings, on September 22, 1977. The specifications as to which there is disagreement are 1(a), (b), 2, 3(b), 3(c), and 7.¹ Air Products contends that these specifications relate to information which is so confidential that it should be made available only to respondent's outside counsel. The administrative law judge, on the other hand, has determined that in addition to outside counsel, Airco's Vice President-Law, Mr. DeWahl, should have access to the information.

The ALJ's position is based on his belief that "a firm facing serious restraint of trade charges was entitled to the assistance of its house counsel familiar with its business and operations, provided he played no role in corporate affairs other than legal counsel." Certification at 3. Moreover, Airco's Vice President-Law has submitted a signed affidavit, at the ALJ's request, which provides that his duties within Airco be limited to the giving of legal advice, and that he not, in any way, participate or make decisions in the operational area. Additionally, Mr. DeWahl would be prohibited from making any notes or copies of the confidential documents.

It is the view of the Commission that the restrictions imposed by the ALJ upon respondent's house counsel represent a reasonable exercise of the law judge's discretion and provide an adequate

¹ 1. Documents sufficient to show:

(a). total net sales for each year from January 1, 1970 to date, in dollars and in units, of each relevant industrial gas sold by your company to distributors;

(b). for each year, those sales included in the response to specification 1(a) that represent sales to company-owned distributors;

2. Documents sufficient to show total net sales for each year from January 1, 1970 to date, in dollars and in units, of medical or therapy oxygen or other medical gases sold by your company.

3. Documents sufficient to show:

(a). facility fees included in the sales figures;

(b). transportation charges not included in the sales figures;

4. Documents sufficient to show all your company's prices in effect for each relevant industrial gas and the calendar period in which such prices were in effect, stated separately, to each distributor.