

Complaint

92 F.T.C.

IN THE MATTER OF

COOGA MOOGA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2925. Complaint, Aug. 9, 1978—Decision, Aug. 9, 1978*

This consent order, among other things, requires a Los Angeles, Ca. marketer and promoter of Acne-Statín, a product advertised for the treatment of acne, to cease disseminating advertisements which misrepresent, through endorsements or otherwise, the characteristics, performance, efficacy or superiority of its skin products. Additionally, the firm is required to maintain ad substantiation records for a specified period of time; and to pay a pro rata share of any restitution which might be ordered by the Commission or a court.

Appearances

For the Commission: *Mark A. Heller* and *Ira R. Nerken*.

For the respondents: *James J. Cook*, Los Angeles, California.

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 Cooga Mooga, Inc. (hereinafter "Cooga Mooga"), a corporation, and Charles E. Boone (hereinafter "Boone"), as an individual and corporate officer, hereinafter, at times referred to as respondents, having violated the provisions of the 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. "Cooga Mooga" 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 9255 Sunset Boulevard, Suite 519, Los Angeles, California.

PAR. 2. "Boone" is an individual and corporate president of "Cooga Mooga." He formulates, directs and controls the acts and practices of "Cooga Mooga," including the acts and practices described herein, and he is the principal beneficiary of the corporation's business. "Boone's" business address is 9255 Sunset Boulevard, Suite 519, Los Angeles, California.

PAR. 3. Respondent "Cooga Mooga" is a privately held corporation which was organized and is maintained for the purpose of promoting and conducting the business interests of "Boone." "Cooga Mooga"

and "Boone" in conjunction with Karr Preventative Medical Products, Inc., a California corporation, Dr. Atida H. Karr, The National Media Group, Inc., a Delaware corporation and Robert J. Marsh have been and now are engaged in the business of marketing and advertising health related products, including but not limited to the product Acne-Statin, a product advertised for the treatment of acne. The above-named parties, in connection with the manufacture and marketing of said product, have disseminated, published and distributed, and now disseminate, publish and distribute advertisements and promotional material for the purpose of promoting the sale of Acne-Statin for human use. This product, as advertised, is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. "Boone" for his part, aided the promotion of Acne-Statin by providing an endorsement which related directly to the product's efficacy, the medical evaluation of the product and his family's satisfaction with the product. This endorsement appeared in virtually every disseminated advertisement for Acne-Statin. In return for his endorsement "Boone" received a share of the product's sales.

PAR. 5. In the course and conduct of their said business, the respondents have disseminated and caused the dissemination of certain advertisements concerning Acne-Statin through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in magazines and newspapers with national circulations and the placement of advertisements through television stations with sufficient power to broadcast across statelines and into the District of Columbia and advertisements in the form of a booklet, entitled "Acne: Its Cause and Its Treatment" which was, and is, sent through the United States mail, for the purpose of inducing and which was likely to induce, directly or indirectly, the purchase of the product Acne-Statin; and have disseminated and caused the dissemination of advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said products in commerce.

PAR. 6. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

"ACNE? Our girls got lasting help with Acne-Statín"

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statín'."



Pat Boone and his daughter Debbie.

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

WHAT MAKES ACNE-STATIN SO DIFFERENT?

The doctor went on to say that many medications only attack acne at the surface level by attempting to dry-up the oil. Usually this is ineffective against Acne, and only irritates, dries and peels the skin. ACNE-STATIN goes right to the root of the problem. It liquefies all body temperature and deposits an anti-bacterial agent that kills bacteria on contact, and keeps on killing bacteria hours after each washing. The photographs below dramatically demonstrate Acne-Statín's continual effectiveness compared to the ineffectiveness of soap.

WHAT ABOUT SENSITIVE SKIN?

Debbie said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with NO PEELING. REGARDLESS OF AGE or sex, Acne-Statín helps control skin irritations from occasional blemishes to chronic acne. DR. ATIDA KARR's genuine concern for skin care was as impressive to me as her credentials. In addition to being an M.D. she also

has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statín. HERE ARE EXCERPTS from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statín could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statín for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

MONEY BACK IF NOT DELIGHTED

If you are not pleased with the help you get you may return the empty container for a full refund.

ACNE-STATIN IS NOT AVAILABLE IN STORES

But you can order a 30-day four-ounce treatment without a prescription for only \$9.50. Order now and you'll receive FREE the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

HERE'S HOW TO ORDER

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add 50¢ for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN, P.O. BOX 100, BEVERLY HILLS, CALIFORNIA 90213.

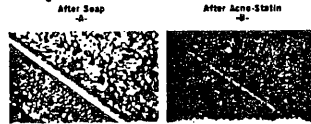
ORDER NOW AND RECEIVE FREE

This booklet,
"Acne, Its Cause and Its
Treatment" by Atida H.
Karr, M.D.



SEE THE DIFFERENCE

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Slide A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Slide B shows a culture of the same facial area a full eight hours after washing with Acne-Statín. Acne-Statín kills bacteria on contact, and keeps on killing bacteria hours after each washing.



Mademoiselle for May 1977

Mail coupon with payment to: NO 577
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213

☐ Please Rush _____ 30 day 4-oz. bottles of Acne-Statín.

Enclosed is \$10.00 (\$9.50 + 50¢ postage & handling for each)

☐ BankAmericard ☐ Check or Money Order ☐ Master Charge

PLEASE PRINT
CREDIT CARD # _____ EXP. DATE _____
NAME _____
ADDRESS _____ APT. NO. _____
CITY _____ STATE _____ ZIP _____
SIGNATURE _____
(IF USING CREDIT CARD)
KPMP Products 510 E. Commercial St. Los Angeles, Calif.

Radio TV Reports

41 East 42nd Street New York N.Y. 10017
(212) 697-5100

PRODUCT: ACNE STATIN
PROGRAM: NEWS
PAGE 1 WPIX-TV

2/15/77
(NEW YORK)

771887
120 SEC.
10:19PM



1. PAT BOONE: Acne is painful, both physically and emotionally. I don't care if you're a teenager or an adult.



2. Acne causes embarrassment and anxiety.



3. I'm one of the lucky ones. I never had much of a skin problem.



4. but I do have four daughters. We've tried a lot of skin cleansers and medications around our house.



5. And nothing ever really seemed to work, did it, Deb?



6. DEBBIE BOONE: No, not until my sisters and I met a Beverly



7. Hills doctor and got some real help through a product she developed called Acne Statin.



8. PAT: Right. The doctor explained that a bacteria called C-Acne



9. located deep in the pores of the skin, breaks the oil of the pores into fatty acids.



10. The pores become blocked and irritated.



11. This results in blemishes, whiteheads, blackheads, and pimples.



12. DEBBIE: Many medications only attack acne at the surface level by trying to draw out the oil.



13. Usually this doesn't work against acne.



14. It only irritates, dries and peels the skin.



15. PAT: Let me show you a photograph.



16. Here are thousands of bacteria colonies still left on facial skin after washing with soap.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

92 F.T.C.

Radio TV Reports

51 East 42nd Street New York N.Y. 10017
(212) 697-5100

PRODUCT:
PROGRAM:
PAGE 2

ACNE STATIN
NEWS
WPIX-TV

2/15/77
(NEW YORK)

771837
120 SEC.
10:19PM



1. Now, here are the same areas eight hours after using Acne Statin.



2. See, Acne Statin goes right to the root of the problem.



3. It liquifies at body temperature so that it can penetrate deep into the pores.



4. And there it deposits an anti-bacterial agent that kills the bacteria responsible for acne.



5. and keeps on killing the bacteria hours after each application.



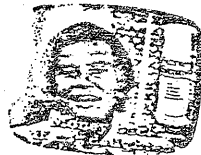
6. DEBBIE: I like it because it's lotion-like, not greasy, and it goes on clear, leaving my skin moist and soft.



7. PAT: Acne Statin is not available in stores.



8. but you can order a full 30-day four ounce treatment without prescription.



9. And if you're not completely satisfied, you just return the empty container for a full refund.



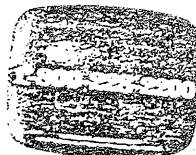
10. Order right away, and you'll also receive a booklet entitled,



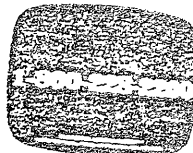
11. "Acne: It's Cause And Treatment", by Tina Carr, M.D. Here's how to order.



12. ANNCR: Call toll free, 1-800-228-2200.



13. When your package arrives, pay just \$9.50 plus C.O.D. Postage



14. That's 1-800-228-2200. 1-800-228-2200. This is a free call.

"ACNE?" Our girls got lasting help with Acne-Statⁱⁿ"

"With four daughters, we've tried the leading acne medications at our house, and nothing ever seemed to work until our girls met a Beverly Hills doctor and got some real help through a product she developed called 'Acne-Statin'."

See why over
700,000
families have
switched
to ACNE-
STATIN!



Pat Borens and her daughter Debby

The doctor explained that a bacteria called "C-Acne" located deep in the pores of the skin breaks the oil in the pores into Fatty Acids. The pores become blocked and irritated, resulting in blemishes, blackheads, whiteheads and pimples.

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WHAT ABOUT SENSITIVE SKIN?

Debby said that even when she leaves it on overnight it doesn't irritate or dry her skin. Dr. Karr explained

that it is hypo-allergenic and that it contains a moisturizer. So it leaves even sensitive skin moist and soft with NO PEELING, REGARDLESS OF AGE or sex. Acne-Statin helps control skin irritations from occasional blemishes to chronic acne.

DR. ATIDA KARR, a genuine concern for skin care was as impressive to me as her credentials. In addition to being an A.D., she also has an M.S. in Physiology and a Ph.D. in Cellular Physiology and Biochemistry. For five years she was involved in cancer research at the University of Pennsylvania under a federal grant.

Equally impressive were the letters she had received from youth and adults alike who had received significant help with Acne-Statin. HERE ARE EXCERPTS from two of those letters. The first one is from an editor of one of the nation's leading fashion magazines.

"Thank you for recommending your fabulous product. I have literally tried everything on the market, plus some of my own home remedies and have spent hundreds, in fact probably

thousands of dollars on treatments, facials and the like and nothing has ever really cleared up my skin, much less left it in good condition. That's why I can't believe that such a pleasant lotion-like cleanser and treatment like Acne-Statin could work as thoroughly as it did. It really is fantastic. It's the only thing that has ever worked."

"Being 25 and having had occasional acne for the past 10 years, I have tried almost every commercial and prescription product, and the results have varied. Since using your Acne-Statin, for the first time I have a clear complexion. As an actress, it is necessary that I have my skin clear. My blemishes are completely gone. Not just on the surface, but all traces of infection have disappeared. My skin has reached a balanced condition."

MONEY BACK

IF NOT DELIGHTED

If you are not pleased with the help you get you may return the empty container for a full refund.

ACNE-STATIN IS NOT AVAILABLE IN STORES

But you can order a 30-day four-ounce treatment without a prescription for only \$8.50. Order now and you'll receive FREE the booklet entitled "Acne, Its Cause and Its Treatment" by Atida Karr, M.D.

HERE'S HOW TO ORDER

1. Complete the coupon below. Be sure to mark the number of bottles you wish to order.
2. Make out a check or money order for the appropriate amount, or use Master Charge or BankAmericard. Be sure to add \$6 for postage for each bottle.
3. Mail the coupon with payment to: ACNE-STATIN, P.O. BOX 100; BEVERLY HILLS, CALIFORNIA 90213.

ORDER NOW AND RECEIVE FREE

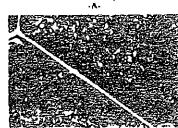
This booklet, "Acne, Its Cause and Its Treatment" by Atida H. Karr, M.D.



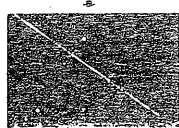
SEE THE DIFFERENCE

In these microscopic photographs, each tiny "bubble" is a COLONY of millions of bacteria. Side A is part of a facial culture taken eight hours after washing with soap. As you can see there are still countless bacterial colonies. Side B shows a culture of the same facial area a full eight hours after washing with Acne-Statin. Acne-Statin kills bacteria on contact, and keeps on killing bacteria hours after each washing.

After Soap



After Acne-Statin



Mail coupon with payment to:
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213

☐ Please Rush ... 30 day 4-oz. bottles of Acne-Statin
Enclosed is \$10.00 (\$8.50 + \$6.00 postage & handling for each)

☐ BankAmericard ☐ Check or Money Order ☐ Master Charge

PLEASE PRINT

CREDIT CARD # _____ EXP. DATE _____

NAME _____

ADDRESS _____ APT. NO. _____

CITY _____ STATE _____ ZIP _____

SIGNATURE _____

(IF USING CREDIT CARD)

KPMF Products, 510 E. Commercial St., Los Angeles, Calif.

PAR. 7. Through the use of said advertisements and others referred to in Paragraphs Five and Six, respondents represented, and now represent, directly or by implication that:

a. Use of Acne-Statin will cure acne regardless of the severity of the condition.

b. Acne-Statin can penetrate the pores of the skin to eliminate the bacteria responsible for pimples, blackheads, whiteheads and other acne blemishes.

c. Acne-Statin can penetrate the pores of the skin to eliminate the fatty acids responsible for pimples, blackheads, whiteheads and other acne blemishes.

d. Acne-Statin is superior to all other acne preparations in the antibacterial treatment of acne.

e. Acne-Statin is superior to soap in the antibacterial treatment of acne.

f. Acne-Statin is a medically and scientifically tested acne treatment.

g. All of "Boone's" daughters used Acne-Statin for the treatment of acne and experienced favorable results.

PAR. 8. In truth and in fact:

a. Use of Acne-Statin will not cure acne.

b. Acne-Statin cannot penetrate the pores of the skin to eliminate the bacteria contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.

c. Acne-Statin cannot penetrate the pores of the skin to eliminate the fatty acids contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.

d. Acne-Statin is not superior to prescription and over-the-counter drug preparations which are efficacious in the antibacterial treatment of acne.

e. Neither Acne-Statin nor soap is an effective antibacterial treatment for acne.

f. At the time of the dissemination of the advertisements referred to in Paragraph Five *supra*, Acne-Statin was neither medically nor scientifically tested as an acne treatment.

g. Not all of "Boone's" daughters used Acne-Statin for the treatment of acne or for any other skin condition.

Therefore, the advertisements referred to in Paragraphs Five and Six were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and representations set forth in Paragraph Seven were, and are false, misleading or deceptive.

PAR. 9. Furthermore, through the use of the advertisements

referred to in Paragraphs Five and Six, respondents represented, and now represent, directly or by implication that:

- a. Use of Acne-Statin by persons with acne will result in skin free of pimples, blackheads, whiteheads and other acne blemishes.
- b. Acne-Statin can penetrate the pores of the skin to eliminate the cause of acne.
- c. Acne-Statin is superior to all prescription acne preparations for the treatment of acne.
- d. Acne-Statin is superior to all other over-the-counter acne preparations for the treatment of acne.

PAR. 10. There existed at the time of the first dissemination of the representations contained in Paragraphs Seven a, b, c, and f and Nine no basis for the making of these representations. Therefore, the making and dissemination of said representations as alleged, constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 11. Through the use of photographs of bacterial colonies, in both the print and television advertisements referred to in Paragraphs Five and Six, respondents represented, and now represent, to consumers that Acne-Statin effectively kills "C-acne," the bacteria responsible for acne.

PAR. 12. In truth and in fact, the slides in the photographs did not contain "C-acne," correctly C-acnes, now generally referred to as P-acnes. They contained staph and other resident bacteria on the facial surface, an environment in which "C-acne" (P-acnes) does not survive. Furthermore, these surface bacteria are neither involved nor in any manner related to the cause of acne.

Therefore, the use of the photographs of bacteria in the advertisements referred to above, constituted, and now constitute, false, misleading or deceptive acts or practices.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

PAR. 14. The use by respondents of the aforesaid unfair or deceptive representations 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 representations were and are true.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertise-

ments, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

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 bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; 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 such 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 Cooga Mooga, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 9255 Sunset Boulevard, Suite 519, Los Angeles, California.
2. Respondent Charles E. Boone is an individual and corporate officer of Cooga Mooga, Inc., and maintains an office at 9255 Sunset Boulevard, Suite 519, Los Angeles, California.
3. 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

I

It is ordered. That respondents Cooga Mooga, Inc., a corporation, and Charles E. Boone, individually and as a corporate officer, their successors and assigns, either jointly or individually, and the corporate respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

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

1. Represents that use of Acne-Statin will cure acne or any skin condition associated with acne.
2. Represents that Acne-Statin will eliminate or reduce the bacteria responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.
3. Represents that Acne-Statin will eliminate the fatty acids responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.
4. Represents that Acne-Statin is superior to prescription or over-the-counter antibacterial acne preparations in the treatment of acne.
5. Represents that Acne-Statin is superior to soap in the antibacterial treatment of acne.
6. Represents that either Charles E. Boone or any member of his family used and/or benefited from a product, unless such representation is true.
7. Misrepresents the extent to which any product has been tested or the results of any such test(s).
8. Misrepresents the efficacy, use or the mode of performance of any product where the use or misuse of the product may affect the health or safety of the user.

B. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of Acne-Statin or any other acne product by persons with acne will result in skin free of pimples, blackheads, whiteheads or any other blemishes associated with acne;
2. Represents that Acne-Statin or any other acne product can

eliminate the cause of acne or any skin condition associated with acne;

3. Represents that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two double-blind clinical studies which conform to accepted designs and protocols and are conducted by different persons, independently of each other. Such persons shall be dermatologists who are recognized as specialists in acne and its treatment and who are experienced in conducting such studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations referring or relating to the performance or efficacy of any product or refers or relates to any characteristic, property or result of the use of any product, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for such representation(s).

D. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents through an endorsement that use of Acne-Statin or any other acne product by persons with acne will result in skin free of pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. Represents through an endorsement that Acne-Statin or any other acne product can eliminate the cause of acne or any skin condition associated with acne;

3. Represents through an endorsement that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne;

4. Makes representations through an endorsement, referring or relating to the performance or efficacy of any product or referring or

relating to any characteristics, property or result of the use of any product, unless, prior to the time of the first dissemination of such representation(s), respondents make a reasonable inquiry into the truthfulness of a proposed endorsement and possess and rely upon information from reliable sources independent of the advertiser or other parties with an interest in the product or service which is the subject of the endorsement. For purposes of this provision "information" may include tests or studies in the possession of the advertiser; however, such information must be independently evaluated by reliable sources in order to provide a basis for an endorsement. For products or services not related to health or safety, respondents may rely on the personal experience of the endorser where the evaluation of such products or services, for purposes of any endorsement, requires no professional expertise and such products or services can be reasonably evaluated through lay use. Additionally, if a material connection exists between the endorser and the advertiser or its advertising agency, such connection must be disclosed in the advertisement(s) which contain the endorsement. A "material connection" shall mean, for purposes of this section, any financial interest in the sale of the product or service which is the subject of the endorsement or any familial connection between the endorser and the advertiser or its advertising agency.

II

It is further ordered, That if any party involved in the marketing, sale and/or advertising of Acne-Statin is directed, by a final order of the Commission or a final court decree, to make restitution, then respondents Cooga Mooga, Inc. and/or Boone will contribute their pro rata share to such restitution. Such restitution shall not exceed the total amount of monies paid by the Acne-Statin Joint Venture and/or any party to that venture to Cooga Mooga, Inc. and/or Boone. Furthermore, such restitution shall be limited to no more than twenty-five cents (25¢) for each bottle for which a refund is returned. However, if a partial restitution is ordered, respondents' pro rata share of such restitution shall be the fraction, that is twenty-five cents (25¢) per bottle (the numerator) over the actual sales price of the bottle (the denominator), of the restitution ordered.

Respondent's restitution shall be confined to all purchases made during the advertising campaign which contained "Boone's" endorsement and all reorders made by persons who first purchased Acne-Statin during such campaign or for a period of two (2) months

after the last disseminated advertisement bearing "Boone's" endorsement; *provided, however*, if a United States District Court, pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b, imposes different restitution obligations on Cooga Mooga, Inc. and/or Boone, such obligations shall supersede this order provision. However, if the District Court does not address the respondents as parties, their obligation for restitution shall be defined by this provision.

III

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

It is further ordered, That each 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 change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, and annually thereafter for one (1) year, file with the Commission a report, in writing, signed by respondent, setting forth in detail the matter and form of its compliance with this order.

It is further ordered, That each respondent shall maintain files and records of all substantiation related to the requirements of Parts IB, IC and ID of this order for a period of five (5) years after the first dissemination of any advertisement which relates to that portion of the order. Additionally, such materials shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such material.

Interlocutory Order

IN THE MATTER OF

COCA-COLA BOTTLING COMPANY OF NEW YORK, INC.

Docket 8992. Interlocutory Order, August 11, 1978

This order grants complaint counsel's motion for reconsideration of a previous Commission denial of their request for an extension of time to file a brief.

ORDER GRANTING MOTION FOR RECONSIDERATION

On August 9, 1978, Complaint Counsel filed a Motion for Reconsideration of Order Denying Request for Eleven Day Extension of Time in Which to File Appeal Brief. Their initial request was denied on the ground that general allegations of burden are not sufficient for an extension of time.

Since complaint counsel's Motion for Reconsideration now cites with specificity their obligations in *Belton Electronics*, Dkt. 8928 and *Amway Corp.*, Dkt. 9023, that defect is cured. The Commission is aware of the time and work burdens associated with both cases and finds that those obligations are sufficient to justify this limited extension.

It is the Commission's intention that the time limitations set forth in Rule 3.52 are to be maintained. General allegations of burden, without more, will not suffice for an extension of time. Furthermore, specificity alone will not always carry the day. The Commission must be convinced that the burdens which counsel plead are genuine and not brought on by counsel's own lack of diligence. Accordingly,

It is ordered, That complaint counsel's Motion for Reconsideration of Order Denying Request for Eleven Day Extension of Time in Which to File Appeal Brief be, and the same hereby is, granted, and complaint counsel are given to and including August 22, 1978, within which to file an appeal brief.