

Complaint

94 F.T.C.

IN THE MATTER OF

**KARR PREVENTATIVE MEDICAL PRODUCTS, INC., ET
AL.****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT***Docket 9109. Complaint, April 26, 1978—Decision, Oct. 29, 1979*

This consent order, among other things, requires a Beverly Hills, Calif. firm and its controlling officer, engaged in the advertising and sale of "Acne-Statin," an acne "treatment," to cease disseminating, or causing the dissemination of advertisements that represent that Acne-Statin, or any other product of similar chemical composition, cures acne, eliminates or reduces the causes of acne blemishes, and is superior to all other acne preparations and soap for the antibacterial treatment of acne. They are required to have a reasonable basis at the time of dissemination for representations relating to product efficacy, performance, characteristics or properties, or the result of the use of any product; and prohibited from misrepresenting the extent to which a product has been tested or the results of such tests. Additionally, the firm and its controlling officer are required to establish an independent, irrevocable trust account containing \$175,000 to be used to pay half of all requests for restitution by Acne-Statin purchasers.

Appearances

For the Commission: *Mark A. Heller, Ira Nerken and Ross D. Petty.*

For the respondents: *George Miron, Wyman, Bautzer, Rothman & Kuchel, Washington, D.C.*

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 Karr Preventative Medical Products, Inc. (hereinafter "KPMP"), and Atida H. Karr, M.D., as a corporate officer and an individual, hereinafter at times referred to as respondents, have 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. "KPMP" is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 9615 Brighton Way, Beverly Hills, California.

PAR. 2. Atida H. Karr, M.D. is an individual and a corporate president, treasurer, director and shareholder of "KPMP". She

formulates, directs and controls the acts and practices of "KPMP," including the acts and practices described herein.

PAR. 3. Respondent "KPMP" is a privately held corporation which was organized and is maintained for the purpose of promoting and advancing the interests of its two shareholders, Dr. Atida H. Karr, M.D., the principal shareholder and beneficiary of the corporation's business, and Devora Silverman, Dr. Atida H. Karr's sister. "KPMP" and Dr. Atida H. Karr 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 respondents, in connection with the manufacture and marketing of said products, 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. The respondent Atida H. Karr, M.D. and the respondent "KPMP" have joined by contract with Robert J. Marsh, Sr. through The National Media Group, Inc. to form a joint venture whose purpose was and is to profitably exploit the product Acne-Statin "through the mutual expertise and capability of the parties" (Joint Venture Agreement, as amended, September 3, 1976). The National Media Group, Inc. and Robert J. Marsh, Sr. for their part gained the sole rights and interests to the marketing and sale of the product, while the ownership of said product remained with "KPMP" and Atida H. Karr, M.D.

PAR. 5. The National Media Group, Inc. is a Delaware corporation located at 1150 First Ave., Suite 1060, Valley Forge Plaza, King of Prussia, Pennsylvania and is owned and controlled by Robert J. Marsh, Sr.

PAR. 6. In the course and conduct of their said businesses, 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 state lines 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. 7: 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-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'."



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 at 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-Statin'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-Statin 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-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 \$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.

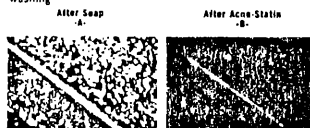
ORDER NOW AND RECEIVE FREE

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-Statin. Acne-Statin kills bacteria on contact, and keeps on killing bacteria hours after each washing.



Mademoiselle for May 1977

Mail coupon with payment to:		MD 577
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213		
☐ Please Rush	30 day 4-oz bottles of Acne-Statin.	
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		
CITY	STATE	ZIP
SIGNATURE		
(IF USING CREDIT CARD)		
KPMP Products 510 E Commercial St. Los Angeles, Calif.		

Complaint

94 F.T.C.

Radio TV Reports

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

PRODUCT:
PROGRAM:
PAGE 1

ACNE STATIN
NEWS
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 daughter. 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.



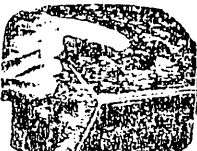
11. This results in blemishes, whiteheads, blackheads, and pimples.



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.

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Complaint

Radio TV Reports

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

PRODUCT:
PROGRAM:
PAGE 2

ACNE STATIN
NEWS
WPIX-TV (NEW YORK)

771887
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.



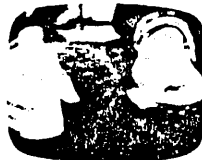
3. It liquifies at body temperature so that it can penetrate deep into the pores.



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,



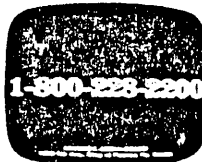
11. "Acne: It's Cause And Treatment"; by Tina Carr, M.D. Here's how to order.



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, a free call.

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

See why over
700,000
families have
switched
to 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'."

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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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 at 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-Statin'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-Statin helps control skin irritations from occasional blemishes to chronic acne.

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"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



Pat Boone and his daughter Debbie

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."

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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.

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*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

P-12-77

☐ Please Rush _____ 30 day 4-oz. bottles of Acne-Statin.
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 _____ APT. NO. _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

SIGNATURE _____

(IF USING CREDIT CARD)

KPMF Products, 1510 E. Commercial St., Los Angeles, Calif.

PAR. 8. Through the use of said advertisements referred to in Paragraphs Six and Seven and others, 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 anti-bacterial treatment of acne.
- f. Competent and reliable medical and scientific tests show that Acne-Statin is an efficacious treatment of acne.
- g. If a purchaser of Acne-Statin is not completely satisfied, a full refund is guaranteed without time or quantity limitations.

PAR. 9. 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. There exist no competent and reliable medical and scientific tests which demonstrate the efficacy of Acne-Statin as a treatment for acne.
- g. There are time and quantity limitations on the money-back guarantee for Acne-Statin.

Therefore, the advertisements referred to in Paragraphs Six and Seven, were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and

representations set forth in Paragraph Eight were, and are false, misleading or deceptive.

PAR. 10. Furthermore, through the use of the advertisements referred to in Paragraphs Six and Seven and others, 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. Use of Acne-Statin by persons with acne will help control pimples, blackheads, whiteheads and other acne blemishes, regardless of the severity of the disease.

c. Acne-Statin can penetrate the pores of the skin to eliminate the cause of acne.

d. Acne-Statin is superior to all prescription acne preparations for the treatment of acne.

e. Acne-Statin is superior to all other over-the-counter acne preparations for the treatment of acne.

PAR. 11. There existed at the time of the first dissemination of the representations contained in Paragraphs Eight a, b, c, and f and Ten no reasonable 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. 12. Through the use of photographs of bacterial colonies, in both the print and television advertisements referred to in Paragraphs Six and Seven, respondents represented, and now represent, to consumers that Acne-Statin effectively kills "C-acne," the bacteria responsible for acne.

PAR. 13. 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. 14. 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. 15. 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. 16. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, 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 Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, 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 complaint, 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days; and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Karr Preventative Medical Products is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 9615 Brighton Way, Beverly Hills, California.
2. Respondent Atida H. Karr, M.D. is an individual and corporate

officer of Karr Preventative Medical Products, Inc., and maintains an office at 9615 Brighton Way, Beverly Hills, 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 Karr Preventative Medical Products, Inc., a corporation, and Atida H. Karr, M.D., an individual, 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 mails 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 product of similar chemical composition will cure acne or any skin condition associated with acne.
2. Represents that Acne-Statin or any other product of similar chemical composition 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 or any other product of similar chemical composition will eliminate or reduce the fatty acids responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.
4. Represents that Acne-Statin or any other product of similar chemical composition is superior to prescription or over-the-counter acne preparations in the antibacterial treatment of acne.
5. Represents that Acne-Statin or any other product of similar chemical composition is superior to soap in the antibacterial treatment of acne.
6. Represents that the money-back guarantee for Acne-Statin or any other product has no time and quantity limitations unless such statement is true.
7. Misrepresents the extent to which any product has been tested or the results of any such test(s).

8. Represents through a test(s) or demonstration(s) that a product is comparable or superior to another product or other products where the test(s) or demonstration(s) does not accurately depict or present the efficacy or the mode of performance of each product for the advertised use or purpose.

9. 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-Staton or any other acne product by persons with acne will reduce, minimize or eliminate pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. Represents that Acne-Staton or any other acne product can eliminate any factor contributing to acne or any skin condition associated with acne;

3. Represents that Acne-Staton 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. Represents that Acne-Staton or any other product is efficacious for the treatment of 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 well-controlled double-blind clinical studies which are conducted by different persons, independently of each other. Such persons shall be dermatologists who are qualified by scientific training and experience to treat acne and conduct the aforementioned studies.

Provided, however, that insofar as representations are covered by Parts IB2 and IA2-IA3, Parts IA2-IA3 shall govern. Additionally, insofar as representations are covered by Parts IB3 and IA4, Part IA4 shall govern.

C. Disseminating and 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).

II

It is further ordered, That:

A. Within thirty (30) days of final acceptance of this order by the Federal Trade Commission (hereinafter the "Commission"), respondents shall establish an interest-bearing trust account for the purpose of paying restitution to Acne-Statin purchasers, which in all respects meets with the approval of the Commission or its designated staff. Said trust account shall provide for at least a six (6) percent annual interest rate, compounded quarterly, and shall be administered, maintained and terminated free of charge. Said account shall be entitled "Acne-Statin Restitution Account-I," and when established shall contain the sum of one hundred thousand dollars (\$100,000). Additionally, within sixty (60) days of the final acceptance of this order by the Commission, respondents shall augment said trust account with an additional seventy-five thousand dollars (\$75,000). Ten (10) days after each funding of said trust account, respondents shall provide the Commission or its designated staff a verified accounting of the funds within said account, and after the first funding, a copy of the trust agreement which establishes the trust account. The instrument creating said trust account shall expressly contain binding provisions to the following effect:

1. Neither Atida H. Karr, M.D., nor Karr Preventative Medical Products, Inc., shall have any power, either express or implied, to revoke said trust account or deplete the monies therein.

2. The trust account monies shall not be subject to the claims of any creditors of Atida H. Karr, M.D., or Karr Preventative Medical Products, Inc.

3. The beneficiaries of said trust account shall be Acne-Statin purchasers who request refunds and are identified by the Commission or its designated staff as beneficiaries of said trust and/or the respondents named herein. *Provided, however,* that purchasers who make their initial purchase of Acne-Statin after the first dissemination of the restitution notice required in Part III, *infra*, shall be ineligible to be designated as beneficiaries of said trust and, therefore, ineligible to receive restitution under this order.

4. The Commission or its designated staff shall have the exclusive power to determine when and which beneficiaries or other parties

necessary to the execution of the restitution program (which includes the notification of consumers) are to receive monies from said trust account and what amount each is to receive. This power of distribution shall include the power to have up to fifty thousand dollars (\$50,000) distributed to pay for the expenses of administering the restitution program.

5. Said trust account shall retain all interest accumulated thereto and such interest shall be available as funds for distribution to the beneficiaries of said trust account.

6. The trustee of said trust account shall be independent of Atida H. Karr, M.D., and Karr Preventative Medical Products, Inc. and shall meet with the approval of the Commission or its designated staff.

7. Upon the direction of the Commission or its designated staff to pay funds to a party identified pursuant to IIA4 *supra*, the trustee shall issue such payment to the said identified party within sixty (60) days of the direction of the Commission or its designated staff.

B. The Commission or its designated staff will determine the terms and conditions under which such purchasers shall receive restitution, provided that:

1. purchasers will be given a specific deadline not more than 120 days after the first publication of the notification before which they must request refunds in writing in order to receive restitution;

2. each purchaser who requests restitution shall receive the total amount paid for Acne-Statin unless there are insufficient funds to pay all such purchasers. If there are not sufficient funds to fully pay all such purchasers, each such purchaser will receive the proportion, equal to the ratio of the total monies available for restitution over the total amount of restitution requested by purchasers, of the amount which he or she spent for Acne-Statin;

3. no purchaser shall receive more in restitution than such purchaser paid for Acne-Statin less the amount of refunds, if any, already received; and

4. funds from the aforementioned trust account shall be used to pay fifty percent (50%) of each restitution payment. *Provided, however,* that if no funds are available from the National Media Group, Inc., and/or Robert J. Marsh, Sr. or if the funds from the trust account established by the National Media Group, Inc., entitled "Acne-Statin Restitution Account-II," are for any reason depleted prior to the depletion of the funds in the trust account established by this order, then monies from the trust account established herein shall alone be used to pay the remaining restitution requests.

C. Within six months after the completion of the restitution program, the Commission or its designated staff shall direct the trustee of the trust account established in IIA, *supra*, to pay all monies remaining in the trust account to Karr Preventative Medical Products, Inc., or Atida H. Karr, M.D., and terminate the trust account.

III

After the final acceptance of this order by the Commission, the Commission or its designated staff shall provide notice to consumers of an opportunity to obtain refunds for purchases of Acne-Statin. Said notice shall not include the Commission's public announcements of this consent agreement or the publication of this agreement and order in the Federal Register.

Ten (10) days prior to reserving commercial space for the first dissemination of said notice, the Commission or its designated staff shall provide respondents with a copy of the restitution notice. Providing said notice to respondents does not in anyway suggest that respondents shall have any veto power over the content of said notice or any part thereof, and in fact, respondents shall have no such veto power.

Said notice may contain the following concepts and shall not substantively exceed the scope of such concepts:

1. No product cures acne.
2. Notice to Acne-Statin purchasers of the restitution program identified herein. Said notice may contain, among other things, information regarding the eligibility for refunds, means of obtaining refunds and any limitations of the restitution program.
3. The fact that a Federal Trade Commission complaint was issued in this matter, and that the consent agreement and order are the basis for said notice and the restitution program.
4. Any information pertinent to the consent agreement or the Commission's order; *provided, however*, that the disclosure of any such information shall not be inconsistent with paragraph seven of the consent agreement.
5. The total amount of money available for restitution including funds from this and other orders.
6. The picturing of the container or any other promotional material for the product Acne-Statin or the quoting or summarizing of the language contained either on the product container or appearing in any other promotional vehicle.

Upon the first publication of said notice to consumers, persons who desire refunds will have up to, and including, one hundred and twenty (120) days to request the return of monies they spent on the purchase of Acne-Statin.

Respondents shall provide the Commission or its designated staff all consumer letters requesting refunds for Acne-Statin not yet provided to the Commission. All such letters shall be provided to the Commission or its designated staff fifteen (15) days after this order becomes final. Further, any such letters received subsequent to the order becoming final and before the end of the 120 day notification period as described in IIB1, *supra*, shall be provided to the Commission within fifteen (15) days of their receipt by respondents.

Lastly, respondents shall provide complete and updated computer tapes which identify the purchasers of Acne-Statin to the party responsible for verifying refund requests from consumers and dispensing refund checks. Such tapes shall remain with said party until all refund requests have been fully processed (*i.e.*, paid or rejected) to the satisfaction of the Commission or its designated staff. At which time, said computer customer list shall be returned to respondents.

IV

It is further ordered, That the corporate respondent 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 three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner 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 and IC of this order for a period of three (3) years after the dissemination of any advertisement which relates to either of these portions of the order. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such material.

Complaint

94 F.T.C.

IN THE MATTER OF
THE NATIONAL MEDIA GROUP, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2995. Complaint, Oct. 29, 1979—Decision, Oct. 29, 1979

This consent order, among other things, requires a King of Prussia, Pa. firm and a corporate officer, engaged in the advertising and sale of "Acne-Statin," an acne "treatment," to cease disseminating or causing the dissemination of advertisements that represent that Acne-Statin cures acne, eliminates or reduces the bacteria and fatty acids responsible for acne blemishes, and is superior to all other acne preparations and soap for the antibacterial treatment of acne. The firm and its corporate officer are required to have a reasonable basis at the time of dissemination for representations relating to the efficacy, performance, characteristics, properties or the use of any drug, cosmetic, device or food; and prohibited from misrepresenting the extent to which a product has been tested or the results of such tests. Additionally, they are required to establish an independent, irrevocable trust account, containing sixty thousand dollars (\$60,000) to be used to pay half of all requests for restitution by Acne-Statin purchasers; and obligated to conduct and be totally responsible for the administration of the restitution program.

Appearances

For the Commission: *Mark A. Heller.*

For the Respondents: *Clinton R. Batterton, Fulbright & Jaworski, Washington, D.C.*

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 The National Media Group, Inc. (hereinafter "NMG"), a corporation, and Robert J. Marsh, Sr., as a corporate officer and an individual, hereinafter at times referred to as respondents, have 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. "NMG" is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1150 First Ave., Suite 1060, Valley Forge Plaza, King of Prussia, Pennsylvania.

PAR. 2. Robert J. Marsh, Sr. is an individual and corporate