

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

director, chief executive officer, president, treasurer and sole shareholder of "NMG." He formulates, directs and controls the acts and practices of "NMG," including the acts and practices described herein.

PAR. 3. Respondent "NMG" is a privately held corporation which was organized and is maintained for the purpose of promoting and advancing the interests of Robert J. Marsh, Sr., the sole shareholder of the corporation. "NMG" and Robert J. Marsh, Sr., have been and now are engaged in the business of marketing and preparing advertisements for consumer products, as well as purchasing television time for the placement of advertisements for consumer products. Among the products now marketed by "NMG" and Robert J. Marsh, Sr. is Acne-Statin. The above-named respondents have prepared, disseminated and published and now prepare, disseminate and publish 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 Robert J. Marsh, Sr., through the respondent "NMG" has joined by contract with Karr Preventative Medical Products, Inc., and Atida H. Karr, M.D., 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). "NMG" and Robert J. Marsh, Sr., for their part gained the sole rights and interests to the marketing and sale of Acne-Statin, while the ownership of said product remained with Karr Preventative Medical Products, Inc. and Atida H. Karr, M.D.

PAR. 5. Karr Preventative Medical Products, Inc. is a California corporation located at 9615 Brighton Way, Beverly Hills, California and directed and controlled by Atida H. Karr, M.D., a major shareholder.

PAR. 6. In the course and conduct of their said businesses, the respondents, along with joint venturers Karr Preventative Medical Products, Inc. and Atida H. Karr, M.D., 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 product 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 product 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-Stat[®]"

"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 _____ APT. NO. _____

CITY _____ STATE _____ ZIP _____

SIGNATURE _____

(IF USING CREDIT CARD)

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

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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 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.



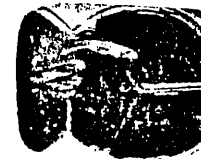
13. Usually this doesn't work against acne.



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.

Radio TV Reports

41 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)

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.



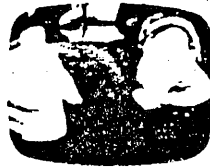
3. It liquefies at body temperature so that it can penetrate deep into the pores.



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,



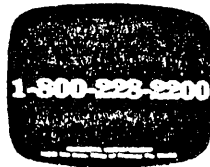
11. "Acne: It's Cause And Treatment" by Tina Carr, M.D. Here's how to order.



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.

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"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.'"

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 pimples, 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-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. ALIDA KARR, a 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



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-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."

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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.

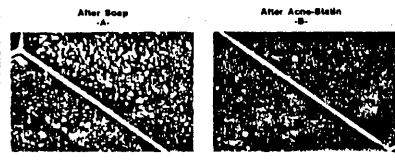
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Mail coupon with payment to:
ACNE-STATIN, P.O. Box 100, Beverly Hills, California 90213

☐ 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 _____ EXP. DATE _____

CREDIT CARD # _____

NAME _____

ADDRESS _____ APT. NO. _____

CITY _____ STATE _____ ZIP _____

SIGNATURE _____

(IF USING CREDIT CARD)

KPMF Products 810 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 antibacterial treatment of acne.
- f. Competent and reliable medical and scientific tests show that Acne-Statin is an efficacious treatment for 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 of acne.
- f. There exist no competent and reliable medical or 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 their aforesaid businesses 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.

In addition to the above, respondents are in substantial competi-

tion in or affecting commerce with corporations, firms and individuals representing or engaged in the direct mail order sales and advertising 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 The National Media Group, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 1060 Valley Forge Plaza, 1150 First Ave., King of Prussia, Pennsylvania

2. Respondent Robert J. Marsh, Sr. is an individual and corporate officer of The National Media Group, Inc., and maintains an office at 1060 Valley Forge Plaza, 1150 First Ave., King of Prussia, Pennsylvania.

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, The National Media Group, Inc., a corporation, and Robert J. Marsh, Sr., 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 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 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 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 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.

9. Misrepresents the efficacy, use or the mode of performance of any "drug," "cosmetic," "device" or "food" (as these terms are defined by Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55) where the use or reasonably foreseeable misuse of the product may adversely 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 reduce, minimize or eliminate pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. represents that Acne-Statin or any other acne product can eliminate any factor contributing to 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;

4. represents that Acne-Statin or any other product is efficacious for the treatment of acne, unless, at the time of each dissemination of such representation(s) respondent(s) 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 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.

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 "drug," "cosmetic," "device" or "food," or refers or relates to any characteristic, property or result of the use of any "drug," "cosmetic," "device" or "food," unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for such representation(s). For purposes of this provision the terms "drug," "cosmetic," "device" or "food" shall be defined by Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

II

With reference to IA 7-9, IB and IC of this order, the respondent(s) shall have an affirmative defense to a compliance suit for violation of these provisions where respondent(s): (1)(a) acted only as an advertising agency; that is only aided in the preparation of copy, marketing strategy and placement of advertisements which are the subject of a compliance suit and had no proprietary interest in the product(s) advertised nor financial interest in the sale thereof; or (b) functioned as a media buyer with a financial interest in the product(s) advertised; that is only purchased media space or time for advertising and had a proprietary interest in the product(s) advertised or a financial interest in the sale thereof; and (2) neither knew nor should have known that the advertisements violated the above-specified order provisions.

III

Respondents shall be exempt from paragraphs IA 7-9, IB and IC of this order where they acted only as media buyer; that is they only purchased media space or time and were remunerated by the standard and traditional means of compensation for such acts. For the purposes of this part of the order, "standard and traditional means of compensation" shall be defined as a fee based on:

- A. a percent of the cost of media space or time;
- B. a fixed rate charged for resources expended by the media buyer to locate and/or purchase media space or time; or
- C. a combination of A and B, *supra*.

In no event shall a "standard and traditional means of compensation" for purposes of this part of the order include a method of payment based on a percentage of sales of the product(s) or service(s) for which media space or time is purchased.

IV

It is further ordered, That:

A. Within thirty (30) days of final acceptance of this consent order by the Federal Trade Commission (hereinafter the "Commission"), respondent The National Media Group, Inc., shall establish an interest-bearing trust account containing the sum of sixty thousand dollars (\$60,000), for the purpose of paying restitution to Acne-Statin purchasers. The instrument creating the trust account shall not become binding until the Commission or its designated staff has reviewed said instrument and determined that it conforms to all obligations outlined in this order. In the event that said instrument does not so conform to the order, respondents shall make all changes identified by the Commission or its designated staff in a timely manner to insure that said trust account is established within the time constraints imposed by this order. Said trust account shall provide for at least a six (6) percent annual interest rate, compounded quarterly, if such rate and terms are reasonably available, and shall be administered, maintained and terminated for a reasonable fee, which fee shall not reduce the principal of the trust account. To the extent respondents pay administration costs of the trust account from funds other than the sixty thousand dollars (\$60,000) specified above, they shall be reimbursed from the trust account established by this order pursuant to the provisions in the instrument which creates the said trust account; *provided, however*, that all such payments shall be limited to the interest of said trust account and the principal of said trust account shall not be reduced. Said account shall be entitled "Acne-Statin Restitution Account - II." Furthermore, within forty (40) days of the final acceptance of this order by the Commission, respondents shall provide the Commission or its designated staff a copy of the trust agreement which establishes the trust account, and a verified accounting of the funds within said account. If, for any reason, respondent, The National Media Group, Inc., does not fulfill its obligation to establish the aforementioned trust account, respondent, Robert J. Marsh, Sr., shall then establish the trust account within the time constraints imposed by this order. The instrument creating said trust account shall expressly contain binding provisions to the following effect:

1. Neither Robert J. Marsh, Sr., nor The National Media Group, 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 Robert J. Marsh, Sr., or The National Media Group, Inc.

3. The beneficiaries of said trust account shall be Acne-Statins purchasers who request refunds and are identified by the Commission or its designated staff as beneficiaries of said trust and/or The National Media Group, Inc. *Provided, however,* that purchasers who make their initial purchase of Acne-Statins after the first dissemination of the restitution notice 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 ten thousand dollars (\$10,000) distributed to pay for 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 and may also be available as money for the administration costs of the trust account.

6. The trustee of said trust account shall be independent of Robert J. Marsh, Sr., and The National Media Group, Inc.

7. Upon direction of the Commission or its designated staff to pay funds to a party identified in IIA4, *supra*, the trustee shall issue 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 means by which Acne-Statins purchasers will be notified and the terms and conditions under which such purchasers shall receive restitution, provided that:

1. no restitution shall be paid out of the aforementioned trust account to any Acne-Statins purchaser unless Karr Preventative Medical Products, Inc., and/or Atida H. Karr, M.D., is directed by a final order of the Commission or a final court decree pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b, to make restitution to such purchasers;

2. purchasers will be given a specific deadline not more than 120 days after their notification before which they must request restitution in writing in order to receive restitution;

3. 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 shall 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;

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

5. 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 Karr Preventative Medical Products, Inc., and/or Atida H. Karr, M.D., or if the funds from the trust account established by these parties 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 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 IV A, *supra*, to pay all monies remaining in the trust account to The National Media Group, Inc., and to terminate the trust account.

V

It is further ordered, That:

Respondents shall be obligated to the extent set forth below, and as directed by the Commission or its designated staff generally, to take responsibility for the administration of the Acne-Statin restitution program.

Included in the said responsibilities of the respondents herein, are the following:

1. Verification of the fact of purchase and the amount of purchase for each Acne-Statin purchaser who requests his/her money back.

2. Totalling the refund requests and notifying the Commission or its designated staff of the identity of persons who should receive refunds and the amount of money each such person should receive.

3. For each person who requests a refund and said request cannot be verified or for some other reason the said person is allegedly ineligible for the total requested refund, the respondents shall identify each such person and provide an explanation why the

refund is inappropriate. The final determination of eligibility for, and amount of, refunds shall rest with the Commission or its designated staff.

4. The writing and mailing of refund checks to all persons who are eligible for restitution.

5. Certifying under oath that all eligible consumer requests for refunds have been satisfied by the act of mailing refund checks to said persons at the most recent address of such persons known to respondents.

6. Providing the Commission or its designated staff with a full accounting regarding how the respondents expended funds approved by the Commission or its designated staff in the discharge of their duties under Part V of this order.

Provided, however, in fulfilling these order obligations, respondents may enter into contracts for the performance of the said obligations. All such contracts shall be approved by the Commission or its designated staff before being made final, and shall be made with parties independent of the respondents, who are bonded to guarantee and insure the honest performance of each such contract. Notwithstanding the fact that certain order obligations may be accomplished through contracting, it shall be the respondents' obligation and responsibility to perform or have performed all order obligations in an expeditious and timely fashion and the responsibility to police all such contracts. Upon approval by the Commission or its designated staff, such contracts shall bind the trustees responsible for Acne-Statin Restitution Accounts I and II. The respondents shall not be financially liable for the aforementioned administrative expenses beyond said ten thousand dollars (\$10,000) specified in the account entitled "Acne-Statin Restitution Account - II."

The respondents shall be responsible for the cost of: finding suitable parties for the fulfillment of such contracts; negotiating such contracts; monitoring the compliance with such contracts; and any other similar administrative tasks which are necessary for the administration of the restitution program through its completion. These obligations shall be independent of and in addition to the monies which respondents shall have paid into the trust account to help defray the administrative expenses of the restitution program.

VI

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 the 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 written request for such material.

IN THE MATTER OF

GANT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2996. Complaint, Nov. 6, 1979—Decision, Nov. 6, 1979*

This consent order, among other things, requires a New Haven, Conn. manufacturer of wearing apparel and related accessories, to cease fixing, maintaining or compelling adherence to suggested resale prices and sale periods for its products. Respondent is prohibited from soliciting the identity of dealers who fail to conform to such prices, and from taking any adverse action against them. Additionally, the firm is prohibited from restricting the use of product trademarks or other identification in the sale or advertising of its products; and barred from suggesting retail prices and sales periods for its products for a period of two years.

Appearances

For the Commission: *Jeffrey Klurfeld.*

For the respondent: *M. Topofsky and S. Bosme, Heller, Ehrman, White & McAuliffe, San Francisco, Calif.*

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 Gant, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

For purposes of this complaint, the following definitions shall apply:

“Product” is defined as any item of wearing apparel or related accessory which is manufactured, offered for sale or sold by respondent.

“Dealer” is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

“Resale Price” is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established or customary resale price as well as the retail price in effect at any dealer.

“Sale Period” is defined as any time during which any dealer