

Complaint

95 F.T.C.

IN THE MATTER OF

SAN-MAR LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3003. Complaint, Jan. 15, 1980—Decision, Jan. 15, 1980*

This consent order requires, among other things, two Elmsford, N.Y. firms and their corporate president, engaged in the manufacture and marketing of "Acne Lotion 22," the "Acne Masque," and the "Home Acne Kit," to cease disseminating advertisements which represent that their products can cure acne or eliminate bacteria-caused skin blemishes; or which misrepresent or make unsubstantiated claims regarding the superiority, efficacy, and performance of their products; the extent to which their products have been tested; and the results of the tests. Respondents are required to inform purchasers of their right to request and receive refunds; and honor refund requests in a timely manner. Additionally, respondents are required to maintain specified records for a period of three years.

*Appearances*For the Commission: *Mark A. Heller.*For the respondents: *Burt Bauman, New York City.*

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 San-Mar Laboratories, Inc. (hereinafter "San-Mar") and Maison Drug Company, Inc. (hereinafter "Maison Drug"), corporations, and Marvin Berkrot, (hereinafter "Berkrot") as an individual and corporate officer, hereinafter at times referred to as respondents, having violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. "San-Mar" and "Maison Drug" are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 399 Executive Boulevard, Elmsford, New York. "San-Mar" and "Maison Drug" manufacture, market and advertise health-related products. "Maison Drug" is a wholly-owned subsidiary of "San-Mar."

PAR. 2. "Berkrot" is an individual and corporate president of "San-Mar" and "Maison Drug." He formulates, directs and controls the acts and practices of "San-Mar" and "Maison Drug," including the acts and practices described herein. "Berkrot's" business address is 399 Executive Boulevard, Elmsford, New York.

PAR. 3. Respondents have been and now are engaged in the business of marketing and advertising health-related products, including but not limited to products known as Acne Lotion 22 or Special Lotion 22 (hereafter "Acne Lotion 22"); and Special Acne Protein Menthol Therapy Masque or Protein Therapy Masque (hereafter "Acne Masque"). The aforesaid products were and are offered alone and as part of a program for the treatment of acne known as the Special Home Acne Treatment Kit (hereafter "the Home Acne Kit"). In connection with the manufacture and marketing of said products respondents "Berkrot" and "San-Mar," through "San-Mar's" subsidiary, respondent "Maison Drug," have disseminated, published and distributed, and now disseminate, publish and distribute advertisements and promotional material for the purpose of promoting the sale of said products for human use. These products, as advertised, are "drugs" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning "Acne Lotion 22," "Acne Masque," and "the Home Acne Kit" through the United States mails 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 advertisements in the form of a booklet, entitled "Acne Its Control and 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 products "Acne Lotion 22," "Acne Masque," and "the Home Acne Kit," 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. 5. Typical of the statements and representations in said advertisements disseminated as previously described, but not necessarily inclusive thereof, are the following:

PAR. 6. Through the use of said advertisements and other advertisements referred to in Paragraphs Four and Five, respondents represented, and now represent, directly or by implication that:

a. Use of "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," will cure acne regardless of the severity of the condition.

b. "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," can penetrate the pores of the skin to eliminate the bacteria responsible for pimples, blackheads, whiteheads, and other acne blemishes.

c. Several minutes after use of "Acne Lotion 22" the bacteria responsible for acne are flushed out of the pores of the skin and can be easily eliminated from the skin surface.

d. "Acne Lotion 22" and "Acne Masque," either alone or as part of "the Home Acne Kit," have been medically and scientifically proven effective in the treatment of acne by clinical testing.

PAR. 7. In truth and in fact:

a. Use of "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," will not cure acne.

b. "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," cannot penetrate the pores of the skin to eliminate the bacteria contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.

c. The bacteria contributively responsible for acne cannot be flushed out of the pores of the skin and easily eliminated from the skin surface.

d. "Acne Lotion 22" and "Acne Masque," either alone or as part of "the Home Acne Kit," are not medically or scientifically proven effective in the treatment of acne by clinical testing.

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

PAR. 8. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondents represented, and now represent that:

a. Use of "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," will result in skin free of pimples,

blackheads, whiteheads, other blemishes associated with acne and scarring, regardless of the severity of the disease.

b. "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," are superior to all prescription and/or over-the-counter acne preparations in the treatment of acne.

c. "The Home Acne Kit" is superior in the treatment of acne to any other treatment, including but not limited to treatments offered by dermatologists other than Dr. Harvey Glass, whose endorsement of "the Home Acne Kit" appears in said advertisements.

PAR. 9. In truth and in fact, there existed at the time of the first dissemination of the representations in Paragraphs Six and Eight no reasonable basis for making them, in that respondents lacked competent and reliable scientific evidence to support each such representation. 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. 10. 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. 11. The use by respondent 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. 12. The aforesaid acts and practices of the 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, 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. Respondents San-Mar Laboratories, Inc. and Maison Drug Company, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their principal offices and places of business at 399 Executive Boulevard, Elmsford, New York.

2. Respondent Marvin Berkrot is an individual and corporate officer of San-Mar Laboratories, Inc., and Maison Drug Company, Inc., and maintains an office at 399 Executive Boulevard, Elmsford, New York.

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 San-Mar Laboratories, Inc. and Maison Drug Company, Inc., corporations, and Marvin Berkrot, individually and as a corporate officer, their successors and assigns, either jointly or individually, and the corporate respondents' officers, agents, representatives, and employees, directly or through any corporation, 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 advertisements 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 Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," or any other acne product or regimen will cure acne.

2. Represents that "Acne Lotion 22" and/or "Acne Masque," or any chemically similar formulations, either alone or as part of "the Home Acne Kit," can penetrate the pores of the skin to eliminate the bacteria contributively responsible for acne, pimples, blackheads, whiteheads, and other acne blemishes.

3. Represents that the bacteria contributively responsible for acne can be flushed out of the pores of the skin and/or easily eliminated from the skin surface.

4. Misrepresents, the efficacy, use or the mode of performance of any drug where the use or reasonably foreseeable misuse of the drug may affect the health or safety of the user.

5. Misrepresents the extent to which any product has been tested or the results of any such tests.

B. Disseminating or causing the dissemination of any advertisements 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 Lotion 22" and/or "Acne Masque," either alone or as part of the "Home Acne Kit," or any other acne product or regimen, will result in skin free of pimples, blackheads, whiteheads, other blemishes associated with acne and scarring, regardless of the severity of the disease;

2. Represents that "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," or any other acne product or regimen, are superior to all prescription and/or over-the-counter acne preparations in the treatment of acne;

3. Represents that "the Home Acne Kit," or any other acne product or regimen, is superior in the treatment of acne to any other treatment, including but not limited to treatments offered by dermatologists other than Dr. Harvey Glass;

4. Represents that "the Home Acne Kit," or any other acne product or regimen, is efficacious in any manner in 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 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).

II

It is further ordered, That respondents shall:

A. Within thirty (30) days after entry of this order notify each purchaser of one or more orders of the Special Home Acne Kit, who has not received nor is in the process of receiving a full refund on their purchase prior to that time, of the purchaser's right to a refund in the amount of the full purchase price excluding the cost of mailing. Said notice shall be in the form of a letter identical in form, language and content to that annexed hereto as Attachment A (hereinafter "the notice"). The notice shall be sent to said purchasers by first class mail, and shall not include any other written matter which would obscure its clear meaning, nor any solicitation for respondents' products.

B. Refund the full purchase price of the Special Home Acne Kit, excluding the cost of mailing, by check, to any purchaser who responds to the notice within ten (10) weeks of its mailing. Such refunds shall be mailed to purchasers who request refunds no later than fourteen (14) weeks after the notice is sent to said purchasers.

C. Proof of compliance with this section shall be sent to the Commission by registered mail upon completion of the processing of all refund requests made pursuant to the notice. Said proof shall include all refund requests by purchasers made pursuant to the notice, and such records as will show full payment to these purchasers.

III

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

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, and one (1) year thereafter, 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 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 written request for such materials.

ATTACHMENT A

(Maison Drug Company Letterhead)

Dear Customer:

According to our records, you have purchased our Special Home Acne Treatment Kit, consisting of Special Lotion 22, Protein Therapy Masque, and a booklet on acne.

The Federal Trade Commission has recently brought to our attention certain questions about advertising claims we made for the Special Home Acne Treatment Kit.

We have agreed with the Commission to make sure that all our customers who purchased the Special Home Acne Kit are satisfied that it performed as they expected it would, and to refund the full purchase price to customers who may have not been satisfied.

If you choose to request a refund because of dissatisfaction with the product, submit proof of purchase (check or money order will do) and we will remit payment. You must complete the form below and return it no later than . Please allow fourteen (14) weeks from receipt for processing of your refund request.

Sincerely,

MARVIN BERKROT, President
MAISON DRUG COMPANY

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(cut along dotted line)

Dear Mr. Berkrot:

I was not satisfied that the Special Home Acne Kit performed as I expected it would.
I purchased _____ (insert number of Kits you bought) Kits. I enclose herewith proof of purchase.

My full name and address is:

NAME: _____

ADDRESS: _____

Street Apt. No.

City State Zip

SIGNATURE: _____

AFTER YOU HAVE COMPLETED THIS FORM, SEND IT TO:

Marvin Berkrot, President
Maison Drug Company
399 Executive Boulevard
Elmsford, New York 10523

Complaint

95 F.T.C.

IN THE MATTER OF
HARVEY GLASS, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3004. Complaint, Jan. 15, 1980—Decision, Jan. 15, 1980

This consent order requires, among other things, a Cherry Hill, N.J. dermatologist to cease, in connection with the endorsing, advertising or sale of products, representing that the use of "Acne Lotion 22," "Acne Masque," or any other acne product or regimen will cure acne; eliminate bacteria-caused skin blemishes and result in a blemish-free skin. The respondent is also prohibited from disseminating advertisements and/or permitting his endorsement to appear in advertisements which misrepresent or make unsubstantiated claims regarding a product's efficacy, use or performance; the extent to which a product has been tested and the results of such tests.

Appearances

For the Commission: *Mark A. Heller.*

For the respondent: *Barry Greenberger, Bricktown, N.J.*

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 Harvey Glass, M.D., an individual (hereafter "Glass"), at times referred to as respondent, having violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. "Glass" is a medical doctor, licensed to practice by the State of New Jersey, with a specialty in dermatology. "Glass's" business address is Old Orchard Professional Building, 1999 East Marlton Pike (Route 70), Cherry Hill, New Jersey.

PAR. 2. "Glass," in conjunction with San-Mar Laboratories, Inc., Maison Drug Company, Inc., and Marvin Berkrot, chief executive officer of both corporations, has been and now is engaged in the business of marketing and advertising health-related products, including but not limited to products known as Acne Lotion 22, or Special Lotion 22 (hereafter "Acne Lotion 22"); and Special Acne Protein Menthol Therapy Masque, or Protein Therapy Masque (hereafter "Acne Masque"). The aforesaid products were and are offered alone