

## IN THE MATTER OF

## BRISTOL-MYERS COMPANY, ET AL.

*Docket 8917. Interlocutory Order, Jan. 29, 1980*ORDER DENYING RESPONDENT BRISTOL-MYERS' MOTION THAT THE  
COMMISSION TAKE OFFICIAL NOTICE OR THAT IT REOPEN THE  
RECORD

On November 26, 1979, respondent, Bristol-Myers Company, ("Bristol-Myers") filed a motion requesting the Commission to take official notice of selected newspaper reports about the initial decision in this case, or reopen the record so those reports could be introduced into evidence. Bristol-Myers contends that these reports have misstated the findings made by the administrative law judge, demonstrating that the press has misunderstood not only the tenor of the initial decision, but also the affirmative disclosures which Bristol-Myers has been ordered to include in its comparative advertising. The respondent argues that the reports consequently provide direct evidence of the likelihood that consumers will also misconstrue the affirmative advertising disclosures. Complaint counsel answered Bristol-Myers' motion on December 3, 1979, opposing it on grounds that the newspaper reports are neither reliable nor probative evidence of consumers' understanding of the affirmative disclosures.

At this point in the proceedings at least, we are not persuaded of a need either to notice the proffered clippings officially or to reopen the record for the introduction into evidence. The newspaper reports seem, in fact, to be only dimly relevant to the issue of consumer perceptions. The respondent's motion does not state that newspapers have generally mischaracterized the affirmative disclosures which would be given to consumers; rather the motion asserts only that the press has misconstrued the findings on which the order of the administrative law judge is based. On the other hand, we also note from the motion that one of the respondent's witnesses has already testified directly about the probable impact on consumers of affirmative disclosures that are similar or identical to those set forth in the initial decision. Therefore, it is not apparent that the selected newspaper reports constitute evidence necessary or helpful to a proper resolution of this case.<sup>1</sup> Accordingly,

*It is ordered,* That Bristol-Myers' motion be and hereby is denied. Commissioner Pitofsky did not participate.

<sup>1</sup> The Commission may at any time take official notice of appropriate material on its own motion. Pursuant to Rule 3.43(d), however, parties are entitled to disprove an officially noticed fact if the Commission's decision is based on it, in whole or in part, and it is a material fact that does not appear in evidence of record.

Complaint

95 F.T.C.

IN THE MATTER OF  
THE HARTZ MOUNTAIN CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.  
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(A) OF THE  
CLAYTON ACT

*Docket C-3008. Complaint, Jan. 31, 1980—Decision, Jan. 31, 1980*

This consent order requires, among other things, a Harrison, N.J. manufacturer of pet supplies to cease entering into any agreement or arrangement having the tendency to fix resale prices for pet products, or restrict interbrand and intrabrand competition in the pet supply industry. The firm is specifically prohibited from entering into any exclusive or preferential dealing arrangements; and using price incentives, refusals to deal, and threats of termination to induce and maintain such arrangements. Respondent is further prohibited from engaging in price discrimination; restricting sales territories and allocating customers; disparaging financial status of competitors or disfavored distributors; suggesting resale prices for pet supplies; and refusing to deal with recalcitrant distributors. Respondent is additionally required to publish the terms of the order in the *Supermarket News*, and maintain specified records for a designated period.

*Appearances*

For the Commission: *Thomas D. Massie, Peggy H. Summers, William C. Holmes and Jerome S. Lamet.*

For the respondent: *Joshua F. Greenberg, Kaye, Scholer Fierman, Hays & Handler, New York City.*

COMPLAINT

The Federal Trade Commission having reason to believe that The Hartz Mountain Corporation has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13(a)) and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges as follows:

Definitions

1. As used in this complaint:

(a) "Pet supply" means a product that is utilized in the everyday maintenance, care and enjoyment of common household pets and includes, but is not limited to, such items as pesticidal collars,