

Complaint

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IN THE MATTER OF
AMERICAN HOME PRODUCTS CORPORATION

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

Docket C-3023. Complaint, June 19, 1980—Decision, June 19, 1980

This consent order requires, among other things, a New York City manufacturer of pharmaceutical products to cease making any misrepresentations of the efficacy or novel performance characteristics of its vaginal contraceptive suppository products. The order specifically prohibits any exaggerated efficacy claims for the products such as "highly" or "extremely" effective. Additionally, respondent is prohibited from making claims of efficacy without a reasonable basis consisting of a consistent body of valid and scientific evidence. Respondent is also required to distribute an information pamphlet discussing the advantages and disadvantages of various over-the-counter contraceptive methods as well as setting forth specifically required affirmative disclosures.

Appearances

For the Commission: *Barry E. Barnes, Susan Lerner and Rachel Wolkin Sesser.*

For the respondent: *William W. Vodra, Arnold & Porter, Charles F. Hagen and William P. Woods, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that American Home Products Corporation, a corporation, (hereinafter "respondent") has violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. American Home Products Corporation is a Delaware corporation with its principal place of business at 685 Third Ave., New York, New York.

Allegations stated in the present tense include the past tense.

PAR. 2. For purposes of this complaint the following definitions shall apply:

1) A "vaginal contraceptive suppository" is a spermicidal contraceptive product which is inserted into the vagina prior to coitus. Body temperature or vaginal secretions dissolve the suppository and spread its sperm killing agent through the vaginal cavity.

2) "Use effectiveness" means that level of effectiveness which is

obtained when the contraceptive method is used by large numbers of subjects not all of whom follow the instructions accurately or use the contraceptive method each time they have sexual relations.

3) "Commerce" means commerce as defined in the Federal Trade Commission Act, as amended.

PAR. 3. Respondent American Home Products Corporation engages in the manufacturing, advertising, offering for sale and sale of pharmaceutical products, including a vaginal contraceptive suppository product named "Semicid", a "drug" within the meaning of Section 15 of the Federal Trade Commission Act.

PAR. 4. Respondent American Home Products Corporation causes its products when sold, to be shipped and distributed from its places of business to purchasers located in various other States of the United States, the District of Columbia and Puerto Rico. Respondent American Home Products Corporation maintains a substantial course of trade in all its products, including its product Semicid, in or affecting commerce.

PAR. 5. In the course and conduct of its business respondent disseminates or causes to be disseminated certain advertisements concerning Semicid (1) by United States mails, or by various means in or having an effect upon commerce, including but not limited to insertion in newspapers or magazines of interstate dissemination and radio and television broadcasts of interstate transmission, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Semicid, or (2) by various means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Semicid in or having an effect upon commerce.

PAR. 6. Among the advertisements and other sales promotion materials, and typical of the statements and representations made in respondent's advertisements, but not all inclusive thereof, are the advertisements identified as Attachments 1 through 4.

PAR. 7. Through the use of such advertisements, and others not specifically set forth herein, respondent represents, directly or by implication, that:

1. Semicid has an extremely high use effectiveness, approaching the level of oral contraceptives (hereinafter "the pill") or intrauterine devices (hereinafter "IUD").

2. Semicid has novel contraceptive performance characteristics.

PAR. 8. In truth and in fact:

1. Semicid's use effectiveness is approximately that of other

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vaginal contraceptive products. It is not considered to have a use effectiveness on the level of the pill or IUD.

2. Semicid does not have novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery. Its sperm killing ingredient, nonoxynol 9, has been in use for many years in various contraceptive products.

Therefore, the advertisements and representations referred to in Paragraphs Six and Seven are false, deceptive or misleading.

PAR. 9. Furthermore, through the use of the advertisements referred to in Paragraphs Five and Six, respondent represents, directly or by implication, that:

1. Semicid has an extremely high use effectiveness.
2. Semicid has novel contraceptive performance characteristics.
3. Semicid has been scientifically or medically proven to have an extremely high use effectiveness.

PAR. 10. At the time respondent made the representations alleged in Paragraph Nine, respondent had no reasonable basis for making those representations. Therefore, the making and dissemination of such representations constitute deceptive or unfair acts or practices in or affecting commerce.

PAR. 11. Furthermore, respondent markets or advertises Semicid without disclosing to the purchasing public through its advertising that:

1. For best protection against pregnancy, it is essential that one follow instructions.
2. Women for whom pregnancy presents a special health risk should make a contraceptive choice in consultation with their physician.
3. Some Semicid users experience irritation.
4. Semicid requires a waiting period of fifteen minutes before intercourse to ensure effectiveness.
5. Semicid is approximately as effective as vaginal foam contraceptives in actual use.

PAR. 12. The facts described in Paragraph Eleven are material with respect to the consequences which may result from use of Semicid as a contraceptive under such conditions as are customary or usual. Respondent's failure to disclose these material facts renders the advertisements referred to in Paragraphs Five and Six false, deceptive or misleading.

PAR. 13. Furthermore, through the use of the advertisements

referred to in Paragraphs Five and Six, respondent, directly or by implication, favorably compares some characteristics of Semicid to the pill or the IUD and represents in the same advertisement that Semicid has an extremely high use effectiveness. Favorable comparison of Semicid to certain characteristics of the pill or IUD has the tendency and capacity to lead members of the public into the erroneous and mistaken belief that Semicid's use effectiveness is equal to that of the pill or IUD. Respondent fails to disclose the fact that Semicid has a use effectiveness below that of the pill or IUD and approximately the same as other vaginal foam contraceptive products.

PAR. 14. The fact described in Paragraph Thirteen is material in light of the comparative representations made in respondent's advertisements. Respondent's failure to disclose this material fact in advertisements containing such comparative representations renders the advertisements referred to in Paragraphs Five and Six false, misleading or unfair.

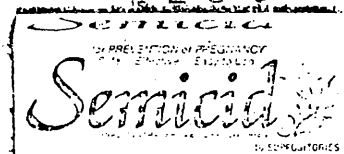
PAR. 15. In the course and conduct of its business, and at all times mentioned herein, respondent American Home Products Corporation is in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of drugs or contraceptive products of the same general kind and nature as advertised or sold by respondent.

PAR. 16. The use by respondent of the aforesaid false, misleading, deceptive or unfair statements, representations, acts or practices, and the dissemination of the aforesaid false advertisements has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's products or services by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Commissioner Pitofsky did not participate.

Now you can say
goodbye to
the pill,
the IUD,
diaphragms,
foams, creams
and droppy jellies.



Semicid is here

A medically tested, vaginal contraceptive
suppository developed for the woman of today.

As a contemporary woman, you think about birth control. You know what works, what feels right, what is aesthetically pleasing.

Whatever method you choose, you want it to be effective, safe and easy to use.

Now there's a non-hormonal contraceptive to satisfy your contemporary needs: Semicid.

Proven to be effective.

Semicid is an effective vaginal contraceptive for the prevention of pregnancy. It is a non-hormonal, vaginal mini-suppository that safely kills sperm in seconds. Semicid's active ingredient is nonoxonyl-9, a spermicide used effectively by millions of women for over 10 years.

Laboratory tested. Doctor tested.

A U.S. clinical study of hundreds of women of childbearing age over a four year period, proved Semicid's high degree of effectiveness. This study was conducted by a gynecologist and was carefully reviewed by an independent non-governmental group. In comparing the findings of this group with published reports of other contraceptive methods, Semicid is shown to be effective in the prevention of pregnancy.

Semicid is safe.

Semicid contains no hormones. As a result, none can enter your bloodstream. What is more, Semicid is safer than the IUD, because it cannot pierce the uterine walls. Semicid is so safe that you can purchase it without a prescription, and it is non-irritating based on reports from doctors and from women using the product.

Easy and convenient to use.

Within minutes, Semicid dissolves and spreads a protective covering over the cervical opening and adjoining vaginal walls. And because Semicid is quick and easy to insert, it will not interfere with spontaneity.

The Semicid package is so small and discreet that it can be kept anywhere. Semicid has no application, so there is nothing to fill, clean or remove.

Semicid is lubricating and has no unpleasant taste or odor. It was formulated for the kind of life you are living today. Ask your gynecologist about it.

Semicid is from Whitehall Laboratories, one of the world's leading pharmaceutical companies. It is available at your local drugstore. Use only as directed.

SEMICID. Today's contraceptive for today's woman.

advertisements identified as Attachments 1 and 2 which are incorporated by reference herein.

PAR. 7. Through the use of such advertisements, and others not specifically set forth herein, respondents represent, directly or by implication, that:

1. Encare has an extremely high use effectiveness, approaching the level of oral contraceptives (hereinafter "the pill" or intrauterine devices (hereinafter "IUD")).
2. Encare has novel contraceptive performance characteristics.

PAR. 8. In truth and in fact:

1. Encare's use effectiveness is approximately that of other vaginal contraceptive products. It is not considered to have a use effectiveness on the level of the pill or IUD.
2. Encare does not have novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery. Its sperm killing ingredient, nonoxynol 9, has been in use for many years in various contraceptive products.

Therefore, the advertisements and representations referred to in Paragraph Six and Seven are false, deceptive, or misleading.

PAR. 9. At the time respondents made the representations alleged in Paragraph Seven, respondents had no reasonable basis for making those representations. Therefore, the making and dissemination of such representations constitute deceptive or unfair acts or practices in or affecting commerce.

PAR. 10. Through dissemination of the advertisement identified as Attachment 2, respondents market or advertise Encare without disclosing to the purchasing public through the advertising that:

1. Women for whom pregnancy presents a special health risk should make a contraceptive choice in consultation with their physician.
2. Some Encare users experience irritation in using the product.
3. Encare requires a waiting period of ten minutes before intercourse.

PAR. 11. Furthermore, respondents market or advertise Encare without disclosing to the purchasing public through the advertising that:

Encare is approximately as effective as vaginal foam contraceptives in actual use.

PAR. 12. The facts described in Paragraphs Ten and Eleven are material with respect to the consequences which may result from use of Encare as a contraceptive under such conditions as are customary or usual. Respondents' failure to disclose these material facts renders the advertisements referred to in Paragraphs Five and Six false, deceptive or misleading.

PAR. 13. Furthermore, through the use of the advertisements referred to in Paragraphs Five and Six, respondents, directly or by implication, favorably compare some characteristics of Encare to the pill or the IUD and represent in the same advertisement that Encare has an extremely high use effectiveness. Favorable comparison of Encare to certain characteristics of the pill or IUD has the tendency and capacity to lead members of the public into the erroneous and mistaken belief that Encare's use effectiveness is equal to that of the pill or IUD. Respondents fail to disclose the fact that Encare has a use effectiveness below that of the pill or IUD and approximately the same as other vaginal foam contraceptive products.

PAR. 14. The fact described in Paragraph Thirteen is material in light of the comparative representations made in respondents' advertisements. Respondents' failure to disclose this material fact in advertisements containing such comparative representations renders the advertisements referred to in Paragraphs Five and Six false, misleading or unfair.

PAR. 15. In the course and conduct of their business, and at all times mentioned herein, respondents Morton-Norwich Products, Inc. and Eaton-Merz Laboratories, Inc. are in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of drugs or contraceptive products of the same general kind and nature as advertised or sold by respondents.

PAR. 16. The use by respondents of the aforesaid false, misleading, deceptive or unfair statements, representations, acts or practices, and the dissemination of the aforesaid false advertisements has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondents' products or services by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act. The acts and practices of

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respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Commissioner Pitofsky did not participate.

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THE FACTS:

1. HUNDREDS OF THOUSANDS OF AMERICAN WOMEN ARE ALREADY USING ENCORE OVAL.

Encore Oval was introduced in the U.S. to the public in December 1972. It is the only oral contraceptive pill which contains both progesterone and estrogen in the form of a single pill. It is the only oral contraceptive pill which contains both progesterone and estrogen in the form of a single pill. It is the only oral contraceptive pill which contains both progesterone and estrogen in the form of a single pill.

2. ITS EFFECTIVENESS HAS BEEN ESTABLISHED IN CLINICAL TESTS.

In a recent clinical study, Encore Oval was found to be 99.7% effective in preventing pregnancy. This is the highest effectiveness rate ever recorded for any oral contraceptive pill.

3. UNLIKE THE PILL, ENCORE OVAL HAS NO HORMONAL SIDE EFFECTS.

Encore Oval is a non-hormonal contraceptive. It does not contain any hormones, and therefore it does not cause the hormonal side effects associated with the pill. It is safe for use by women who are sensitive to hormones.

4. ENCORE OVAL IS EASIER TO INSERT THAN A TAMPON.

The Encore Oval is a small, flexible, and comfortable device that is easy to insert and remove. It is designed to be used like a tampon, but it is much easier to insert and does not require the use of lubrication.

BECAUSE ENCORE OVAL IS INSERTED IN ADVANCE, IT WON'T INTERRUPT LOVE-MAKING.

Encore Oval is inserted into the vagina before intercourse, so it does not interrupt the sexual act. It is a discreet and convenient method of contraception.

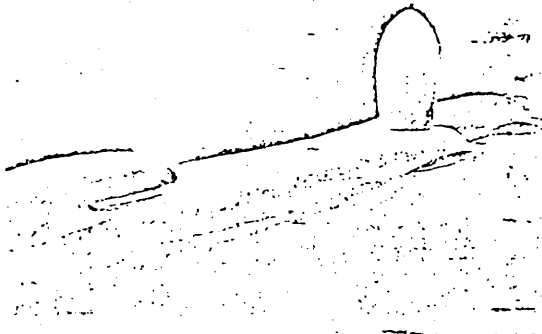
ENCORE OVAL
for preventing pregnancy
12 PILLARS

The most talked about contraceptive since the pill.

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Birth control
Now it's as simple as this.

**At last, Encare!**

Neat, compact, no bigger than your finger tip. Encare is just the thing for the most relaxed about contraceptive we have today.

Free from hormonal side effects. Encare is as simple without a prescription. And it's the easiest, most reliable method of birth control you will ever use.

Simply simple.

You simply insert Encare with the tip of your finger. There's no tiny measuring instrument, no dip wators. And no messy paraphernalia to clean up

afterward. Each tiny insert contains an exact, premeasured amount of the clinically proven spermicide, nonoxonyl 9.

Simply effective.

Very simply, Encare works by neutralizing sperm. When used properly, Encare melts and gently effervesces, spreading throughout your vagina for protection against pregnancy.

Even under very rigorous testing conditions, Encare's spermicide was

found to be highly effective.

Simply safe.

And, if you ask your gynecologist about Encare, you'll be reassured to hear that Encare cannot harm your body the way the pill or I.D.M. might.

Which means you simply won't be worried about those complications.

Encare 

Birth control, simplified.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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 Morton-Norwich Products, Inc. is a Delaware corporation with its principal place of business at 110 N. Wacker Drive, Chicago, Illinois.

Respondent Eaton-Merz Laboratories, Inc. is a Delaware corporation with its principal place of business at 17 Eaton Ave., Norwich, New York. It is a joint venture owned in equal shares by Morton-Norwich Products, Inc. and Merz and Co., Chemische-Fabrik of Frankfurt, Federal Republic of Germany.

2. 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

This order applies to respondent Morton-Norwich Products, Inc. and respondent Eaton-Merz Laboratories, Inc., their successors, assigns,

officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device. Except as otherwise provided, order provisions apply to any act taken in connection with either respondent's advertising, offering for sale, sale or distribution of Encare or any OTC (over the counter) contraceptive product in or affecting commerce within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States. The reasonable basis standards used in this order are not intended to set a standard for drug products other than OTC contraceptives.

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

1) "Use effectiveness" means that level of effectiveness which is obtained when the contraceptive method is used by large numbers of subjects not all of whom follow the instructions accurately or use the contraceptive method each time they have sexual relations.

2) "Encare" means the vaginal contraceptive suppository product marketed under the tradename Encare or Encare Oval, or any vaginal contraceptive suppository product of substantially the same chemical formulation.

3) "Advertisement" means any written, verbal or audiovisual statement, illustration, depiction or presentation, which is designed to effect the sale of any OTC contraceptive product, or to create interest in the purchasing of such products (except a package or package insert) whether same appears in a brochure, newspaper, magazine, leaflet, circular, mailer, book insert, catalog, billboard, public transit card, point-of-sale display, film strip, video presentation, or in a radio or television broadcast or in any other media, regardless of whether such statement, illustration, depiction or presentation is characterized as promotional, educational or informative; *provided, however*, that the term advertisement does not include material which solely refers to the product without making any claims for the product.

4) "Product or use characteristic" includes but is not limited to efficacy, safety or convenience.

I.

It is ordered, That each respondent cease and desist from:

A. Making in consumer (lay) advertisements any contraceptive effectiveness claims regarding Encare which use the words "effective" or "reliable" in conjunction with any performance or quality heightening modifiers such as "highly", "extremely" and the like.

B. Misrepresenting, directly or by implication, the effectiveness of any OTC contraceptive product.

C. Representing, directly or by implication, that Encare has novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery.

D. Making any representation, directly or by implication, concerning the effectiveness of any OTC contraceptive product unless respondent has a reasonable basis for such representation consisting of a consistent body of valid and reliable scientific evidence; *provided, however*, that respondents may represent that Encare is effective or reliable or make other effectiveness claims as permitted by this order (for example, "Encare provides reliable protection against pregnancy").

II.

It is further ordered, That each respondent make the following affirmative disclosures in any consumer (lay) print advertisement for Encare:

A. For best protection against pregnancy, it is essential to follow package instructions.

B. If your doctor has told you that you should not become pregnant, you should ask your doctor which contraceptive method, including Encare, is best for you.

C. Some Encare users experience irritation in using the product.

D. It is essential that you insert Encare at least ten minutes before intercourse.

E. Encare is approximately as effective as vaginal foam contraceptives in actual use.

The above affirmative disclosures shall be made clearly and conspicuously. Disclosures C, D and E shall be made in the exact language indicated above; *provided, however*, that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "ten minutes" in Disclosure D consistent with such reasonable basis. Disclosures D and E shall be made in type at least as large as the type face of the major portion of the text of the ad copy. Disclosures D and E shall be separate and distinguishable from the main body of the advertisement for a period of 24 months following the date of service of this order or 27 months from the date of signing of this order, whichever expires earlier.

III.

It is further ordered, That each respondent make the following affirmative disclosure in any consumer (lay) print advertisement for Encare in which any product or use characteristic of Encare is

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compared, directly or by implication, to any product or use characteristic of oral contraceptives or intrauterine devices:

Encare is approximately as effective as vaginal foam contraceptives in actual use, but is not as effective as the pill or IUD.

OR

Encare is not as effective as the pill or IUD in actual use, but is approximately as effective as vaginal foam contraceptives.

Either above affirmative disclosure shall be made, where required, in lieu of Disclosure II.E above. The disclosure shall satisfy the requirements regarding exact language, size of type and relation to the main body of the ad specified for Disclosure II.E.

IV.

It is further ordered, That each respondent make the following disclosures in any consumer (lay) TV advertisements for Encare:

- A. Follow directions exactly, including the ten minute waiting period.
- B. Encare is approximately as effective as vaginal foam contraceptives in actual use.

The above disclosures shall be made clearly and conspicuously as video supers and in the exact language indicated above; *provided, however,* that if respondents have a reasonable basis, consisting of valid scientific test(s) or study(ies), respondents may modify the words "ten minutes" in Disclosure IV.A consistent with such reasonable basis.

V.

It is further ordered, That each respondent make the following disclosure in any consumer (lay) radio advertisements for Encare:

Encare is approximately as effective as vaginal foam contraceptives in actual use.

The above disclosure shall be made clearly and conspicuously and in the exact language indicated above.

VI.

It is further ordered, That each respondent shall make the following disclosures in ethical (professional) advertisements for Encare.

- A. Irritation accompanies use of the product in some instances.
- B. Encare must be inserted according to product instructions and at least ten minutes before intercourse.

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C. Encare is approximately as effective as vaginal foam contraceptives in actual use, but is not as effective as the pill or IUD.

OR

Encare is not as effective as the pill or IUD in actual use, but is approximately as effective as vaginal foam contraceptives.

Affirmative Disclosures A and B shall be made in language the same as or substantially similar to the language set forth above; *provided, however*, that if respondents have a reasonable basis, consisting of valid scientific test(s) or study(ies), respondents may modify the words "ten minutes" in Disclosure B consistent with such reasonable basis. Disclosure C shall be made in the exact language indicated above, in typeface at least as large as the typeface of the major portion of the text of the ad copy.

If respondent has a reasonable basis, consisting of a consistent body of valid and reliable scientific evidence, for any change in disclosures contained in Paragraphs II.A, B, C or E, III, IV.B, V, and VI.A or C above, respondent may petition the Commission for appropriate modification of this order.

VII.

It is further ordered, That each respondent 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 within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States, which contains any of the representations prohibited in Paragraph I. A-C of this order or fails to include any of the disclosures required by this Order.

B. Disseminating, or causing to be disseminated, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of Encare or any OTC contraceptive product in or affecting commerce within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States, any advertisement which contains any of the representations prohibited in Paragraph I. A-C of this order or fails to include any of the disclosures required by this order.

VIII.

It is further ordered, That respondents shall, within six (6) months after the date of service of this order, run print advertisements for

Encare in at least two (2) separate issues of at least nine (9) professional (ethical) publications approved by authorized representatives of the Federal Trade Commission. The advertisements required by this paragraph shall comply with Paragraphs I.B-D and VI, of this order. Advertisements run after the date of the signing of this order, but prior to the date of service of this order, shall be considered satisfactory compliance with this order.

IX.

It is further ordered, That respondents prepare an informational pamphlet, in a form to be approved by authorized representatives of the Federal Trade Commission, which clearly and conspicuously sets forth the affirmative disclosures specified in Paragraphs II and III above, as well as other information regarding the advantages and disadvantages of various OTC contraceptive methods. The pamphlet shall be at least (4) pages in length, oriented toward a lay audience, and based upon current labeling of, and published scientific literature regarding OTC contraceptive products. The form of the pamphlet shall be submitted by the respondents to the Federal Trade Commission within sixty (60) days after the date of service of the order. Copies of the pamphlet shall be distributed within sixty (60) days after the date on which the representatives of the Federal Trade Commission serve notice on the respondents that they have approved the form of the pamphlet. Copies of the pamphlet shall be initially distributed to all physicians and other health care professionals engaged in obstetric and gynecological practice or family planning activities who previously received any promotional material concerning Encare. A cover letter and postpaid reply card shall be provided with the initial mailing of the pamphlet indicating its availability, at no charge, in reasonable quantities upon request. Copies shall also be distributed to retail pharmacies who purchase Encare directly from respondents with a request that the pamphlet be made available to consumers. Respondents shall thereafter provide, at no charge, additional copies of the pamphlet upon reasonable request for a period of one (1) year.

X.

It is further ordered, That each respondent maintain complete business records relative to the manner and form of its compliance with this order. Such records shall include, but not be limited to, copies of and dissemination schedules for all advertisements; documents which substantiate or contradict any claim made in advertising, promoting or selling the product; and an affidavit of compliance with

Paragraph IX of this order. Such records shall be retained for at least three (3) years beyond the last dissemination of any relevant advertisement. Upon thirty (30) days notice each respondent shall make any and all such records available to Commission staff for inspection or photocopying.

XI.

It is further ordered, That each respondent forthwith deliver a copy of this order to each operating division and to all employees or agents now or hereafter engaged in the sale or offering for sale of Encare or in any aspect of the preparation, creation or placing of advertising for Encare on behalf of respondent. A statement acknowledging receipt of this order shall be obtained in each case.

XII.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporations which may affect compliance obligations arising out of this order.

XIII.

It is further ordered, That each respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with this order.

Commissioner Pitofsky did not participate.

Complaint

IN THE MATTER OF
SCHLUMBERGER LIMITED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket C-3025. Complaint, June 23, 1980—Decision, June 23, 1980

This consent order requires, among other things, a New York City multinational company, engaged in various activities, including the manufacture of electrical and electronic devices, to divest all stock it owns in the Unitrode Corporation ("Unitrode") within six months from the date of the order. Prior to such divestiture, the order requires that respondent treat Unitrode as an independent entity, and refrain from attempting to influence or control Unitrode. Respondent is further prohibited from acquiring any Unitrode stock or assets without prior Commission approval for a period of ten years.

Appearances

For the Commission: *Gordon Youngwood.*

For the respondent: *R. Bruce MacWhorter and Stanley I. Rubinfeld, Shearman & Sterling, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, subject to the jurisdiction of the Commission, has acquired Fairchild Camera and Instrument Corp. ("Fairchild"), a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

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

- (a) "Respondent" shall mean Schlumberger Limited, a corporation, and its subsidiaries, affiliates, successors and assigns; and
- (b) "Diodes" shall mean semiconductor products consisting of a two-electrode device which passes current in one direction but not in the opposite direction.