

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

DANCER-FITZGERALD-SAMPLE, INC.

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

Docket 8919. Complaint, Feb. 23, 1973—Decision, July 1, 1980

This consent order requires, among other things, a New York City advertising agency to cease disseminating advertisements which misrepresent, or fail to make relevant disclosures regarding the contents, performance, effectiveness, or therapeutic superiority of Bayer Aspirin, Bayer Children's Aspirin, Cope, or similar non-prescription drug products manufactured by Sterling Drug Inc. Additionally, the order requires the firm to substantiate all representations made for non-prescription drug products concerning their performance, effectiveness and freedom from side effects.

Appearances

For the Commission: *Melvin H. Orlans, H.R. Field, C.B. Anaeer, R.B. Bloomfield, D.J. Freeman and Joel Brewer.*

For the respondent: *Richard Rieder, Dunnington, Bartholow & Miller, 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 Sterling Drug Inc., a corporation, Dancer-Fitzgerald-Sample, Inc., a corporation, and Lois Holland Callaway, Inc., a corporation, hereinafter referred to as respondents, have 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. For purposes of this complaint the following definitions shall apply:

1. "Commerce" means commerce as defined in the Federal Trade Commission Act.

2. "False advertisement" means false advertisement as defined in the Federal Trade Commission Act.

PAR. 2. Respondent Sterling Drug Inc. 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 90 Park Ave. in the City of New York, State of New York.

Respondent Dancer-Fitzgerald-Sample, Inc. 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 347 Madison Ave. in the City of New York, State of New York.

Respondent Lois Holland Callaway, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 745 Fifth Ave. in the City of New York, State of New York.

PAR. 3. Respondent Sterling Drug Inc. is now and has been for all times relevant to this complaint engaged in the manufacturing, advertising, offering for sale, sale and distribution of certain non-prescription internal analgesic preparations which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act. The designations, directions for use and active ingredients for some of these analgesic drugs are as follows:

1. *Designation:* "Bayer Aspirin"

Active ingredients:

Aspirin

Dosage: 1 or 2 tablets with water every 4 hours, as necessary, up to 12 tablets a day.

2. *Designation:* "Bayer Children's Aspirin"

Active Ingredients:

Aspirin

Dosage: Varies depending upon age of child.

3. *Designation:* "Cope"

Active Ingredients:

Aspirin

Caffeine

Methapyrilene Fumarate

Magnesium Hydroxide

Aluminum Hydroxide (Dried Gel)

Dosage: 1 or 2 tablets every 4 hours, as needed, up to 9 tablets per day.

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4. *Designation:* "Vanquish"*Active Ingredients:*

Aspirin

Caffeine

Acetaminophen

Magnesium Hydroxide

Aluminum Hydroxide (Dried Gel)

Dosage: 2 caplets with water. Can be repeated every 4 hours if needed, up to 12 caplets per day.5. *Designation:* "Midol"*Active Ingredients:*

Aspirin

Caffeine

Cinnamedrine HCL

Dosage: 2 Midol Tablets with water. Repeat 1 or 2 tablets every 4 hours as needed, up to 8 tablets per day.

PAR. 4. Respondent Dancer-Fitzgerald-Sample, Inc. is now and for all times relevant to this complaint has been an advertising agency of Sterling Drug Inc., and for all times relevant to this complaint, has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said "Bayer Aspirin," "Bayer Children's Aspirin" and "Cope."

Respondent Lois Holland Callaway, Inc., for all time relevant to this complaint has been an advertising agency of Sterling Drug Inc., and for all times relevant to this complaint, has prepared and placed for publication advertising material, including but not limited to the advertising referred to herein, to promote the sale of the said "Vanquish."

PAR. 5. In the course and conduct of its aforesaid business, respondent Sterling Drug Inc., causes the said analgesic drug preparations, when sold, to be transported from its places of business located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent Sterling Drug Inc., maintains and at all times relevant to this complaint has maintained, a substantial course of trade in said preparations in commerce. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their businesses, respondents Sterling Drug Inc., Dancer-Fitzgerald-Sample, Inc., and Lois Holland Callaway, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning the said drugs by the United

States mails and by various means in commerce, including but not limited to, advertisements inserted in magazines and newspapers, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said drugs and have disseminated, and caused the dissemination of, advertisements concerning said drugs by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said drugs in commerce.

PAR. 7. Typical of the statements and representations made in the advertisements, but not all inclusive thereof, are the following:

A. For Bayer Aspirin:

(1) To relieve a headache fast Bayer Aspirin's got the best help there is. Of all the leading pain relievers you see advertised, only Bayer is 100% aspirin. And Aspirin is what doctors recommend.

(2) I'm Ozzie Nelson. Here's something I'm passing along to *my* family. This booklet about pain relievers. Bayer tested its aspirin for quality against 220 other brands. The results? Bayer is superior. I also read about the latest report written by the American Medical Association Council on Drugs . . . Straight aspirin is preferred over other non-prescription pain relievers. Find out why . . . aspirin's the best pain reliever. And Bayer's the best aspirin.

(3) Has anyone ever improved on Bayer Aspirin? Made a faster Aspirin? A more effective Aspirin? Lots of people have tried. They took plain Aspirin. Made it bigger. Smaller. They buffered it. They added extra ingredients. They squeezed it. Squared it. Flavored it. Gummed it. Capsuled it. Fizzed it. Even tried spraying it . . . They did every thing—but improve it. Today there is still nothing faster . . . nothing more effective . . . than good old genuine Bayer Aspirin. It's pure Aspirin . . . not part Aspirin. It works wonders for headache, muscle pain, aches and fever of a cold. For just about anything that hurts.

(4) Would you like to see the inside story on all the major pain relievers you see advertised? Inside every single leading pain reliever is the same major ingredient . . . Aspirin . . . every one of those products relies chiefly on Aspirin. Surprised? Don't be . . . after all, Aspirin is the only pain reliever doctors overwhelmingly recommend for nearly every type of ache or pain. And did you know that Bayer is the only one of those pain relievers that makes all its own Aspirin? With care and experience no one else can match? That's why pure Bayer Aspirin, without Buffering or Caffeine or any other extra ingredient is the pain reliever for you.

(5) Deciding which pain reliever you should take can be like a game. Some talk about strength, some talk about speed, some talk about ingredients they don't name. But of all the leading pain relievers you see advertised, Bayer is the only one that is all Aspirin. And Aspirin is what doctors recommend.

(6) Bayer wants you to *know* about pain relievers . . . did you know that two Bayer Aspirin tablets bring all the pain relief power a headache can use? Did you know that Bayer without any additives is every bit as fast and effective in relieving pain as those products that have additives?

(7) Confused by claims? By shapes and sizes? By strange sounding ingredients? When you need fast relief from headache pain, don't forget this fact . . . Bayer is 100% Aspirin and Aspirin is the strongest pain reliever you can buy. No wonder Bayer works wonders.

(8) If you've ever heard that all aspirin's alike, here's something you should know. While it's true that the United States Pharmacopoeia does set standards for aspirin, Bayer surpasses these standards in many ways. For example, Bayer standards require complete tablet disintegration within thirty seconds. That's ten times faster than the accepted five-minute standard. It's one of the things that helps make Bayer fast and gentle.

(9) 1ST MAN: How come Bayer doesn't buffer its aspirin? BAYER MAN: There's really no need to. In relieving pain, buffered aspirin isn't any faster or gentler than Bayer. Yes.

(10) When hot weather makes you feel headachy, tense, irritable, two Bayer Aspirin and a short rest can help you feel better fast!

It happens to most of us on a hot, humid summer day, when the pressures of daily living mount up. By mid-afternoon we feel so headachy and edgy that the simplest chore, the smallest disturbance becomes an irritation. We're in no mood to enjoy life or the company of others.

Here's how to turn that mood around: just take two Bayer Aspirin for your headache, sit down for a few minutes and relax. You too will say, "Bayer works wonders." These few minutes can make a world of difference in the way you feel and act. You'll enjoy being with people, and they'll enjoy being with you.

Whenever you get headachy, tense and out of sorts on a hot summer afternoon, set aside a few minutes for Bayer Aspirin and a brief rest. Bayer is *pure* aspirin, not just *part* aspirin. Ask your pharmacist.

(11) Bayer recently tested its aspirin against 220 other brands. For purity, stability, speed of disintegration, Bayer was consistently better.

(12) I read about recent Bayer tests on aspirin. They tested for *quality*, for purity, for *freshness* against 220 other brands. The tests showed that Bayer makes the superior aspirin.

B. Bayer Aspirin for Children:

. . . You don't settle for any children's aspirin. You want the best. You want Bayer because no one makes aspirin like Bayer. No one purifies aspirin like Bayer. No one protects Aspirin like Bayer.

C. For Cope:

(1) Important studies made at the world's leading headache clinic show that for

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relief of severe nervous tension headaches a combination of a pain reliever and a sedative provides greater relief than either medication alone. Of all the leading remedies you can buy for ordinary nervous tension headaches, only Cope combines a gentle relaxer with a powerful pain reliever for really effective relief. If you have chronic headaches, see your doctor. For the usual nervous tension headache get Cope.

(2) I get it on rainy days. I get it during rush hour. I get it when the boss looks over my shoulder. When the name of the pain is nervous tension headache, the name of the remedy is Cope. Because Cope gives you a powerful pain reliever plus a gentle relaxer.

D. For Vanquish:

(1) (3 tablets are shown with 1 caplet of Vanquish)

For your headache pain, here are your major choices. This leading extra strength product has no buffers. This leading buffered product has no extra strength. This leading pain reliever has strength but no buffers. Of all the leading pain relievers you can buy, only Vanquish gives you extra strength and gentle buffers. Vanquish. The choice. (Sterling Drug Inc.)

(2) When you get a headache we think you should take Vanquish. And we'll show you why in a head to head comparison. This is Vanquish. It gives you extra strength and gentle buffers. And it's the only leading pain reliever that does. This is a leading extra strength product. It has no buffers. And there are no buffers in this other extra strength product either. This leading buffered product comes without extra strength. We think your headache deserves extra strength and you deserve gentle buffers. (Sterling Drug Inc.)

(3) Vanquish is different. It gives you proven effectiveness of Aspirin as in this tablet plus extra medication as in these. But it also includes two gentle buffers . . . With Vanquish the only one. (Sterling Drug Inc.)

(4) Her headache is killing me. When she gets a pain in the head, it can be a big pain to me, so I give her Vanquish. Vanquish is strong medicine. Vanquish contains more pain relievers than the largest selling extra strength tablet . . . and it has gentle buffers. How's your headache, dear? Dit Dit Dit Dah . . . Vanquish is strong medicine. (Sterling Drug Inc., and Lois Holland Callaway, Inc.)

E. For Midol:

(1) Live Your Life . . . Relieved of Menstrual Distress. In the modern life you lead, there come the calm times, too. Strolling hand in hand. Reading together. Talking together. These are the precious, serene moments. And you let nothing interfere. Not even functional menstrual distress. How? With Midol. Because MIDOL contains:

An exclusive anti-spasmodic that helps STOP CRAMPS

Medically-approved ingredients that RELIEVE HEADACHE, LOW BACKACHE . . . CALM JUMPY NERVES . . .

Plus a special mood-brightener that gives you a real lift . . . gets you through the trying pre-menstrual period feeling calm and comfortable.

PAR. 8. Through the use of these advertisements, and others

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similar thereto not specifically set out herein, it was represented directly or by implication:

A. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc., that it has been established that:

1. Bayer Aspirin is superior in terms of significant therapeutic effect to any other aspirin.

2. Bayer Children's Aspirin is superior in terms of significant therapeutic effect to any other children's aspirin.

3. A recommended dose of Cope is more effective for the relief of "nervous tension headache" pain than a recommended dose of any other non-prescription internal analgesic.

B. By respondent Sterling Drug Inc., that it has been established that:

1. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

2. Because Vanquish contains "gentle buffers" it will result in less gastric discomfort than any non-prescription internal analgesic not containing buffers.

C. By respondents Sterling Drug Inc. and Lois Holland Callaway, Inc., that a recommended dose of Vanquish is more effective for the relief of pain than the largest selling "extra strength" tablet.

PAR. 9. In truth and in fact, none of said representations has been established, for reasons including, but not limited to, the existence of a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drugs, as to the validity of all such representations.

PAR. 10. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication by respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc. that:

A. Bayer Aspirin is superior in terms of significant therapeutic effect to any other aspirin.

B. Bayer Children's Aspirin is superior in terms of significant therapeutic effect to any other children's aspirin.

PAR. 11. There existed, at the time of said representations, no reasonable basis for making the above representations, in that

respondents lacked competent and reliable scientific evidence sufficient to support such representations.

PAR. 12. Through the use of these advertisements, and others similar thereto not specifically set out herein, it was represented directly or by implication:

A. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc., that a recommended dose of Cope is more effective for the relief of "nervous tension headache" pain than a recommended dose of any other non-prescription internal analgesic.

B. By respondent Sterling Drug Inc., that:

1. A recommended dose of Vanquish is more effective for the relief of pain than a recommended dose of aspirin or buffered aspirin.

2. Because Vanquish contains "gentle buffers" it will result in less gastric discomfort than any non-prescription internal analgesic not containing buffers.

C. By respondents Sterling Drug Inc. and Lois Holland Callaway, Inc., that a recommended dose of Vanquish is more effective for the relief of pain than the largest selling "extra strength" tablet.

PAR. 13. There existed, at the time of said representations, a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drugs, as to the validity of such representations.

PAR. 14. Moreover, respondents made said representations without disclosing the existence of such a substantial question as to the validity of each representation. In light of the representations made, the existence of such a substantial question is a material fact, which, if known to consumers, would be likely to affect their consideration of whether or not to purchase such products. Thus, respondents have failed to disclose material facts.

PAR. 15. Through the use of the aforesaid advertisements and others similar thereto not specifically set out herein, it was represented directly or by implication:

A. By respondents Sterling Drug Inc. and Dancer-Fitzgerald-Sample, Inc. that a recommended dose of Bayer Aspirin relieves nervous tension, anxiety and irritability and improves the user's mood.

B. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc. that a recommended dose of Cope relieves nervous tension, anxiety and irritability and will enable persons to cope with the ordinary stresses of everyday life.

C. By respondent Sterling Drug Inc. that a recommended dose of Midol relieves nervous tension, stress, fatigue and depression and improves the user's mood.

PAR. 16. There existed at the time of said representations no reasonable basis for making the above representation in that respondents had no competent and reliable scientific evidence to support such representations.

PAR. 17. Through the use of the advertisements referred to in Paragraph Seven, sections (A) (2) (3) (4) (6) (7) and (9), (C), and (D) above it was represented directly or by implication:

A. By respondents Sterling Drug Inc., Dancer-Fitzgerald-Sample, Inc., that Bayer Aspirin is as effective for the relief of headache pain (including "nervous tension headache" pain) as, and will cause gastric discomfort no more frequently than, any other non-prescription internal analgesic, including Cope and Vanquish;

B. By respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc., that Cope is more effective for the relief of "nervous tension headache" pain than any other non-prescription internal analgesic, including Bayer Aspirin and Vanquish;

C. By respondent Sterling Drug Inc., that Vanquish is more effective for the relief of headache pain than any aspirin, including Bayer Aspirin, and will cause less gastric discomfort than any non-buffered internal analgesic, including Bayer Aspirin.

The representations referred to in sections (A), (B), and (C) above are mutually inconsistent. Respondents have made claims for a product that are inconsistent with contemporaneous claims for other products made by the same firm.

PAR. 18. Furthermore, in advertisements for Cope, respondents Sterling Drug Inc., and Dancer-Fitzgerald-Sample, Inc. referred to the results of tests or studies and represented, directly or by implication, that such tests or studies prove the claim that a recommended dose of Cope is more effective for the relief of "nervous tension headaches" than recommended doses of all other non-prescription internal analgesics.

PAR. 19. In truth and in fact, the tests or studies referred to do not prove the claim that a recommended dose of Cope is more effective for the relief of "nervous tension headaches" than recommended doses of all other non-prescription internal analgesics.

PAR. 20. Through the use of the advertisements referred to in Paragraph Seven, Sections A(11) and (12), and other similar thereto not specifically set out herein, respondents Sterling Drug Inc. and

Dancer-Fitzgerald-Sample, Inc. represented, directly or indirectly, that Bayer Aspirin has been tested against 220 other brands of aspirin for quality, purity, freshness, stability, and speed of disintegration, and that the results of the tests demonstrated that Bayer Aspirin is qualitatively superior to all of the other brands tested in all respects, and therapeutically superior to all of the other brands tested.

PAR. 21. In truth and in fact, the tests referred to do not demonstrate that Bayer Aspirin is qualitatively superior in all respects, including speed of disintegration, to all other aspirins tested. Moreover, these tests do not demonstrate that Bayer is therapeutically superior to all other brands because at the time of such representations there existed a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug product, concerning the validity, significance or interpretation of such tests as related to such representation.

PAR. 22. Respondents Sterling Drug Inc. and Dancer-Fitzgerald-Sample, Inc. represented directly or by implication that Cope contained a unique formula in that it alone among non-prescription headache remedies contained both a pain reliever and an ingredient with sedative properties. In truth and in fact the ingredients referred to are aspirin and methapyrilene, both of which were available for non-prescription use in Excedrin PM. Therefore, the advertisements referred to in Paragraph Seven (C)(1) were and are misleading in a material respect.

PAR. 23. Respondents Sterling Drug Inc. and Lois Holland Callaway, Inc., marketed and advertised Vanquish without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine can be injurious to health and may cause undesirable side effects. Thus, respondents have failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 24. Furthermore, respondents Sterling Drug Inc. and Dancer-Fitzgerald-Sample, Inc. marketed and advertised Cope without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine can be injurious to health and may cause undesirable side effects. Thus, respondents

have failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 25. Furthermore, respondent Sterling Drug Inc. marketed and advertised Midol without disclosing in the advertising for this product that it contains aspirin and caffeine. Aspirin and caffeine are well-known commonplace substances widely available in a variety of non-prescription products. Moreover, the use of aspirin or caffeine can be injurious to health and may cause undesirable side effects. Thus, respondent has failed to disclose in advertising a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase such products.

PAR. 26. Furthermore, in advertisements for Midol, respondents Sterling Drug Inc. and Thompson-Koch Company represented directly or by implication that the analgesic ingredients in Midol are other than ordinary aspirin and that the stimulant in Midol is other than caffeine.

PAR. 27. In truth and in fact, the analgesic ingredient in Midol is ordinary aspirin, and the stimulant in Midol is caffeine.

PAR. 28. The advertisements referred to in Paragraph Eight above were, and are, misleading in material respects, as alleged in Paragraphs Nine, Thirteen, Fourteen, Nineteen, Twenty-one, Twenty-two, Twenty-three, Twenty-four, Twenty-five, and Twenty-seven and constituted and now constitute false advertisements.

PAR. 29. The making of claims for a product that are inconsistent with contemporaneous claims for other products made by the same firm, as alleged in Paragraph Seventeen above, and the making of representations as alleged in Paragraphs Eleven, Thirteen, Fourteen, and Sixteen, constituted and now constitute unfair or deceptive acts or practices in commerce.

PAR. 30. The use by respondents of the aforesaid deceptive statements, representations, or claims, 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 statements, representations, or claims were and are true and into the purchase of substantial quantities of said drugs of respondent Sterling Drug Inc. by reason of said erroneous and mistaken belief.

PAR. 31. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Sterling Drug Inc. has been and now is in substantial competition in commerce, with corpora-

tions, firms and individuals in the sale of drug products of the general kind and nature as those sold by respondent.

In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Dancer-Fitzgerald-Sample, Inc. has been, and now is in substantial competition in commerce with other advertising agencies.

In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Lois Holland Callaway, Inc. has been, and now is in substantial competition in commerce with other advertising agencies.

PAR. 32. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of false advertisements, as aforesaid, 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 commerce and unfair or deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges the above-named respondents with violation of the Federal Trade Commission Act; and

Respondent Dancer-Fitzgerald-Sample, Inc. ("Dancer") for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent Dancer of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Dancer 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 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 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Dancer 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 located at 347 Madison Ave., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of respondent Dancer, and the proceeding against respondent Dancer is in the public interest.

ORDER

I

It is ordered, That respondent Dancer-Fitzgerald-Sample, Inc., a corporation, its successors and assigns, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, 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:

1. Represents directly or by implication, in connection with the advertising, offering for sale, sale or distribution of Bayer Aspirin or any other product consisting of the same active ingredient in approximately equal amount, that Bayer Aspirin or such other product is superior in terms of significant therapeutic effect to any other aspirin unless such representation of superiority is true as applied to each and every brand of aspirin for which a comparison is made or implied.

2. Represents directly or by implication, in connection with the advertising, offering for sale, sale or distribution of Bayer Children's Aspirin, or any other product consisting of the same active ingredient in approximately equal amount, that Bayer Children's Aspirin or such other product is superior in terms of significant therapeutic effect to any other aspirin unless such representation of superiority is true as applied to each and every brand of aspirin for which a comparison is made or implied.

3. Represents directly or by implication, in connection with the advertising, offering for sale, sale or distribution of Cope, or any other product consisting of the same active ingredients in approximately equal amounts, that a recommended dose of Cope or such other product is more effective for the relief of nervous tension headaches than recommended doses of any other non-prescription analgesic.

4. Represents, directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any non-prescription drug product, that any non-prescription drug product has a

unique combination of ingredients when the claimed unique combination is contemporaneously available, regardless of proportion, in other non-prescription drug products unless respondent can establish that it neither knew, nor had reason to know, nor upon reasonable inquiry could have known of such other non-prescription drug product.

5. Fails to disclose that Cope contains aspirin and caffeine.

B. Disseminating or causing the dissemination of any advertisement by any means, which contains statements which are inconsistent with, negate, or contradict any disclosures required by Paragraph A(5) above, or in any way obscure the meaning of such disclosures;

C. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any of the products named in Paragraph A above in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Subparagraphs A(1) through A(4) above; or which fails to disclose the disclosures required in Subparagraph A(5) above;

D. Representing that aspirin alone relieves nervous tension, anxiety or irritability or will improve the user's mood;

E. Representing that a recommended dose of Cope, or any other product consisting of the same active ingredients in approximately equal amounts, relieves nervous tension, anxiety or irritability or will enable persons to cope with the ordinary stresses of everyday life;

F. Making any statement or representation, directly or by implication, concerning any product which is inconsistent with a contemporaneous claim made by respondent for any other product manufactured or distributed by the same advertiser, either directly or through any corporation, subsidiary, division or other device.

G. Representing directly or by implication, in connection with the advertising, offering for sale, sale or distribution of any non-prescription drug product that any claim is proved by one or more tests or studies when such tests do not prove such claims unless respondent can establish that it neither knew nor had reason to know, nor upon reasonable inquiry could have known, that such tests do not prove such claims.

II

It is ordered, That respondent Dancer-Fitzgerald-Sample, Inc., a

corporation, its successors and assigns, and respondents' 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 any non-prescription drug product do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication, that a claim concerning the performance, effectiveness, or freedom from side effects of such product has been established, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such claim, unless respondent can establish that it neither knew nor had reason to know, nor upon reasonable inquiry could have known, of the existence of such substantial question;

B. Making any statements or representations, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, unless at the time of such representations, respondents have competent and reliable scientific evidence to support such representations.

III

It is ordered. That respondent Dancer-Fitzgerald-Sample, Inc., a corporation, its successors and assigns, and respondents' 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 any non-prescription drug product 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 fails to disclose that the product contains aspirin or caffeine, if such is the case; *provided, however*, that a disclosure of aspirin content shall be unnecessary where the trademark or name contains the term "Aspirin;"

B. Disseminating, or causing the dissemination of, any advertisement by any means, which contains statements which are inconsistent with, negate or contradict any disclosures required by Para-

graph A above, or in any way obscure the meaning of such disclosures;

C. Making any representation, directly or by implication, concerning the performance, effectiveness, or freedom from side effects of such product, when there exists a substantial question, recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug products, as to the validity of such representation unless respondent can establish that it neither knew nor had reason to know, nor upon reasonable inquiry could have known, of the existence of such substantial question.

IV

Provided, however, that Paragraphs II(A) and III(C) of this Order shall not take effect or be binding unless or until an order provision embodying the "Standard" set forth in Paragraphs II(A) and III(C), or any modification thereof, becomes final with respect to Sterling Drug Inc., co-respondent joined in the complaint issued in Docket 8919. *Provided further,* that should said order against Sterling Drug Inc., contain a standard different or modified in any respect from the "Standard" set forth in said paragraphs, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs. For the purpose of this Paragraph IV the "Standard" shall mean "when there exists a substantial question recognized by experts qualified by scientific training and experience to evaluate the safety and efficacy of such non-prescription internal analgesic product".

Provided further, that the defense of "neither knew nor had reason to know, nor upon reasonable inquiry could have known," as set forth in Paragraphs II(A) and III(C) of this Order shall not be revised or modified or otherwise affected, even though the "Standard" finally utilized is different or modified in any respect from the "Standard" set forth in said paragraphs.

Provided further, that should said order against Sterling Drug Inc., with respect to the prohibitions contained in Paragraphs II(A) and III(C) of this Order, prohibit only representations as to the comparative performance, comparative effectiveness and comparative freedom from side effects, both parties agree to a reopening and modification of these paragraphs for the sole purpose of incorporating said modification into these paragraphs.

V

Provided further, that Paragraphs III(A) and III(B) of this Order

shall not take effect or be binding unless or until an order provision requiring the disclosure of aspirin or caffeine content becomes final with respect to Sterling Drug Inc. in Docket 8919.

Provided further, that nothing contained in this Order shall in any way limit respondent's right to move for a reopening of the Order under the Rules of the Commission and request a modification thereof in accordance with the provisions of those Rules.

VI

It is further ordered, That respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

It is further ordered, That 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 changes in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondent shall, within sixty (60) days and at the end of six (6) months after the effective date of the Order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the Order to cease and desist.

Commissioner Pitofsky did not participate.

IN THE MATTER OF

BOB RICE FORD, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS
WARRANTY ACTS*Docket C-3026. Complaint, July 1, 1980—Decision, July 1, 1980*

This consent order requires, among other things, a Boise, Idaho seller of new and used motor vehicles and its corporate officer to make the text of written warranties readily available to prospective buyers and prominently display signs advising consumers of such availability. Written warranties must include all statutorily required information, and limited warranties so designated. Respondents are also required to post signs stating that all warranties are not the same and that comparisons should be made prior to purchase. All relief available to purchasers under state laws must be provided; and affected customers, in instances where implied warranties were improperly waived, notified of their implied warranty rights. Further, the order bars respondents from raising any defenses pertaining to a disclaimer of implied warranties in suits brought by motor vehicle purchasers who were issued written limited warranties disclaiming implied warranties. Additionally, respondents are required to instruct their employees as to their statutory obligations, and maintain a surveillance program designed to ensure compliance with the provisions of the order.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondents: *Paul T. Baird, Boise, Idaho.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Warranty Act"), the implementing Rules concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule") (16 C.F.R. 701 (1977)) and the Availability of Written Warranty Terms ("Pre-Sale Rule") (16 C.F.R. 702 (1977)) duly promulgated on December 31, 1975 pursuant to Title I, Section 109 of the Warranty Act (15 U.S.C. 2309), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bob Rice Ford, Inc., a corporation, and Robert L. Rice, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, the Pre-Sale Rule and the