

Complaint

97 F.T.C.

IN THE MATTER OF
TELEDYNE, INC., ET AL.

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

Docket 9131. Complaint, Nov. 27, 1979—Decision, April 13, 1981

This consent order requires, among other things, a Los Angeles, Calif. manufacturer of oral irrigating devices and other consumer products to cease misrepresenting the content, results or conclusions of any survey or opinion research; failing to base preventive or therapeutic claims about devices upon other than competent and reliable scientific tests or other evidence; and claiming that the American Dental Association recommends the Water Pik unless such claim is in fact authorized by the ADA. Further, the order requires that claims regarding the ability of a device to prevent, mitigate or treat periodontal disease be based upon clinical tests which are well-controlled using acceptable testing procedures and that the firm maintain records substantiating its claims for three years after disseminating advertisements affected by this order.

Appearances

For the Commission: *Randell C. Ogg, John Clewett, Roberta L. Gross and David Axelrad.*

For the respondent: *Peter K. Bleakley, Daniel M. Lewis, Maxwell J. Mehlman, Carol A. Cichowski, and Vicki J. Divoll, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Teledyne, Inc., Teledyne Industries, Inc., and J. Walter Thompson Company, hereinafter sometimes 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. Respondent Teledyne, Inc., (Teledyne) is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its executive office and principal place of business located at 1901 Avenue of the Stars, Los Angeles, California.

Respondent Teledyne Industries, Inc. is a corporation, organized,

existing and doing business under and by virtue of the laws of the State of California with its executive office and principal place of business located at 1901 Avenue of the Stars, Los Angeles, California.

PAR. 2. Respondent J. Walter Thompson Company (Thompson) is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 420 Lexington Ave., New York, New York.

PAR. 3. Respondent Teledyne, through corporate devices under its control, to wit, Teledyne Industries, Inc. and its division Teledyne Water Pik, now, and for some time past has been engaged in the distribution, sale and advertising of oral irrigating devices and other consumer products to the public.

PAR. 4. Respondents Teledyne and Teledyne Industries, Inc. through Teledyne Water Pik, cause the said products when sold to be transported from their places of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Teledyne and Teledyne Industries, Inc. maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondents Teledyne and Teledyne Industries, Inc., at all times mentioned herein have been and now are in competition in commerce with individuals, firms and corporations engaged in the sale and distribution of oral irrigators and other consumer products.

PAR. 6. Respondent Thompson is now, and for some time past has been, an advertising agency of the respondent Teledyne, Inc., and Teledyne Water Pik and now and for some time past has prepared and placed for dissemination, advertising material to promote the sale of various consumer products including the Water Pik oral irrigating device.

PAR. 7. Respondent Thompson, at all times mentioned herein, has been, and now is, in substantial competition in or affecting commerce with other advertising agencies.

PAR. 8. In the course and conduct of their businesses, and for the purpose of inducing the sale of Water Pik oral irrigators and other consumer products, respondents have disseminated and caused the dissemination of advertising in national magazines distributed by mail and across state lines, and in 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.

PAR. 9. Typical of the statements and representations in said advertisements, disseminated as previously described but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C, and D.

PAR. 10. Through the use of said advertisements referred to in Paragraphs Eight and Nine, and other advertisements not specifically set forth herein, respondents have represented and now represent directly or by implication that:

1. four out of five dentists recommend Water Pik to their patients;
2. four out of five dentists recommend the Water Pik because, in their medical judgment, the Water Pik plays a significant role in the prevention of gum disease;
3. the Water Pik when used with other methods of dental care plays a significant incremental role in the prevention of gum disease;
4. the use of the Water Pik will significantly diminish the chances of getting gum disease.

PAR. 11. At the time of the first dissemination of the representations contained in Paragraph Ten, respondents did not possess and rely upon a reasonable basis for making these representations. Therefore, the making and dissemination of said representations as alleged, constituted and now constitute unfair or deceptive acts or practices.

PAR. 12. Through the use of said advertisements referred to in Paragraphs Eight and Nine and other advertisements not specifically set forth herein respondents have represented and now represent directly or by implication that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Ten at the time of their initial and each subsequent dissemination.

PAR. 13. In truth and in fact, respondents did not possess or rely upon a reasonable basis for those representations at the time of their initial and each subsequent dissemination. Therefore, said representations are and were deceptive or unfair.

PAR. 14. Through the use of the advertisements referred to in Paragraph Eight and Paragraph Nine and others substantially similar thereto Respondents have represented and now represent, directly or by implication, that an appropriately designed, conducted, and analyzed survey of dentists proves the representations in Paragraph Ten (1) and Ten (2).

PAR. 15. In truth and in fact, the aforementioned survey does not

prove the representation in Paragraph Ten for reason that the alleged survey of the recommendations of dentists was not designed, conducted, and analyzed in accordance with accepted survey standards. Therefore, the representation referred to in Paragraph Fourteen was and is deceptive or unfair.

PAR. 16. Through the use of the advertisements referred to in Paragraph Eight and attached hereto as Exhibit D and others not specifically set forth herein, respondents Teledyne and Teledyne Industries, Inc. have represented directly or by implication that the Water Pik oral irrigating device is approved by the American Dental Association.

PAR. 17. In truth and in fact at the time of dissemination of such advertisements as referred to in Paragraph Eight, and attached hereto as Exhibit D, the Water Pik oral irrigating device was not approved by the American Dental Association. Therefore, said representation is false, misleading, deceptive and unfair.

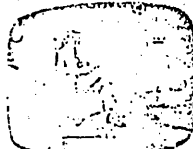
PAR. 18. The use by the Respondents of the aforesaid false, misleading, deceptive or unfair statements and representations, has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of oral irrigators sold by respondent Teledyne by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of Respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of Respondents' competitors, and constituted, and now constitute, unfair or deceptive acts or practices in commerce and unfair methods of competition, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

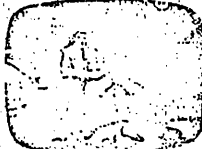
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Bank: TELEDYNE WATER PIK
Product: WATER PIK



GREAT EVIL: Even though your teeth are healthy, you can still lose them.

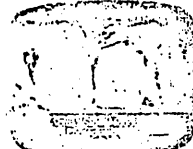


In fact, one out of 10 adults in America lose all their teeth to gum disease... gum disease that could be prevented.

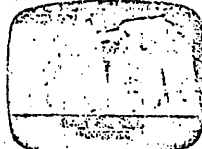
Title: "Pre-empter"
Length: 60 SECONDS



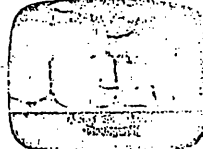
The regular use of the Water Pik Appliance can help. Because Water Pik does something easily that no other form of home dental care can.



Use powerful jets of water to help remove the debris that can lead to gum disease.



It washes away the debris loosened by flossing.



and it clears away hard-to-reach food particles your toothbrush misses and while



Water Pik stimulates and massages your gums, it actually flushes away plaque from beneath the gum line.



When the Water Pik is used as part of a complete program of oral hygiene, it can help reduce the causes of gum disease. No wonder 4 out of 5 dentists surveyed recommend it.



Use the Water Pik. It works. Ask your dentist.

TELEDYNE
WATER PIK

Complaint

EXHIBIT B



J. WALTER THOMPSON/SAN FRANCISCO
Creative Department

TELEVISION

YOMP 6693
TELEDYNE WATER PIK
Water Pik

Title "Prosepter"
Length :30
Approval Date 3/17/76
AS PRODUCED

AUDIO

BACK FULLER - ON CAMERA IN DEN.

ROBERT FULLER: One out of 10 adults in America lose all their teeth to gum disease, but the Water Pik appliance can help.

TO HIGH-SPEED FOOTAGE OF WATER PIK IN ACTION.

Its powerful jets of water help remove food debris that can lead to gum disease... from under the gumline-- places a brush misses -- while it massages, stimulates gums.

BACK TO FULLER.

Used as part of a complete oral hygiene program, the Water Pik can help reduce the causes of gum disease. No wonder 4 out of 5 dentists surveyed recommend the Water Pik.

PRODUCT SHOT

It works. Ask your dentist.

FEDERAL TRADE COMMISSION DECISIONS

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EXHIBIT C

J. WALTER THOMPSON/SAN FRANCISCO
Creative Department

1st BROADCAST

CUT 2:44 MON 7/17

SHOW

AIR DATE 11/26/77

TIME 11:25/25

TELEVISION

Job No. TDWP 7423
Client Tuleadyn Water Pik
Product Water PikTitle "Robert Fuller"
Length 1:30
Approval AS PRODUCED 7/14/77

VIDEO

OPEN ON ROBERT FULLER IN HIS DEN.

CUT TO CLOSE UP/SLOW MOTION OF TEETH

CUT TO SINK SHOWING DEBRIS.

CUT BACK TO FULLER IN BATHROOM.

PRODUCT SHOT WITH SUPER WATER PIK:
IT WORKS.

AUDIO

ROBERT FULLER: Have you tried the Water Pik yet? We literally get thousands of letters from dentists who recommend Water Pik and we're going to show you why. . . Even after brushing, the Water Pik removes food particles and even microscopic debris and bacteria you can see. . . Odor causing particles that also lead to gum disease. The sink shows why the Water Pik is one appliance every family should have and one reason why 4 out of 5 dentists surveyed recommend it.

The Water Pik. It works. Ask your dentist.

They used to call it pyorrhea. Now they call it periodontal disease. By either name it steals the teeth right out of your mouth. Perfectly good teeth become loose and fall out when the gums go bad. And three-fourths of all of the teeth people lose after the age of 40 are good teeth lost due to gum gums.

Now, there is a weapon with which we can fight back. It's now possible for your family to keep a full set of natural teeth for a lifetime. The weapon that's been added to the toothbrush and to regular dental attention, the newest weapon is a oral irrigating device - the Water Pik. Approved by the American Dental Association, the Water Pik is recommended by 4 out of 5 dentists.

Even if your teeth are bunched, even if you wear bridge-work or braces, now you can clean them with a jet stream of water which also stimulates and firms your gums and takes less than 90 seconds. I Water Pik my teeth at bedtime. And get a Water Pik device for your family, for your whole family, from your drug department or discount store. And then over, around and in-between your Water Pik teeth will be hydraulically clean.

(3/30/76),

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(d) of its Rules; and

The Commission having considered the matter 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 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Teledyne, 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 1901 Avenue of the Stars, in the City of Los Angeles, State of California.
2. Respondent Teledyne Industries, 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 1901 Avenue of the Stars, in the City of Los Angeles, State of California.
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

Part I

It is ordered, That respondents, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity, in connection with the consumer advertising, offering for sale, sale or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the content, results or conclusions of any survey or opinion research.

B. Employing, in any advertisement for any product, the word "survey" (or any comparable term), or basing any claim upon one or more surveys in whole or in part which states, either expressly or by implication, the beliefs, opinions, practices, recommendations, or endorsements of any group, unless:

(1) a representative, unbiased and fair sampling from the population referred to in the advertisement is questioned;

(2) a projectable sample was used and the sample size of and the response rate to the survey were sufficiently large so as to allow meaningful projections to the population referred to in the advertisement with a reasonable degree of confidence, unless there is a clear and conspicuous disclosure in the advertisement that the survey may not be representative of the population referred to in the advertisement;

(3) the survey was completed within three (3) years prior to the date of the representation, unless there is other appropriate data which establish a reasonable basis for concluding that the beliefs, opinions, practices, recommendations or endorsements of the members of the group referred to in the advertisement have not materially changed since the completion of the survey; and

(4) the survey was designed, executed and analyzed in a competent and reliable manner.

C. Representing, directly or by implication, that the beliefs, opinions, practices, recommendations or endorsements of members of any group have been surveyed or sampled unless the survey or sample directly solicits the beliefs, opinions, practices, recommendations, or endorsements of the members of that group.

D. Representing, directly or by implication, that a professional body or any portion thereof has some belief, opinion, recommenda-

tion, endorsement or follows some typical course of conduct unless and only to the extent such representation is true.

Part II

It is further ordered. That respondents, their successors and assigns, and their officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other method, in connection with the consumer advertising, offering for sale, sale or distribution to a consumer of a "device," as "device" is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. (1) Making any statements or representations, directly or by implication, concerning the preventative or therapeutic abilities of such devices unless at the time the statements or representations are made, respondents possess and rely on a reasonable basis for such statements or representations, which shall consist of competent and reliable scientific tests as defined in Paragraph A(2) hereafter, or other competent and reliable evidence that substantiates such representation.

(2) For the purposes of this Order, a scientific test is one in which a person with skill and expertise in the field, conducts the test and evaluates its results in a disinterested manner using those testing procedures generally accepted in the profession which best ensure accurate and reliable results.

B. (1) Making any statements or representations, directly or by implication, concerning the ability of such devices to prevent, mitigate, or treat periodontal disease unless, at the time the statements or representations are made, respondents possess and rely on a reasonable basis for such statements or representations, which shall include a competent and reliable clinical test and may also include other competent and reliable evidence including competent and reliable opinions of experts who are qualified by professional training, education, and experience to render competent and reliable judgments in such matters.

(2) For purposes of this Order, a "clinical test" is one in which a person with skill and expertise in the field conducts a well-controlled test on human subjects, using those testing procedures generally accepted in the profession which ensure accurate and reliable results, and evaluates its results in a disinterested manner. The results of the test must be clinically significant, which requires that the test be, among other things, of sufficient duration to ensure that

the results are not materially distorted by any unusual short term practices or temporary physical conditions of the test subjects (as such practices or conditions related to the test conditions).

Part III

It is further ordered, That respondents, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity in connection with the advertising, offering for sale, distribution or sale of the Water Pik oral irrigating device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that the Water Pik oral irrigation device is accepted, approved or endorsed by the American Dental Association unless (1) such claim is expressly authorized in writing, and unless (2) there is good reason to believe that at the time of such claims the American Dental Association subscribes to the facts or opinion therein contained.

Part IV

It is further ordered, That respondents, for the period of three years after respondents last disseminated the advertisements of the products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for their advertisements or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in their possession during either their creation or dissemination. Such records may be inspected by the staff of the Commission upon reasonable notice.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That the respondents shall forthwith distribute a copy of this Order to each of their operating divisions, and to each of their officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements.

It is further ordered, That the respondents shall, within sixty (60)

days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondents, setting forth in detail the manner and form in which they have complied with this Order.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
J. WALTER THOMPSON COMPANY

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

Docket 9131. Complaint, Nov. 27, 1979—Decision, April 13, 1981*

This consent order requires, among other things, a New York City advertising agency to cease making survey claims unless the surveys are designed, executed and analyzed in a competent and reliable manner. Further, the firm is prohibited from making claims regarding the opinions or recommendations of any professional group unless that professional group is actually asked about their opinions or recommendations.

Appearances

For the Commission: *Randell C. Ogg, John Clewett, Roberta L. Gross and David Axelrad.*

For the respondent: *Donald H. Green, Mark Schattner and Mary Graham, Wald, Harkrader & Ross, Washington, D.C.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and

* Complaint published at page 320 herein.