

Complaint

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IN THE MATTER OF
SPERRY CORPORATION

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

Docket C-3068. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires a New York City manufacturer, among other things, to cease disseminating advertisements which misrepresent that the Black Man's Shaver or any other device or commercial treatment will cure or minimize "razor bumps." Further, respondent is barred from making statements which are inconsistent with accepted medical opinion or which misrepresent the efficacy, performance or superiority of any drug or device. The order also requires that the company contact previous customers and make refunds to those eligible.

Appearances

For the Commission: *Mark Allan Heller and Teresa A. Hennessy.*

For the respondent: *Roger A. Clark, Rogers & Wells, 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 Sperry Corporation, formerly the Sperry Rand Corporation, (hereinafter "Sperry"), through its former Sperry-Remington Division, (hereinafter "Remington"), hereinafter at times referred to as respondent, has violated the provisions of the 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. "Sperry" 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 1290 Avenue of the Americas, New York, New York.

PAR. 2. "Sperry" has engaged in the business of manufacturing, advertising, and offering for sale, various products, including but not limited to, Remington's Black Man's Shaver, a product advertised for treating the shaving problems of Black men, to wit pseudofolliculitis barbae (hereinafter "razor bumps"), a disease primarily induced by shaving.

PAR. 3. In connection with the manufacture and marketing of the Black Man's Shaver, respondent has disseminated, published and distributed advertisements and promotional material for the purpose of promoting the sale of the Black Man's Shaver for human use. As advertised, this product is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its said business, the respondent has disseminated and caused the dissemination of certain advertisements concerning the Black Man's Shaver through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, the insertion of advertisements in magazines with national circulations and the placement of advertisements with radio and television stations with sufficient power to broadcast across state lines and into the District of Columbia for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of the Black Man's Shaver; and has disseminated and caused the dissemination of advertisements concerning the said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of the said product in commerce.

PAR. 5. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

I used to have a shaving problem. Ingrown hairs that caused ugly razor bumps. Yeah, you know what that's like. But then, Remington came up with the answer. The Black Man's Shaver. The Black Man's Shaver cuts off my tough, curly whiskers to help prevent them from growing back into my skin and becoming those ugly bumps. * * * They're so sure the Black Man's Shaver will help reduce razor bumps, that they'll give you your money back if you're not completely satisfied. Man, that's a guarantee! So thanks to Remington, I said, 'so long messy depilatories. . .farewell beard. . .and bye bye bumps.' * * * The Black Man's Shaver by Remington. It's the answer to a black man's tough shaving problems.

* * * * *

If you're black like I am, shaving may cause problems. You know, those ugly razor bumps. You can camouflage them with a beard. Or mess with depilatories. But there's never been a real solution. Until now. Because now, Remington has created a revolutionary new shaving system called the Black Man's Shaver. * * * The Black Man's Shaver works so well, Remington guarantees it will help prevent razor bumps or they'll give you your money back. * * * The Black Man's Shaver by Remington. It's the first *real* answer to a Black man's shaving problem.

PAR. 6. Through the use of said advertisements referred to in

Paragraphs Four and Five and others, respondent represented directly or by implication that:

- a. Use of the Black Man's Shaver will eliminate "razor bumps" for persons with that condition.
- b. Growing a beard only camouflages "razor bumps" and has no therapeutic value in the treatment of that condition.
- c. The Black Man's Shaver is the only effective means of treating "razor bumps."
- d. Thirty (30) days is an adequate time period for consumers to evaluate the Black Man's Shaver's efficacy and to have a fair opportunity to take advantage of Remington's money back guarantee.

PAR. 7. In truth and in fact:

- a. Use of the Black Man's Shaver will not eliminate "razor bumps" for persons with that condition.
- b. Growing a beard is considered by accepted medical opinion the preferred method of treating "razor bumps", and therapeutic beards are prescribed often for the treatment of that condition.
- c. Regardless of whether the Black Man's Shaver is effective for the treatment of "razor bumps", there are other methods of treating that condition which are effective.
- d. Thirty (30) days is an inadequate time period for many consumers to evaluate the efficacy of the Black Man's Shaver, and many consumers are without a fair opportunity to take advantage of Remington's money back guarantee.

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

PAR. 8. Through the use of the said advertisements referred to in Paragraphs Four and Five and others, respondent represented directly or by implication, that the Black Man's Shaver is effective in the treatment of "razor bumps."

PAR. 9. There existed at the time of the first dissemination of the representation contained in Paragraph Eight no materials that provided a reasonable basis for the making of that representation. Therefore, the making and dissemination of the said representation as alleged, constituted, and now constitutes unfair or deceptive acts or practices in commerce.

PAR. 10. In the course and conduct of its aforesaid business, and

at all times mentioned herein, respondent has been in substantial competition in or affecting commerce with corporations, firms, and individuals representing or engaged in the manufacture or marketing of shaving products, shaving accessories and health-related devices.

PAR. 11. The use by respondent of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

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

DECISION AND ORDER

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

The respondent 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 aforesaid draft of complaint, a statement that the signing of such 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 Rule; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sperry Corporation 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 1290 Avenue of the Americas, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent Sperry Corporation ("Sperry"), a corporation, its successors and assigns, and its 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 all drugs and devices as defined by Section 15 of the Federal Trade Commission Act, do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that the use of the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment will eliminate pseudofolliculitis barbae (hereinafter "razor bumps") for persons with that condition.

2. Represents that the use of the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment will cure "razor bumps" for persons with that condition.

3. Represents that growing a beard only camouflages "razor bumps" and has no therapeutic value in the treatment of that condition.

B. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of the Black Man's Shaver or any other

product by persons afflicted with "razor bumps" will reduce or minimize that condition;

2. Represents that the Black Man's Shaver or any other product is efficacious for the treatment of "razor bumps";

3. Represents that the Black Man's Shaver, with or without the Beard Lifter Comb, or any other device or commercial treatment is superior to other treatments for "razor bumps"; or

4. Represents that any time period is adequate for consumers to evaluate the Black Man's Shaver's effectiveness in the treatment of "razor bumps",

unless at the time of each dissemination of such representation(s) respondent possesses and relies upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two well-controlled clinical studies which conform to acceptable designs and protocols and are conducted by different persons independently of each other. Such persons shall be qualified by training and experience to treat "razor bumps" and to conduct the aforementioned studies.

C. Disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with the advertising, offering for sale, sale or distribution of all drugs and devices as defined in Section 15 of the Federal Trade Commission Act (excluding products not primarily advertised or promoted to consumers for personal, family or household use), which directly or indirectly:

1. Misrepresents the uniqueness of any such drug or device intended for human use.

2. Misrepresents the efficacy or performance of any such drug or device.

3. Makes representations, for the purpose of promoting the sale of any such drug or device, that are inconsistent with accepted medical opinion, *provided however*, that this provision, IC3, does not apply where statements inconsistent with accepted medical opinion are supported by a reasonable basis. Accepted medical opinion shall mean the general consensus of opinion of specialists as expressed in the medical literature, or if no such literature exists the consensus of the specialists themselves.

II

It is ordered, That Sperry shall initiate or cause and pay the cost of (1) sending thirty (30) days after the Order is final, to all persons known to it or Remington Products, Inc., at that time, as purchasers of Sperry Remington's Black Man's Shaver, a questionnaire with a self-addressed, stamped envelope (attached hereto and incorporated as Attachment A) to determine, *inter alia*, whether a.) the 30 day period under respondent's advertised money back guarantee was too short for said purchasers to evaluate the performance of the Black Man's Shaver as a treatment for razor bumps, b.) the said purchasers were satisfied with the Black Man's Shaver, and c.) the said purchasers bought the Black Man's Shaver on or prior to February 28, 1979, and (2) sending within thirty (30) days after respondent's receipt of the completed questionnaire referred to above, to those persons who purchased the Black Man's Shaver on or prior to February 28, 1979, and who responded within thirty (30) days after the mailing of the questionnaire that they are dissatisfied with the Black Man's Shaver and that 30 days was not a sufficient time period in which to evaluate the Black Man's Shaver as a treatment for razor bumps, a notice (attached hereto and incorporated as Attachment B) which shall provide said purchasers an additional thirty (30) days from the date of receipt of the notice to request a refund under said money back guarantee. The word "refund", for purposes of this provision, shall mean the return of the requested purchase price not to exceed 30% above the distributor's price for the model of the Black Man's Shaver returned in response to this Order. Said refund shall be provided within six (6) to eight (8) weeks of receipt of purchaser's request for a refund. *Provided, however*, Sperry shall be exempt from the obligations of Part II of the Order where it has *actual knowledge* that a purchaser of its Black Man's Shaver purchased it after February 28, 1979.

III

It is further ordered, That Sperry 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 respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That respondent shall, within one hundred

fifty (150) days after this Order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this Order.

It is further ordered, That respondent shall maintain files and records of all substantiation related to the requirements of Parts IB, and IC3 of this Order for a period of three (3) years after the dissemination of any advertisement which relates to these portions of the Order. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such material.

Attachment A

QUESTIONNAIRE

Dear Purchaser:

At this time, various aspects of the marketing of the Black Man's Shaver are being reviewed. We hope you are pleased with our product. In this regard we ask you to take a few minutes within the next thirty days and help us evaluate the Black Man's Shaver by completing the attached questionnaire and returning it to us in the attached self-addressed, stamped envelope. You may be entitled to a refund if you complete this questionnaire and return it to us within thirty (30) days of its receipt.

We at Sperry Corporation wish to thank you for your patronage and cooperation.

Sincerely,

Sperry Corporation

SURVEY

1. How long have you been using your Remington Black Man's Shaver?

3 weeks 4 weeks 5 weeks 6 weeks
7 weeks 8 weeks 9 weeks 10 weeks or longer

2. What shaving method did you use before you began using Remington?

Electric Safety razor or blade Depilatory

Other (Describe) _____

3. Before you used the Remington, how often did you get "bumps" from shaving?

Always Often Sometimes Never

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4. Since using your Remington Shaver, has your problem with "bumps"

Decreased Remained the Same Increased

5. Do you feel that the beard lifter

Helps you a lot Helps a little

Does not help at all Not yet sure

How often do you use the beard lifter? _____

6. How do you rate your new Remington Black Man's Shaver compared to previous shaving methods?

Much Better Somewhat Better Equal

Somewhat Worse Much Worse

7. Based on your use so far, how satisfied are you?

Very Satisfied Somewhat Dissatisfied

Somewhat Satisfied Very Dissatisfied

8. If you were not satisfied, did you return the shaver under the 30 day money back guarantee provision?

Yes No

If you did not return the shaver, what did you do with it? _____

9. Do you feel the 30 Day Trial offer allowed you sufficient time to evaluate the shaver's performance?

Yes

No. What would have been a better period of time?

10. When did you purchase your Black Man's Shaver? (Check one from each column)

January/February 1977

March/April 1978

May/June 1979

July/August 1980

September/October

November/December

11. Will you recommend the Remington Black Man's Shaver to a friend?

Yes

No

purchaser's name and address
(please print)

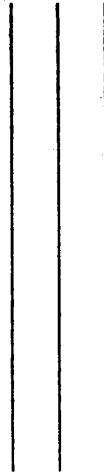
SPERRY CORP.

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Envelope



Sperry Corporation
P.O. Box 1000
Bridgeport, Conn. 06602

Attachment B

Dear Purchaser:

Recently we sent you a survey regarding various aspects of the marketing of the Black Man's Shaver, including the 30 day money back guarantee. Inasmuch as you indicated that the original 30 day refund period did not allow you sufficient time to evaluate your shaver's performance, we are extending to you an additional thirty (30) days from the date of receipt of this letter to request a refund under the advertised money back guarantee for the Black Man's Shaver.

If you wish to take advantage of our offer, just return the shaver, postage prepaid, with your name, address and approximate purchase price, clearly and legibly written. For your convenience fill in the attached form showing your name, address and approximate purchase price and return it with your shaver to Sperry Corporation, P.O. Box 1000, Bridgeport, Connecticut 06602. You must respond within thirty (30) days from the date of receipt of this letter to receive a refund. Please allow 6-8 weeks for your check to arrive.

We at Sperry Corporation wish to thank you for your patronage and cooperation.

Sincerely,

Sperry Corporation

Enclosure

SPERRY REMINGTON BLACK MAN'S SHAVER REFUND FORM

Dear Gentlemen:

Enclosed is my Sperry Remington Black Man's Shaver which I am returning for a refund. Please mail my refund check to:

(Name)

(Address)

(City, State and Zip Code)

The approximate price of the enclosed Black Man's Shaver is _____.

(Signature)

Complaint

IN THE MATTER OF
DKG ADVERTISING, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3069. Complaint, July 17, 1981—Decision, July 17, 1981*

This consent order requires, among other things, a New York City advertising agency to cease disseminating advertisements which misrepresent that the Black Man's Shaver or any other device or commercial treatment will cure or minimize "razor bumps." Further, respondent is barred from making statements which are inconsistent with accepted medical opinion or which misrepresent the efficacy, performance or superiority of any drug or device. The order also requires the company to maintain specific records for a period of 3 years and provide its operating divisions with a copy of the order.

Appearances

For the Commission: *Mark A. Heller and Teresa A. Hennessy.*

For the respondent: *Steven Winston, Kantor, Davidoff, Winston & Ferber, P.C., 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 DKG Advertising, Inc., (hereinafter "DKG"), hereinafter at times referred to as respondent, has violated the provisions of the 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. "DKG" 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 1271 Avenue of the Americas, New York, New York.

PAR. 2. Respondent is now and for all times relevant to this complaint has been an advertising agency of Sperry-Rand Corporation (hereinafter "Sperry"), for its division Sperry-Remington (hereinafter "Remington"), 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 for human use of the product Remington's Black Man's Shaver, a product advertised for treating the shaving prob-