

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-

lems of Black men, to wit pseudofolliculitis barbae (hereinafter "razor bumps"), a disease primarily induced by shaving. As advertised, this product is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. 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 said product in commerce.

PAR. 4. Typical of the statements and representations in said advertisements, disseminated as previously described, but not necessarily inclusive thereof, are the following:

Complaint

DKG ADVERTISING, INC.

AD PRODUCED --
11/16/77

CLIENT REMINGTON DATE December 7, 1977
 Rev. #1
 JOB # RR-3485A CODE # RM-40-77-60 PRODUCT Black Man's Shaver
 TITLE "Shaving Problems" Rev. 1 LENGTH :60 Radio

BROADCAST COPY

SFX UNDER: HUMMING OF AN ELECTRIC SHAVER.

BLACK MAN:

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. I didn't believe it at first. But those guys at Remington are smart dudes. 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." And my woman said, "Hello, sexy."

ANNCR:

The Black Man's Shaver by Remington. It's the answer to a black man's tough shaving problems.

D.J.:

The new Black Man's Shaver is available for the first time at: STORE NAMES. Satisfaction guaranteed or return shaver and sales slip to Remington within 30 days for a full refund.

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98 F.T.C.

DKG

11/16/77

CLIENT REMINGTON DATE November 9, 1977
 JOB# RR-1485A CODE# RM-39-77-60 PRODUCT Black Man Shaver
 TITLE "If You're Black" Rev 12 LENGTH :60 Radio

BROADCAST COPY

BLACK ANNOUNCER:

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. It comes with a unique Beard Lifter comb which helps dislodge ingrown hairs before you shave. Then the shaver's specially engineered head, blunt cuts your whiskers at skin level to help prevent them from growing back into your skin. The Black Man's Shaver works so well, Remington guarantees it will help prevent razor bumps or they'll give you your money back. Man, that's a guarantee. The Black Man's Shaver by Remington. It's the first real answer to a black man's shaving problem.

LIVE ANNCR:

The new Black Man's Shaver is available for the first time at: Store names.

Satisfaction guaranteed or return shaver and sales slip to Remington within 30 days for a full refund.

**THE NEW BLACK MINIS SHOWER
BY RAYMOND RAMINGTON**
**CREATES THE PERFECT SHAVE
FOR EVERY MAN.**



The unique Beard Lift-Cut is the only
shave system for shaving by
blowing air to the skin.

If you have very curly hair, shaving may
cause problems. The curly hair of your beard
can grow back into your skin and become ugly
razor burn.

You can camouflage them with a beard.
Or mess with depilatories. But there's never
been a real solution. Until now.

Because now Ramington has created a
revolutionary new shaving system called the
Black Minis Shower.

The Black Minis Shower comes with
a unique Beard Lift-Cut which lifts the hair
before you shave.

Then the Shower's specially engineered
head blows air which lifts the hair level to help
prevent them from growing back into the skin.
Which helps keep the hair from forming.
The Black Minis Shower is so effective
Ramington guarantees that it will help prevent
razor burn. Or your money back.

So try the Black Minis Shower by
Ramington. It's the new answer to the black
man's shaving problems.

RAMINGTON
BLACK MINIS SHOWER
For more information, write to: RAMINGTON, 1000 N. 1st St., St. Paul, MN 55101

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PAR. 5. Through the use of said advertisements referred to in Paragraphs Three and Four and others, respondent represented and now represents, 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. 6. 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 Three and Four were and are misleading in material respects, and constituted, and now constitute, false advertisements, and the representations set forth in Paragraph Five were and are false, deceptive, or unfair.

PAR. 7. Through the use of the said advertisements referred to in Paragraphs Three and Four and others, respondent represented, and now represents, directly or by implication, that the Black Man's Shaver is effective in the treatment of "razor bumps."

PAR. 8. There existed at the time of the first dissemination of the representation contained in Paragraph Seven no 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. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is in substantial competition in or affecting commerce with other advertising agencies.

PAR. 10. 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. 11. 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 DKG Advertising, 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 1271 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

It is ordered, That respondent DKG Advertising, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of all 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, *provided however*, that the respondent shall have an affirmative defense to this provision if it can prove that the statements prohibited herein are in fact true.

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, *provided however*, that the respondent shall have an affirmative defense to this provision if it can prove that the statements prohibited herein are in fact true.

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

4. Misrepresents the uniqueness of any device intended for human use.

B. Disseminating or causing the dissemination of any advertise-

ment 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";
4. Represents that any time period is an adequate time period 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, which directly or indirectly makes representations, for the purpose of promoting the sale of a device, that are inconsistent with accepted medical opinion unless a reasonable basis exists therefor. 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.

It is further ordered, That DKG Advertising, Inc. 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 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 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 B and C 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.

Complaint

IN THE MATTER OF

YKK (U.S.A.) INC.

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

Docket C-3070. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires a New Jersey based firm engaged in the manufacture and sale of finished zippers, zipper chain and sliders, among other things, to cease discriminating in price between different customers on the same functional level, purchasing products of like grade and quality, through the use of discriminatory prices and rebates.

Appearances

For the Commission: *Randall S. Leff* and *Karen G. Bokat*.

For the respondent: *Francis Y. Sogi, Miller, Montgomery, Sogi, Brady & Taft*, New York City, *James H. Lundquist, Barnes, Richardson & Colburn*, New York City, and *Salvatore A. Romano, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent, subject to the jurisdiction of the Commission, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45) and of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, charging as follows:

PARAGRAPH 1. Respondent YKK (U.S.A.) Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1251 Valley Brook Ave., Lyndhurst, New Jersey.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, distribution and sale of finished zippers, zipper chain and sliders.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, and the Federal Trade Commission Act, as amended, having sold or shipped its products or caused them to be transported from its principal place of business in New Jersey