

Complaint

IN THE MATTER OF

MILES LABORATORIES, INC.

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

Docket C-3071. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires an Elkhart, Indiana manufacturer and seller of various non-prescription health care products, among other things, to cease failing to make its advertising and promotional allowances available on proportionally equal terms to all customers, both direct and indirect. The order also requires the company to notify all its customers, as specified, of its advertising and promotional programs, and of the availability of usable and economically feasible alternatives. Respondent is further required to distribute a special written notice informing customers of the modification in its promotional programs and provide its sales personnel with a copy of the order.

Appearances

For the Commission: *Randall S. Leff.*

For the respondent: *Franklin Breckenridge*, in-house counsel, Elkhart, Ind. and *James M. Johnstone, Kirkland & Ellis*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 41, *et seq.*) and subsection (d) 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 this complaint, charging as follows:

PARAGRAPH 1. Respondent, Miles Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1127 Myrtle St., Elkhart, Indiana.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, sale and distribution of adult vitamins, pediatric vitamins and antacid products.

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 and Federal Trade Commission Act, having sold

and shipped its products or caused them to be transported from its principal place of business in Indiana to customers located in other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of credits or sums of money, hereinafter referred to as promotional allowances, either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services or facilities, including advertising in various media such as newspapers, furnished by customers in connection with the offering for sale or sale of respondent's products.

PAR. 5. Respondent's promotional allowances discriminated against particular customers or classes of customers in that they were not available, in a practical business sense, on proportionally equal terms to all customers competing in the sale and distribution of respondent's products. Respondent failed to offer alternative terms and conditions to customers for whom respondent's basic promotional allowance plan is not usable and suitable.

PAR. 6. The acts and practices of respondent set forth in Paragraphs 4 and 5 above violate Section 5 of the Federal Trade Commission Act, as amended, and Section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein contemplated.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Miles Laboratories, Inc., a corporation, and the respondent having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton and Federal Trade Commission Acts; 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 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 Commission having thereafter considered the matter and

having determined that it had reason to believe that the respondent has violated the said Acts, 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 Miles Laboratories, 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 the principle place of business located at 1127 Myrtle St., in the City of Elkhart, State of Indiana.

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

A. *It is ordered*, That respondent, Miles Laboratories, Inc., a corporation, and its officers, directors, agents, representatives and employees, and its successors and assigns, directly or indirectly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of adult vitamins, pediatric vitamins, antacid products, topical antiseptics such as Bactine, or other nonprescription health care products, except diagnostics, environmental control products, steroid products, aluminum acetate products, acne treatment products, medicated paste bandages and colloidal bath products (hereinafter referred to as "Respondent's Covered Products") in or affecting commerce, as "commerce" is defined in the Clayton Act, as amended, or the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer as compensation or in consideration for any advertising or promotional services or any other service or facility furnished by or through such customer in connection with the handling, sale or offering for sale of any of Respondent's Covered Products, unless (1) such payment or consideration is made available on proportionally equal terms to all customers, including customers who do not purchase directly from respondent, who compete in the distribution or resale of Respondent's Covered Products; and (2) all

customers, including customers who do not purchase directly from respondent, who compete in the distribution or resale of Respondent's Covered Products are informed, in writing, in the manner provided in Paragraph I B, of (a) the terms and conditions of the promotional program or plan under which such payments are made, including the services or facilities to be furnished and the methods by which performance will be proved; and (b) the availability of usable and economically feasible alternative services or facilities which competing customers could provide and be paid for on proportionally equal terms if the furnishing of identical services or facilities would not be economically feasible and usable in a practical business sense by all competing customers.

B. *It is further ordered*, That respondent shall inform all customers of the terms and conditions of each of its advertising or promotional programs, the methods by which performance will be proved, and the availability of alternatives, as required by Paragraph I A, in the following manner:

1. Respondent shall cause copies of deal sheets or similar materials explaining the plan or program to be presented or delivered to each direct customer of respondent in sufficient time to enable each such customer to make an informed judgment whether to participate, and

2. At or about the same time respondent shall deliver sufficient copies of deal sheets or similar materials to respondent's wholesalers for presentation or distribution to each customer of such wholesalers that purchases any of Respondent's Covered Products. Respondent shall take steps, which need not include direct mailings, to insure that its indirect purchasing customers are informed of its advertising or promotional programs.

II

It is further ordered, That respondent shall within thirty (30) days after service upon it of this order notify each retailer that purchased less than \$5,000 of Respondent's Covered Products in 1979 of the availability of alternative methods of participation in respondent's advertising or promotional allowance programs by distributing a written notice in the form attached hereto as Exhibit A in the following manner:

- (1) Respondent's sales representatives will hand deliver sufficient copies of such notice to respondent's wholesalers for distribu-

tion to each customer of such wholesalers that purchases any of Respondent's Covered Products;

(2) Respondent will send such notice by direct mail to each retailer that buys Respondent's Covered Products directly from respondent and purchased less than \$5,000 of such products in 1979; and

(3) Respondent will notify independent pharmacies by placing such notice in PHARMALERT, a national coop mailing service for independent drug stores.

III

It is further ordered, That respondent shall deliver a copy of this order to cease and desist to all sales and sales management personnel employed on the date of service of this order in each of respondent's operating divisions that is engaged in the sale of Respondent's Covered Products within the United States.

IV

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

V

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 change in the corporation which may affect compliance obligations arising out of the order.

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Dear Retailer:

Miles has recently revised its promotional trade advertising policy to encourage greater participation in its promotions by smaller direct retailers and non-direct retailers. We are recognizing the fact that some accounts would prefer more flexibility in advertising performance requirements, and for this reason we feel our new trade advertising policy will better serve your needs. We anticipate the ultimate results will be a stronger promotional program for both you and Miles.

TRADE ADVERTISING PERFORMANCE REQUIREMENTS

To receive promotional advertising payments a qualifying performance must be rendered by a participating account employing their most used medium such as newspapers, radio, television, circulars, handbills, window/wall banners, in-store displays, feature pricing, etc.

Upon completion of the advertising performance, the retailer must submit his invoice (or paid wholesaler invoice) to Miles along with a Miles Certificate of Advertising Performance for advertising other than newspaper, radio and television. This form provides for a description of the advertising performance rendered by the account with the specific date(s) of performance. (See Attachment 1)

We look forward to your greater participation in Miles' promotions through your own creative advertising performance.

MILES LABORATORIES, INC.

ATTACHMENT 1

CERTIFICATE OF ADVERTISING PERFORMANCE (Non-Direct Retailers)

This is to certify that advertising performance was rendered on the following Miles Laboratories, Consumer Products Division brands and package sizes:

<u>Brand/Package Size(s)</u>	<u>Date(s) of Performance</u>	<u>Regular Price</u>	<u>Feature Price</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Performance rendered on the above brands was my normal and most frequently employed form of advertising and price featuring to my customers. (Check form of advertising)

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- ☐ Newspaper (tearsheet attached)
☐ Radio (script/affidavit attached)
☐ Television (script/affidavit attached)
☐ Home delivered Circular/Handbill (attached)
☐ Window/Wall Banner (attached)
☐ In-Store Extra Off-shelf Display (Describe)

☐ Other (describe) _____

Attached is my original paid wholesaler invoice to verify promotional purchases of the above ad featured Miles Brands.

Retailer's Name _____

Address _____

City _____ State _____ Zip Code _____

Authorized Signature for Retailer

(Title)

Send to MILES LABORATORIES, INC.

Dept. "G"

P. O. Box 340

Elkhart, IN 46515

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IN THE MATTER OF
ZALE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING
ACTS

Docket C-3072. Complaint, Aug. 4, 1981—Decision, Aug. 4, 1981

This consent order requires, among other things, that a Dallas, Texas retailer cease, in connection with the extension of open end credit, failing to comply with the billing error resolution procedures required by the Fair Credit Billing Act. The firm is required to send a prescribed "Billing Complaint Form" to specified customers and upon receipt of such form, investigate each billing error claim and either refund or credit the amount in error, or provide the customer with proof that the claim was incorrect; take reasonable steps to correct any erroneous credit report; and pay all unpaid credit balances which existed after April 1, 1975, plus daily interest. The order also requires the firm to include a specified disclosure on all future periodic statements which reflect a credit balance, and pay all credit balances upon written request, or automatically after 7 months if no request has been made.

Appearances

For the Commission: *David Pender, George Zweibel and Rachel Garson.*

For the respondent: *Charles Stewart, Vice-President and Associate General Counsel, Zale Corp.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and its implementing Regulation Z, duly promulgated by the Board of Governors of the Federal Reserve System, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Zale Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Regulation Z, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Zale Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 3000 Diamond Park Drive, Dallas, Texas.

PAR. 2. Respondent is now, and for some time last past has been, engaged directly and through its subsidiaries in the advertising,