

IN THE MATTER OF

NORTH AMERICAN PHILIPS CORPORATION

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3105. Complaint, March 7, 1983—Decision, March 7, 1983*

This consent order requires a New York City corporation, among other things, to cease misrepresenting that the Black Pro Shaver or any other drug or device will cure or minimize "razor bumps." The company is required to have a reasonable basis for representations relating to the efficacy, performance or benefit of any drug, device or other product; barred from making statements which are inconsistent with reliable scientific or medical evidence; and prohibited from misrepresenting the extent or results of product testing. The order also requires that the company maintain specific records for a period of three years and provide its sales and advertising personnel with a copy of the order.

Appearances

For the Commission: *Mitchell Paul* and *Grace Polk Stern*.

For the respondent: *William B. Gerwig*, New York City.

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 North American Philips Corporation and McCaffrey and McCall, Inc., 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 North American Philips Corporation 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 100 East 42 Street, New York, New York.

PAR. 2. Respondent McCaffrey and McCall, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 575 Lexington Avenue, New York, New York.

PAR. 3. Respondent North American Philips Corporation is now, and for some time in the past has been, engaged in the manufacture,

importation, distribution, advertising and sale of electric shavers and other products to the public.

PAR. 4. Respondent North American Philips Corporation causes said products, when sold, to be transported from its 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. Respondent North American Philips Corporation maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondent North American Philips Corporation at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations in the sale and distribution of electric shavers and other products.

PAR. 6. Respondent McCaffrey and McCall, Inc. has been and now is an advertising agency of respondent North American Philips Corporation. Respondent McCaffrey and McCall has prepared, and has placed for dissemination, advertising material to promote the sale of various products of respondent North American Philips Corporation, including the Black Pro shaver.

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

PAR. 8. Respondent North American Philips Corporation is now, and for some time in the past has been, engaged in the manufacture, importation, distribution, advertising and sale of the Black Pro shaver, a product advertised as curing, mitigating, treating or preventing a shaving problem common to black men, specifically pseudofolliculitis barbae (hereinafter "razor bumps"), a skin disease primarily induced by shaving. As advertised, the Black Pro shaver is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 9. In the course and conduct of their businesses, and for the purpose of inducing the sale of electric shavers and other products, respondents have disseminated and caused the dissemination of advertising for the Black Pro shaver in national magazines distributed by the mail and across state lines, and in radio broadcasts transmitted by 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. In addition, respondents have disseminated across state lines advertising for the Black Pro shaver in newspapers and catalogues, and have distributed by mail or other means, product brochures and other sales literature directly to con-

sumers or to dealers for display or distribution to consumers prior to or at the time of sale.

PAR. 10. Typical of the statements in the advertisements disseminated as previously described, but not necessarily inclusive thereof, are the following:

- a. With the . . . Black Pro, razor bumps go away. And stay away.
- b. [North American Philips Corporation] . . . and a leading black university have found a dramatic cure for your shaving problems. . . . Even in *daily* shaving. (emphasis in original)
- c. The one that really works . . . Other companies have tried to come up with a razor bump cure. But only . . . [North American Philips Corporation] has succeeded. . . .
- d. Razor bumps go away and stay away as proven in tests at a leading black university.
- e. In a study conducted at a leading black university, black men suffering from razor bumps tested the . . . Black Pro Rotary Razor in daily shaving.
- f. These unretouched photos prove that after shaving for six weeks with the . . . Black Pro, your skin can be free of razor bumps.

PAR. 11. Through the use of the 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:

- a. Use of the Black Pro shaver will cure the condition of razor bumps.
- b. Tests conducted at a leading black university prove that the Black Pro shaver will cure the condition of razor bumps.
- c. The photographic demonstration depicted constitutes proof that the Black Pro shaver will cure the condition of razor bumps.
- d. The efficacy of the Black Pro has been tested in a *daily* shaving regimen.

PAR. 12. In truth and in fact:

- a. Use of the Black Pro shaver will not cure the condition of razor bumps.
- b. Tests conducted at a leading black university do not prove that the Black Pro shaver will cure the condition of razor bumps.
- c. The photographic demonstration depicted does not constitute proof that the Black Pro shaver will cure the condition of razor bumps.
- d. The efficacy of the Black Pro has not been tested in a *daily* shaving regimen.

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

PAR. 13. Through the use of the 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:

- a. The Black Pro is effective in the treatment of razor bumps.
- b. In six weeks, the typical user of the Black Pro will see his razor bumps disappear.

PAR. 14. At the time respondents made the representations alleged in Paragraphs Eleven and Thirteen, respondents did not possess and rely on a reasonable basis for making such representations. Therefore, respondents' making and dissemination of said representations as alleged, constituted and now constitute unfair or deceptive acts or practices.

PAR. 15. Through the use of the 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 Paragraphs Eleven and Thirteen at the time of the representations' initial dissemination and each subsequent dissemination. In truth and in fact, respondents did not possess and rely on a reasonable basis for making such representations. Therefore, respondents' making and dissemination of said representations, as alleged, constituted and now constitute unfair or deceptive acts or practices.

PAR. 16. Respondents' use of the aforesaid deceptive or unfair statements and 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 such statements and representations are true, and into the purchase of substantial quantities of Black Pro shavers sold by respondent North American Philips Corporation by reason of such erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, 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 and unfair methods of competition, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

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 of Consumer Protection 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 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 North American Philips Corporation 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 100 East 42nd Street, New York, 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

Part I

It is ordered, That respondent North American Philips Corporation, its successors and assigns, and its officers, representatives, agents 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 electric shaver or any drug or device, as "drug" and "device" are defined in Section 15 of 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:

1. Making any statement or representation, directly or by implication, that use of the Black Pro shaver, or any other electric shaver or other drug or device, will cure the condition of pseudofolliculitis barbae (hereinafter sometimes referred to as "razor bumps").

2. Making any statement or representation, directly or by implication, that tests, studies or demonstrations prove or constitute proof that use of the Black Pro shaver, or any other electric shaver or other drug or device, will cure the condition of pseudofolliculitis barbae ("razor bumps").

Part II

It is further ordered, That respondent North American Philips Corporation, its successors and assigns, and its officers, representatives, agents 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 electric shaver or any drug or device, as "drug" and "device" are defined in Section 15 of 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:

1. Making any statement or representation, directly or by implication, that use of the Black Pro shaver, or any other electric shaver or other drug or device, by persons afflicted with "razor bumps" will reduce or minimize that condition or is efficacious for the treatment of "razor bumps", unless at the time of each dissemination of such statement or representation respondent possesses and relies upon competent and reliable scientific or medical evidence as a reasonable basis for such statement or representation. 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.

Part III

For purposes of Part IV and Part V of this order, the term *product* shall be defined as follows: electric and cordless shavers, microwave ovens and toaster ovens.

Part IV

It is further ordered, That respondent North American Philips Corporation, its successors and assigns, and its officers, representatives, agents 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 "product" as defined in Part III of this order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any statement or representation, directly or by implication, concerning the performance, or any other characteristic, feature, attribute or benefit of any product unless respondent possesses and relies upon a reasonable basis for such statement or representation at the time of its initial dissemination and each subsequent dissemination. Such reasonable basis shall consist of competent and reliable evidence which substantiates such statement or representation.

2. Advertising any product by referring to or presenting evidence, including a test, survey, experiment, demonstration, study or report, or the results thereof, which evidence is represented, directly or by implication, as supporting, showing or proving the existence or nature of any fact or feature respecting such product when such evidence does not support, show or prove such fact or feature.

3. Making any statement or representation, directly or by implication, by reference to a test, survey, experiment, demonstration, study or report, unless such work has been designed, executed, and analyzed in a competent and reliable scientific manner and unless its purpose, content, validity, reliability, results, or the conclusions which may be drawn therefrom, are fairly and accurately represented.

Part V

It is further ordered, That respondent North American Philips Corporation, its successors and assigns, and its officers, representatives, agents 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 product, as defined in Part III of this order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this order.

2. Of all test reports, studies, surveys or demonstrations in its possession that contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials, or post purchase materials making such claim or representation were last disseminated. Such records will be made available to the Commission staff for inspection upon reasonable notice.

Part VI

It is further ordered, That respondent shall forthwith, relative to the products specified in Part III, distribute a copy of this order to each of its concerned operating divisions and to each of its officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements or other sales materials concerning said products.

Part VII

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to the effective date of 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 this order.

Part VIII

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

IN THE MATTER OF
MCCAFFREY AND MCCALL, INC.

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

Docket C-3106. Complaint, March 7, 1983—Decision, March 7, 1983*

This consent order requires a New York City advertising agency, among other things, to cease misrepresenting in advertisements that the Black Pro Shaver or any other drug or device will cure or minimize "razor bumps." The company is required to have a reasonable basis for advertising representations relating to the efficacy, performance or benefit of any drug, device or other product; barred from making statements which are inconsistent with reliable scientific or medical evidence; and prohibited from misrepresenting the extent or results of product testing. The order also requires that the company maintain specific records for a period of three years and provide its sales and advertising personnel with a copy of the order.

Appearances

For the Commission: *Mitchell Paul* and *Grace Polk Stern*.

For the respondent: *Arthur M. Klebanoff, Janklow, Traum & Klebanoff*, New York City.

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 of Consumer Protection 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 Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has

*Complaint previously published at 101 F.T.C. 359.