

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.

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 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 at 575 Lexington Avenue, 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 McCaffrey and McCall, Inc., 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 McCaffrey and McCall, Inc., 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 McCaffrey and McCall, Inc., 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 McCaffrey and McCall, Inc., 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 distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements or other product-related sales materials.

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

U.S. PIONEER ELECTRONICS CORP.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2755. Consent Order, Oct. 24, 1975—Modifying Order, March 8, 1983

This order reopens the proceeding and modifies the Commission's order issued on Oct. 24, 1975 (86 F.T.C. 1002), by modifying Paragraph I(11), so as to allow the company to impose non-discriminatory standards on the kind of retailers its distributors and dealers can serve.

ORDER MODIFYING DECISION AND ORDER

The Commission on November 5, 1982 having reopened the order and issued an order against respondent to show cause why the consent order to cease and desist entered on October 24, 1975 should not be modified as set forth therein; and respondent thereafter having answered that it has no objection to modification of the consent order as set forth in the order to show cause;

Accordingly, *it is ordered* that Paragraph I(11) of the order in this matter is modified to read:

Preventing or prohibiting any independent dealer or distributor from reselling his products to any person or group of persons, business or class of businesses, except as expressly provided herein. This order shall not prohibit respondent from establishing lawful, reasonable, and nondiscriminatory minimum standards for its dealers, including standards that relate to promotion and store display, demonstration, inventory levels, service and repair, volume requirements and financial stability nor shall this order prohibit respondent from requiring its dealers who sell respondent's products for resale to make such sales only to dealers who maintain such minimum standards.