

Modifying Order

101 F.T.C.

IN THE MATTER OF

GOLDEN TABS PHARMACEUTICAL CO., INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8792. Final Order, March 16, 1970—Modifying Order, March 17, 1983*

This order reopens the proceeding and modifies the Commission's order issued on March 16, 1970 (77 F.T.C. 277), by allowing respondent to disclose, clearly and conspicuously any place in advertisements, that there are conditions and obligations attendant upon acceptance of free or nominally priced offers. The modified order also reflects the company's new name and deletes from the order the name of the company's founder, Michael Posen.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On November 17, 1982 Golden Tabs Pharmaceutical Co., Inc., respondent in the above-captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the order entered therein.

The order, which was entered in 1970, covers "Golden 50 Tablets" or any food, drug, device or cosmetic. The complaint, which was issued on July 17, 1969, alleged, among other things, that respondent had represented in advertisements that Golden 50 Tablets would be sent free to persons responding to respondents' advertisements and that persons answering said advertisements will be under no obligation to purchase additional supplies of respondents' products. In truth and in fact, the Hearing Examiner found that the 30 day supply of respondents' product were not free for the reason that the offer was an inseparable part of a plan under which respondents, after the receipt of the 30 day supply by those who accepted the offer, shipped additional monthly supplies of the product and attempted to collect the price for these shipments. Furthermore, the Examiner found that persons answering the ads are under an obligation to purchase additional supplies or to notify respondents to cancel further shipments. After sending the 30 day supply, respondents shipped additional supplies each month, mailed statements requesting payment and threatened visits by company representatives in an attempt to collect payment. The Examiner also found that in many cases even if persons notified respondents that they did not wish additional supplies to be sent, respondents continued to ship supplies of said product to those persons and attempted to collect the price.

The Examiner issued an order, which, among other things, prohibited respondent in paragraph 1(b) of the order from representing that "any product is offered free or under any other terms when the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to the 'free' or other offer." The respondents did not appeal from the initial decision and the Commission thereafter adopted the decision and order.

Petitioner now seeks to modify one provision of that order, by adding a provision to paragraph 1(b) of the order which would permit respondent to have the option of clearly and conspicuously disclosing, when the free or other offer is made, that there are obligations attendant upon acceptance of the free or nominally priced offer and then clearly and conspicuously disclosing the complete terms of the offer elsewhere. Thus, the alternative language would not require that respondent disclose all the conditions "within close proximity to the free or other offer" as is now mandated.

While the Commission supports petitioner's proposed revisions to the order, the Commission has, without objection from petitioner, added a proviso to that portion of paragraph 1(b)(2) which would permit respondent to disclose the complete terms of the offer elsewhere in the advertisement. As revised herein, where respondent exercises this option and also includes in the advertisement a coupon, signature space or other means by which a consumer is intended to accept the offer, it is required to disclose the complete terms of the offer on or in close proximity to the coupon or other space provided.

The alternative language, as revised, should be sufficient to ensure that consumers are aware of their obligations in accepting the free or other offer. Not only would respondent be required by the modified order to disclose clearly and conspicuously and within close proximity to the offer that there are other conditions that a consumer assumes upon accepting the offer, but the respondent must clearly and conspicuously set forth on a coupon or other offer acceptance form included in the advertisement or, if no such form is provided, elsewhere in the advertisement the complete details, conditions, and obligations. Thus, assuming that the proper language is used, a consumer can be expected to be aware of the obligations attendant upon acceptance of the offer.

In its petition at page 8, respondent suggests that the modified order would be satisfied by placing, clearly, conspicuously, and within close proximity to the offer, such terms as "with membership", "with club membership", "when you join", "when you rejoin", "see details of plan in enrollment coupon", "see details of offer below", "see de-

tails inside", and other similar terms which clearly convey to the consumer a further obligation upon acceptance of the offer. Respondent should be advised that, in granting the petition, the Commission does not agree that all of the above terms would constitute satisfactory compliance with the modified order. In particular, in the Commission's view, the terms "see details inside" or "see details of offer below," even if placed "clearly, conspicuously and in close proximity" to the offer, are too imprecise to adequately inform consumers that there are further *obligations* attendant upon acceptance of the offer.

With the above noted order revision and compliance caveat, the Commission has decided to grant the petition. Moreover, having been informed by staff that the petitioner has no objection, the Commission also has made two other changes in the order. Because respondent Michael Posen has died, the Commission has deleted his name from the order, and it has changed the name of the corporate respondent, from Golden Fifty Pharmaceutical Co., Inc. to Golden Tabs Pharmaceutical Co., Inc.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued July 17, 1969, in Docket No. 8792 is hereby modified to read as follows:

ORDER

It is ordered, That respondent Golden Tabs Pharmaceutical Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated "Golden 50 Tablets," or any food, drug, device or cosmetic do forthwith cease and desist from directly or indirectly:

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

(a) Represents directly or by implication that respondent is a manufacturer of vitamin and/or mineral preparations or maintains laboratory facilities concerned with the formulation, testing or performance of vitamin and/or mineral preparations.

(b) Represents directly or by implication that any product is offered free or under any other terms when the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to the "free" or other offer,

or, alternatively,

represents directly or by implication that any product is offered free or under any other terms when the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless (1) respondent discloses clearly, conspicuously, and within close proximity to the free or other offer that there is a further obligation upon the consumer upon acceptance of the offer, and (2) respondent also discloses clearly and conspicuously elsewhere in the advertisement the complete details, conditions, and obligations attendant upon acceptance of the offer, *provided further* that, if the advertisement includes a coupon, signature space, or other designated means by which the consumer is intended to accept the offer, respondent discloses clearly and conspicuously on or in close proximity to the coupon or other space provided for acceptance of the offer the complete details, conditions and obligations attendant upon acceptance of the offer, but such complete disclosure need not appear more than once in the advertisement, including the coupon.

(c) Represents directly or by implication that an offer is made without "further obligation," or with "no risk," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer when in fact there is an obligation incurred by the recipient.

(d) Represents directly or by implication that an offer is made to only a limited customer group or for only a limited period of time when no such limitations are imposed by respondents.

(e) Represents directly or by implication that such products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which said guarantor will perform thereunder are clearly and conspicuously disclosed therewith.

(f) Represents directly or indirectly that any product or combination of products identified, described or specified, directly or by implication, is being offered for sale, as a "gift" or otherwise, unless such offer does contain the items as specified, described or otherwise identified.

(g) Represents directly or indirectly that any product or combination of products which are offered for sale, "free," as a "gift," or otherwise is or are of regular commercial size when such product or product are of "trial," "sample," or otherwise less than regular commercial size.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or in-

directly, the purchase of respondent's products in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited by Paragraph 1 hereof.

It is further ordered, That respondent and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of "Golden 50 Tablets" or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or sending any merchandise to any person without the prior authorization or prior consent of the person to whom such merchandise is sent and attempting, or causing to attempt, the collection of the price thereof.

2. Shipping or sending any merchandise to any person and attempting, or causing to attempt, the collection of the price thereof when a notification of refusal of such merchandise, or a notification of cancellation for any further shipments of merchandise, has been sent by such persons and received by respondent.

It is further ordered, That respondent notify the Commission at least 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.

It is further ordered, That respondent shall, within sixty (60) days after service of this modified order upon it, file with the Commission a report in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

It is further ordered, That the foregoing modification shall become effective upon service of this order.

IN THE MATTER OF

MIB, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT
REPORTING ACT*Docket C-3108. Complaint, March 21, 1983—Decision, March 21, 1983*

This consent order requires a Westwood, Mass. non-profit medical reporting agency, among other things, to cease reporting that a code in a consumer's file has been cancelled or deleted, except to report the cancellation or deletion to a person who was previously informed of the code's existence. The order prohibits respondent from conditioning the release of information to a consumer on his/her execution of a waiver of claims against the firm, and from representing to consumers that their statements concerning disputed items be limited to 100 words or less, unless at the same time, respondent offers to assist the consumer in preparing the statement. Additionally, the firm must timely reinvestigate disputed information; contact, where possible, the source(s) of disputed information or other persons identified by the consumer who may possess information relevant to the challenged data and modify its files accordingly.

Appearances

For the Commission: *William P. McDonough* and *Stephen P. Fauteux*.

For the respondent: *David B. Lytle, Hogan & Hartson*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Federal Trade Commission (Commission), having reason to believe that MIB, Inc., d/b/a Medical Information Bureau (MIB), has violated provisions of those Acts, and it appearing to the Commission that a proceeding by it in respect to those violations would be in the public interest, the Commission issues this complaint.

1. For the purposes of this complaint, the terms *consumer*, *consumer report*, *consumer reporting agency*, *file*, *person*, and *medical information* are defined as set forth in Section 603 of the Fair Credit Reporting Act (Act).

2. MIB is a nonprofit corporation, organized, existing, and doing business under the laws of Delaware, with its principal office and