

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

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

Docket C-2059. Consent Order, Oct. 8, 1971—Modifying Order, Feb. 3, 1984

This order reopens the proceeding and modifies the Commission's order issued on Oct. 8, 1971 (79 F.T.C. 589), *modified* Feb. 26, 1974 (83 F.T.C. 1354), to ensure that consumers receive necessary information regarding promotions involving chance while allowing the company to publicize such promotions more effectively and efficiently. The modified order changes the disclosure requirements for broadcast and print advertising, and includes a "trigger" modeled on that in the Commission's Games of Chance Rule. The "trigger" would require certain disclosures in print advertisements which "refer in any manner to prizes or their number or availability."

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On May 2, 1983 Procter & Gamble Company, respondents 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 consent order entered therein. By letter dated October 21, 1983, petitioner agreed to modify its original proposal.

The order relates to alleged unfair and deceptive practices by Procter & Gamble in connection with any use of a "sweepstakes" or other similar promotional device involving chance. Paragraphs A(1) and B(1)(2)(3) and (4) of the order require petitioner to disclose in all advertising and promotional material: (1) the total number of prizes to be awarded, (2) the exact nature of the prizes, their approximate retail value, and the number of each, (3) the geographic area or states in which any such device is used, and (4) the date the device is initiated and the date the device is to end. Other provisions of the order prohibit petitioner from failing to award all of the prizes as represented, from falsely representing that prizes have already been purchased, from failing to furnish a list of winners on request, and from misrepresenting any aspect of any promotional device involving chance. Procter & Gamble seeks modification only of the disclosure requirements contained in paragraphs A(1) and B(1)(2)(3) and (4) of the order.

Petitioner requests the establishment of different disclosure requirements for broadcast and print advertising, and the lessening of the requirements for both types of ads. In place of the current broad-

cast advertising requirements petitioner requests those set out in proposed paragraph C. This paragraph would require petitioner to disclose in all advertising: (1) the geographic area or states in which the device is used *if* the advertisement would reach consumers outside that area, (2) the date the device is to end *if* the advertising would be disseminated within less than thirty days before such ending date and, (3) the date the device is to begin *if* the advertising would be disseminated prior to that beginning date. No other disclosures would be required in broadcast advertisements.

Petitioner argues that the changes in the broadcast advertising requirements of the order are justified by changes in law and fact and by the public interest. Petitioner points to nearly identical consent orders against three pesticide producers in which fewer disclosures were required in certain broadcast advertisements than were required in print advertisements. *Union Carbide*, 84 F.T.C. 591 (1974), *modified*, 86 F.T.C. 1231 (1975), *modified*, 94 F.T.C. 315 (1979); *Hercules, Inc.*, 84 F.T.C. 605 (1974), *modified*, 86 F.T.C. 1236 (1975), *modified*, 94 F.T.C. 315 (1979); *FMC Corp.*, 86 F.T.C. 897 (1975), *modified*, 94 F.T.C. 315 (1979). Petitioner also argues that the prize information disclosure requirement amounts to a virtual ban on broadcast advertising of its sweepstakes. Finally petitioner argues that at the time the order was entered into television advertising of sweepstakes promotions was virtually nonexistent, whereas today such advertising is increasingly common and petitioner's inability to place such advertisements places it at competitive disadvantages.

Petitioner also proposes that the order's print advertising disclosure requirements be modified by introducing a "trigger." Under this approach, the disclosures listed in paragraphs A and B would be required only in print advertisements which "refer in any manner to prizes or their number or availability." Print advertising which does not set off the trigger would still have to meet the disclosure requirements of paragraph C, however. Petitioner also proposes special provisos to paragraphs A, B and C. The provisos to paragraphs A and B would allow petitioner to place disclosures triggered by advertisements on package labels on material other than the labels themselves, as long as statements on those packages directed consumers to those disclosures. The proviso to paragraph C would allow petitioner to place any disclosures required by that paragraph on the side or back of packages as long as a statement on the front of the package informed consumers of the disclosures' location.

Finally, petitioner contends that the addition of the "trigger" to the order's print advertising disclosure requirements is justified by changes in law and the public interest. In support, petitioner points to the consent order in *Coca-Cola Co.*, 88 F.T.C. 656 (1976) that regu-

lates the conduct of contest promotions and includes trigger language related to the kind of disclosures required by that order.

With respect to the deletion of the obligation to disclose prize information in broadcast advertisements we note that in January 1983 we issued a temporary stay of those portions of our Trade Regulation Rule on Games of Chance in the Food Retailing and Gasoline Industries (16 C.F.R. 419) which required the disclosure of prize information in broadcast advertising.* (48 FR 1046) This stay will remain in effect pending the conclusion of proceedings to amend that rule. Thus the modification makes petitioner's obligation more consistent with that presently imposed by the rule. Moreover, in this case petitioner's advertising of prize information will remain subject to paragraph A.(5) of the order which forbids petitioner from "misrepresenting in any manner by any means any element, feature, or aspect of any 'sweepstakes,' contest, game or any similar promotional device involving chance."

Similarly, we believe that conditioning disclosure in broadcast advertising of the starting and ending dates and geographic scope of a promotion is also justified by the public interest. Paragraph C of the modified order requires these disclosures whenever they are necessary and helpful to the consumer.

Finally, adoption of a trigger modeled on that contained in our Games of Chance Rule is also in the public interest. The disclosures required in Procter & Gamble's order are similar to those required in the Games of Chance Rule. Both require disclosure of detailed prize information. This requirement is present in the order against petitioner to ensure that consumers are not deceived about the value and nature of the prizes by vague or incomplete references to prizes in advertising. Therefore, the trigger used in the Games of Chance Rule—any reference to prizes—is appropriate for use in petitioner's order. The insertion of this trigger language serves the public interest by more closely tailoring the disclosure requirements to the purposes they serve. The provisos relating to disclosures on package labels are also justified by the public interest. They allow petitioner to provide more information to consumers on package labels than would otherwise be possible under the order, while still ensuring that the required disclosures are available for consumers to view. This increased flow of information to consumers is in the public interest.

Thus, the Commission finds that the changes requested in Procter & Gamble's modified petition are in the public interest. The modified order will ensure that consumers receive necessary information re-

* This rule applies only to the food retailing and gasoline industries. It does not apply to petitioner's activities in the sweepstakes area, which are governed solely by the order.

garding promotions involving chance, while allowing petitioner to publicize such promotions more effectively and efficiently.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued October 8, 1971, as modified February 26, 1974, in Docket No. C-2059 is hereby modified to read as follows:

ORDER

It is ordered, That the Procter & Gamble Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the preparation, advertising, sale, distribution or use of any "sweepstakes," contest, game or any similar promotional device involving chance in commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. (1) Failing to disclose clearly and conspicuously the exact number of prizes which will be awarded, the exact nature of the prizes and the approximate retail value of each prize offered in all print advertising and printed promotional materials which refer in any manner to prizes or their number or availability. *Provided, however*, That such disclosures in any case need not be made on any package label as long as somewhere on that same package consumers are clearly and conspicuously referred to advertising or promotional material which does contain such disclosures and which may be viewed by consumers without any purchase or other monetary outlay.

(2) Failing to award and distribute all prizes of the type and value represented.

(3) Representing directly or by implication that prizes other than cash prizes have been purchased unless they have in fact been purchased at the time that the representation is made.

(4) Failing to furnish upon request to any individual a complete list of the names and states of residence of winners of major prizes, identifying the prize won by each.

(5) Misrepresenting in any manner by any means any element, feature, or aspect of any "sweepstakes," contest, game or any similar promotional device involving chance.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contest, game, or similar promotional device involving chance, unless the following are disclosed clearly and conspicuously in all print advertising and printed promotional material which refer in any manner to prizes or their number or availability. *Provided, however*, That except as provided in Paragraph C of this order, such disclosures in any case need not be made on any package

label as long as somewhere on that same package consumers are clearly and conspicuously referred to advertising or promotional material which does contain such disclosures and which may be viewed by consumers without any purchase or other monetary outlay.

- (1) The total number of prizes to be awarded;
- (2) The exact nature of the prizes, their approximate retail value, and the number of each;
- (3) The geographic area or states in which any such device is used; and
- (4) The date the device is initiated and the date the device is to end.

C. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contest, game, or similar promotional device involving chance, unless the following are disclosed clearly and prominently in all advertising or promotional material concerning said devices:

- (1) The geographic area or states in which any such device is used if the advertising or promotional material would reach consumers outside such geographic area or states; and
- (2) The date the device is to end if the advertising or promotional material would be disseminated within less than thirty days before such ending date.
- (3) The date the device is to begin if the advertising or promotional material would be disseminated prior to such beginning date.

Provided, however, That in advertising or promotional material printed on package labels it shall be sufficient if such advertising or promotional material contains the clear and conspicuous disclosure of the statement "See back/side for details" and any required information about geographic areas or states and/or ending or beginning dates is then disclosed clearly and conspicuously elsewhere on the package.

It is further ordered, That respondent Procter & Gamble Company shall;

- (1) File with the Commission, within sixty (60) days after service upon it of this order, a report in writing setting forth in detail the manner and form in which it has complied with the provisions of this order;

- (2) Maintain adequate records:

- (a) which disclose the facts upon which any of the representations of the type described in the preceding paragraphs of this order are based, and

- (b) from which the validity of the representations of the type described in the preceding paragraphs of this order can be determined;

(3) Furnish upon the request of the Federal Trade Commission:

(a) a complete list of the names and addresses of the winners of each prize, and an exact description of the prize, including its retail value;

(b) a list of the winning numbers or symbols, if utilized, for each prize;

(c) the total number of coupons or other entries distributed;

(d) the total number of participants in the promotion;

(e) the total number of prizes in each category or denomination which were made available; and

(f) the total number of prizes in each category or denomination which were awarded.

It is further ordered, That the respondent 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 its corporate form such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance with this order.

Commissioner Pertschuk voted in the negative.

IN THE MATTER OF
AMERICAN HOME PRODUCTS CORPORATION

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

*Docket 8918. Modified Order To Cease and Desist, April 8, 1983—
Modifying Order, Feb. 7, 1984*

This order modifies the Commission's Modified Order to Cease and Desist issued on April 8, 1983 (101 F.T.C. 698), to permit the company to substantiate superiority or freedom-from-side-effects claims with competent and reliable scientific evidence, as is required of its competitors, Bristol-Meyers Co. and Sterling Drug Co. Previously, the company was required to substantiate such claims with two or more well-controlled clinical investigations.

ORDER MODIFYING ORDER TO CEASE AND DESIST

In response to the Commission's Order to Show Cause issued January 12, 1984, respondent American Home Products Corporation (AHP) and complaint counsel have consented to modify the Order of April 8, 1983 [101 F.T.C. 698] in this matter to allow AHP to make comparative analgesic efficacy claims under paragraph I(B) that are based on the reasonable basis standard for such claims established in the Commission's decisions in *Bristol-Myers Company*, Docket No. 8917 [102 F.T.C. 21] and *Sterling Drug, Inc.*, Docket No. 8919 [102 F.T.C. 395]. The Commission agrees that such modification should be made.

Accordingly, *it is hereby ordered* that the Order be reopened and paragraph I(B) thereof be modified by adding the word "or" to the end of paragraph I(B)(2) and adding the following new paragraph I(B)(3):

3. Respondent, at the time such representation is made, possesses a reasonable basis for making that representation. A reasonable basis for such a representation shall consist of competent and reliable scientific evidence supporting it.

It is further ordered, That with this modification, the Commission's stay of paragraph I(B) is hereby lifted and the entire Order as modified shall take effect 90 days from our January 12, 1984 order, as contemplated by our Stay order of April 8, 1983.