

Set Aside Order

104 F.T.C.

IN THE MATTER OF
FOREMOST DAIRIES, INC.

Docket C-1161. Consent Order, Jan. 23, 1967—Set Aside Order, Sept. 18, 1984

This Order reopens the proceeding and sets aside the divestiture Order issued against a dairy products processor in 1967 (71 F.T.C. 56) and modified in 1983 (101 F.T.C. 343) by deleting the provision requiring prior Commission approval for any further acquisitions by the company. After considering the request of successor company, McKesson Corporation, together with supporting materials and other relevant data, the Commission found that the competitive problem that had prompted issuance of the divestiture Order no longer existed and termination of the Order to relieve respondent of compliance costs was in the public interest.

ORDER REOPENING AND SETTING ASIDE MODIFIED ORDER ISSUED ON
JANUARY 23, 1967

By a petition filed on May 16, 1984, and a supplement thereto dated June 29, 1984, McKesson Corporation (formerly Foremost-McKesson, Inc. and Foremost Dairies, Inc. and hereafter "McKesson") requests that the Commission reopen the proceeding in Docket No. C-1161 and set aside the modified order against McKesson issued by the Commission on January 23, 1967. Pursuant to Section 2.51 of the Commission's Rules of Practice, McKesson's petition was placed on the public record for comment. No comments were received.

Upon consideration of McKesson's petition and supporting materials, and other relevant information, the Commission now finds that changed conditions of fact and the public interest warrant reopening the proceeding and setting aside the modified order. The record demonstrates that the competitive problem Paragraph IV of the order intended to remedy no longer exists and termination of the order to relieve respondent of compliance costs is in the public interest.

Accordingly,

It is ordered, That this matter be, and it hereby is reopened and that the Commission's modified order be, and it is hereby set aside.

Chairman Miller did not participate.

IN THE MATTER OF

SPERRY CORPORATION,
DKG ADVERTISING, INC.,
NORTH AMERICAN PHILIPS CORPORATION

and

MCCAFFREY AND MCCALL, INC.

Dockets C-3068, C-3069, C-3105 & C-3106. Interlocutory Orders, Sept. 21, 1984

In four separate Orders Terminating Show Cause Proceeding, the FTC declined to modify the "reasonable" provision in individual consent orders issued against two manufacturers of electric shavers for black men, and their advertising agencies. This provision barred the companies from claiming, without a reasonable basis consisting of two well-controlled clinical studies, that their products reduced or alleviated "razor bumps," a skin condition affecting many black men. The Commission asserted that while its Show Cause Orders had solicited from the four companies and other interested parties evidence that one well-controlled clinical study would satisfy the "reasonable basis" requirement and serve the public interest, lesser substantiation was not warranted in this case. The Commission's review of the entire record, including public comment and complaint counsel's memoranda, together with the alleged improper conduct of respondents in the past, indicated that the "reasonable basis" requirement of two well-controlled clinical tests should not be modified.

ORDER TERMINATING SHOW CAUSE PROCEEDING

On March 8, 1983, the Federal Trade Commission issued a Show Cause Order instructing respondent Sperry Corporation to show cause, if any, why a Decision and Order issued against the company on July 17, 1981 [98 F.T.C. 4], should not be reopened and modified. The July 17, 1981, cease and desist order prohibited Sperry Corporation from claiming that the Black Man's Shaver or any other product reduces or treats a painful medical condition known as pseudofolliculitis barbae (or "razor bumps") unless the company possesses and relies on a reasonable basis consisting of two well-controlled clinical studies. In its Show Cause Order the Commission solicited evidence from respondent and any other interested party as to whether one well-controlled clinical study would satisfy the reasonable basis requirement contained in the order and as to whether it would be in the public interest to replace the existing two clinicals requirement with a one clinical test requirement.

Our review of the entire record of this proceeding, including the eight public comments received and complaint counsel's extensive memorandum, leads us to conclude that, although a different level of