

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

substantiation might be appropriate in other circumstances, two clinical studies represent the appropriate level of substantiation that should be required in this order. In arriving at this conclusion we have, among other things, weighed the benefits of having two well-designed tests, such as increased certainty that claims based on the tests are accurate, against the costs saved by requiring only one such test. The significance of these factors varies from case to case. Here, the benefits are self-evident and substantial. Requiring two tests will significantly reduce the risk that the respondent will disseminate inaccurate claims concerning a product that not only fails to treat a serious and painful medical condition as advertised but may actually prolong or exacerbate the condition. In contrast, savings the company might achieve by conducting one fewer test appear modest since the relatively low cost of conducting a second test would not greatly exceed the cost of a single test that included additional procedural safeguards needed to enhance its reliability, such as those proposed by complaint counsel and the experts who commented. Finally, respondent's past conduct, as alleged in the complaint, of making false and unsubstantiated claims for its product on the basis of inadequate and flawed testing warrants imposition of a more rigorous substantiation requirement to provide additional assurance that the respondent will not engage in such conduct in the future.

For these reasons, we are unpersuaded that the public interest would be served by a reduction in the level of substantiation required under this order. We therefore direct that the show cause proceeding instituted on March 8, 1983, be terminated and that no modification be made to the Decision and Order issued against Sperry Corporation on July 17, 1981.

ORDER TERMINATING SHOW CAUSE PROCEEDING

On March 8, 1983, the Federal Trade Commission issued a Show Cause Order instructing respondent DKG Advertising, Inc. to show cause, if any, why a Decision and Order issued against the company on July 17, 1981 [98 F.T.C. 15], should not be reopened and modified. The July 17, 1981, cease and desist order prohibited DKG Advertising, Inc. 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 substantiation might be appropriate in other circumstances, two clinical studies represent the appropriate level of substantiation that should be required in this order. In arriving at this conclusion we have, among other things, weighed the benefits of having two well-designed tests, such as increased certainty that claims based on the tests are accurate, against the costs saved by requiring only one such test. The significance of these factors varies from case to case. Here, the benefits are self-evident and substantial. Requiring two tests will significantly reduce the risk that the respondent will disseminate inaccurate claims concerning a product that not only fails to treat a serious and painful medical condition as advertised but may actually prolong or exacerbate the condition. In contrast, the savings the company might achieve by conducting one fewer test appear modest since the relatively low cost of conducting a second test would not greatly exceed the cost of a single test that included additional procedural safeguards needed to enhance its reliability, such as those proposed by complaint counsel and the experts who commented. Finally, respondent's past conduct, as alleged in the complaint, of making false and unsubstantiated claims for its product on the basis of inadequate and flawed testing warrants imposition of a more rigorous substantiation requirement to provide additional assurance that the respondent will not engage in such conduct in the future.

For these reasons, we are unpersuaded that the public interest would be served by a reduction in the level of substantiation required under this order. We therefore direct that the show cause proceeding instituted on March 8, 1983, be terminated and that no modification be made to the Decision and Order issued against DKG Advertising, Inc. on July 17, 1981.

ORDER TERMINATING SHOW CAUSE PROCEEDING

On March 8, 1983, the Federal Trade Commission issued a Show Cause Order instructing respondent North American Philips Corporation to show cause, if any, why a Decision and Order issued against the company on March 7, 1983 [101 F.T.C. 359], should not be reopened and modified. The March 7, 1983, cease and desist order prohibited North American Philips Corporation from claiming that the Black Pro shaver or any other electric shaver, drug, or device reduces or treats a painful medical condition known as pseudofolliculitis bar-

bae (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 substantiation might be appropriate in other circumstances, two clinical studies represent the appropriate level of substantiation that should be required in this order. In arriving at this conclusion we have, among other things, weighed the benefits of having two well-designed tests, such as increased certainty that claims based on the tests are accurate, against the costs saved by requiring only one such test. The significance of these factors varies from case to case. Here, the benefits are self-evident and substantial. Requiring two tests will significantly reduce the risk that the respondent will disseminate inaccurate claims concerning a product that not only fails to treat a serious and painful medical condition as advertised but may actually prolong or exacerbate the condition. In contrast, savings the company might achieve by conducting one fewer test appear modest since the relatively low cost of conducting a second test would not greatly exceed the cost of a single test that included additional procedural safeguards needed to enhance its reliability, such as those proposed by complaint counsel and the experts who commented. Finally, respondent's past conduct, as alleged in the complaint, of making false and unsubstantiated claims for its product on the basis of inadequate and flawed testing warrants imposition of a more rigorous substantiation requirement to provide additional assurance that the respondent will not engage in such conduct in the future.

For these reasons, we are unpersuaded that the public interest would be served by a reduction in the level of substantiation required under this order. We therefore direct that the show cause proceeding instituted on March 8, 1983, be terminated and that no modification be made to the Decision and Order issued against North American Philips Corporation on March 7, 1983.

ORDER TERMINATING SHOW CAUSE PROCEEDING

On March 8, 1983, the Federal Trade Commission issued a Show Cause Order instructing respondent McCaffrey and McCall, Inc. to

show cause, if any, why a Decision and Order issued against the company on March 7, 1983 [101 F.T.C. 367], should not be reopened and modified. The March 7, 1983, cease and desist order prohibited McCaffrey and McCall, Inc. from claiming that the Black Pro shaver or any other electric shaver, drug, or device 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 substantiation might be appropriate in other circumstances, two clinical studies represent the appropriate level of substantiation that should be required in this order. In arriving at this conclusion we have, among other things, weighed the benefits of having two well-designed tests, such as increased certainty that claims based on the tests are accurate, against the costs saved by requiring only one such test. The significance of these factors varies from case to case. Here, the benefits are self-evident and substantial. Requiring two tests will significantly reduce the risk that the respondent will disseminate inaccurate claims concerning a product that not only fails to treat a serious and painful medical condition as advertised but may actually prolong or exacerbate the condition. In contrast, savings the company might achieve by conducting one fewer test appear modest since the relatively low cost of conducting a second test would not greatly exceed the cost of a single test that included additional procedural safeguards needed to enhance its reliability, such as those proposed by complaint counsel and the experts who commented. Finally, respondent's past conduct, as alleged in the complaint, of making false and unsubstantiated claims for its product on the basis of inadequate and flawed testing warrants imposition of a more rigorous substantiation requirement to provide additional assurance that the respondent will not engage in such conduct in the future.

For these reasons, we are unpersuaded that the public interest would be served by a reduction in the level of substantiation required under this order. We therefore direct that the show cause proceeding instituted on March 8, 1983, be terminated and that no modification

be made to the Decision and Order issued against McCaffrey and McCall, Inc. on March 7, 1983.

MATTTEL, INC., et al.

Modifying Order

IN THE MATTER OF

MATTEL, INC.

and

CARSON-ROBERTS, INC.

*Dockets C-2071 & C-2072. Consent Orders, Nov. 1, 1971—
Modifying Order, Sept. 24, 1984*

In response to a joint petition from a toy manufacturer and its advertising agency, this Order reopens the proceedings and modifies Paragraph One of two 1971 consent orders issued against Mattel, Inc., 79 F.T.C. 667, and Carson-Roberts, Inc. (succeeded by Ogilvy & Mather U.S., a Division of Ogilvy & Mather International Inc.), 79 F.T.C. 674. Noting that Paragraph One of the Orders prohibited the use of certain film or camera techniques in children's advertising only if they misrepresented advertised product's performance; operation or use, the Commission held that modification clarifying the circumstances under which these techniques may be used would be in the public interest. The Commission therefore added a proviso permitting the non-deceptive use of the techniques if respondents possessed and relied on competent and reliable tests establishing this lack of deception; and a requirement that the supporting data be maintained for a period of two years. However, the Commission declined to modify Paragraph Four on the ground that petitioners had not demonstrated that the requested modification to remove the broadcast advertisement disclosure requirement regarding the incompatibility of some "Hot Wheels" toys with others is supported by a change in law, change in fact or the public interest.

ORDER REOPENING THE PROCEEDINGS AND
MODIFYING CEASE AND DESIST ORDERS

On January 19, 1984, Mattel, Inc., and Ogilvy & Mather U.S., a Division of Ogilvy & Mather International Inc., (successor corporation to Carson Roberts, Inc.), respondents in the above captioned matter, filed a joint petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceedings and modify the consent orders entered therein. [79 F.T.C. 667, 674 (1971)] By letters dated June 7, 1984, June 21, 1984, July 19, 1984, and August 13, 1984, Petitioners modified their original joint proposal.

The Orders relate to alleged unfair and deceptive practices by Mattel and Carson-Roberts in connection with the advertising of toy racing sets and dancing or walking dolls. The first three paragraphs of the Orders against the two petitioners are substantively identical. These paragraphs: (1) prohibit the use of certain film or camera techniques in advertising addressed to children that misrepresent the product's performance, operation or use, (2) limit the circumstances under which endorsements may be used in advertising addressed to