

IN THE MATTER OF
BIOPRACTIC GROUP, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF SEC. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3148. Complaint, Dec. 12, 1984—Decision, Dec. 12, 1984

This consent order requires a Riegelsville, Pa. corporation, among other things, to cease representing that any new drug or device provides relief from the inflammation and joint stiffness associated with arthritis and other musculoskeletal ailments, unless such claims are substantiated by competent and reliable evidence. The Order also bars the company from making unsubstantiated claims that any drug or device has been praised as an effective treatment for arthritis and similar ailments by doctors, medical centers and athletic teams; or that any such product has been reported to be an important breakthrough in pain management in newspaper and magazine articles or on TV or radio. The company is additionally required to maintain records substantiating product claims, and to provide all personnel involved in the preparation of advertising and promotional materials with a copy of the Order.

Appearances

For the Commission: *William Haynes and Nancy Warder*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Biopractic Group, Inc. (Biopractic), a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent Biopractic is a corporation with its office and principal place of business located at 328 Easton Road, Riegelsville, Pennsylvania.

PAR. 2. Respondent is now and has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of Therapeutic Mineral Ice. In connection with the manufacture and marketing of Therapeutic Mineral Ice, respondent is now and has been engaged in the dissemination, publication, and distribution of advertisements and promotional material for the purpose of promoting the sale of

Therapeutic Mineral Ice for human use. As advertised, Therapeutic Mineral Ice is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. Respondent causes Therapeutic Mineral Ice when sold to be transported from its place of business in various states to purchasers located in other states. Respondent maintains, and at all times mentioned herein has had, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and at all times mentioned herein, respondent has been and now is in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the manufacture or marketing of health care products.

PAR. 5. In the course and conduct of its business, respondent has disseminated and caused the dissemination of certain advertisements and promotional materials for Therapeutic Mineral Ice, such as the advertising material attached hereto as Exhibit A, through the United States mail and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Through the use of the advertisements and promotional materials referred to in Paragraph Five, and others not specifically set forth herein, respondent represented, and now represents, directly or by implication, that:

a. Therapeutic Mineral Ice has been praised as an effective treatment for arthritis and other musculoskeletal ailments by medical doctors, leading medical centers, professional athletic teams, and the United States and Russian Olympic track teams; and

b. Therapeutic Mineral Ice has been reported to be an important new breakthrough in pain management in news reports of the Associated Press and in news stories in the *National Enquirer*, *Globe*, and *Star*.

PAR. 7. In truth and in fact:

a. Therapeutic Mineral Ice has not been praised as an effective treatment for arthritis and other musculoskeletal ailments by medical doctors, leading medical centers, professional athletic teams, and the United States and Russian Olympic track teams; and

b. Therapeutic Mineral Ice has not been reported to be an important new breakthrough in pain management in news reports of the Associated Press and in news stories in the *National Enquirer*, *Globe* and *Star*.

Therefore, the representations set forth in Paragraph Six were and are false, deceptive, misleading, and unfair, and the advertisements

and promotional materials referred to in Paragraph Five were and are misleading in material respects, and have constituted and now constitute false advertisements.

PAR. 8. Through the use of the advertisements and promotional materials referred to in Paragraph Five and others not specifically set forth herein, respondent represented, and now represents, directly or by implication, that:

a. Therapeutic Mineral Ice will provide relief from the inflammation and joint stiffness that characterizes arthritis and other musculoskeletal ailments; and

b. Therapeutic Mineral Ice stimulates the beta-endorphins present in the human body.

PAR. 9. Through the use of the advertisements and promotional materials referred to in Paragraph Five, respondent has represented and now represents directly or by implication that, at the time the representations set forth in Paragraph Eight were made, it possessed and relied upon a reasonable basis for those representations.

PAR. 10. In truth and in fact, respondent did not, at the time the representations set forth in Paragraph Eight were made, possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in Paragraph Nine was and is unfair and deceptive.

PAR. 11. The use by respondent of the aforesaid unfair and deceptive representations and the dissemination of the aforesaid false advertisements and promotional materials has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and has induced, or is likely to induce, directly or indirectly, the purchase of Therapeutic Mineral Ice.

PAR. 12. The facts and practices of respondent, as herein alleged, including the dissemination of the aforesaid false advertisements and promotional materials, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce, and unfair and deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

Commissioner Bailey voted in the negative. Commissioner Azcuenaga abstained.

EXHIBIT A

Doctors at leading Medical Pain Centers reveal amazing new anti-inflammatory ICE THERAPY treatment for control of Arthritic, Rheumatic pain.
Associated Press, National Inquirer, Globe Star, report on important new break-through in pain management.

Called "cryotherapy," Doctor's hail this important new "pain-icing" technique as a remarkable, yet safe and simple answer to controlling inflammation, a key for cause of the stiffness, swelling and pain associated with Rheumatism and Arthritis. Inflammation means heat... so it makes no sense to treat inflammation with more heat, or heat-creating products such as methylsalicylate, Capsicum, wintergreen, which can actually aggravate the problem. Only ice can counter this heat or inflammation.

Modern Biochemistry has now created a product that actually "ices pain away."

Called Therapeutic Mineral Ice, this new discovery utilizes a unique combination of tested and proven ingredients in a totally absorbent new gel formula. It's the only formula of its kind in the world and it attacks and fights pain like nothing ever has before. In fact, with Therapeutic Mineral Ice many people report they can now cope with and endure and function with their pain controlled... and enjoy life once again. YES, NOW FOR THE FIRST TIME, YOU CAN CONTROL PAIN AND END THE FEELING THAT PAIN CONTROLS YOU. You simply apply Therapeutic Mineral Ice externally to the afflicted area as often as needed and with complete safety. It goes to work immediately. Starts relieving inflammation and pain on contact. Brings blessed relief day and night.

New Therapeutic Mineral Ice Reduces Dependence On Aspirin, Drugs, All Medication

You hurt, but why punish the rest of your body to reach the pain? Since nature is the true healer and pain fighter, it makes sense to use a product that works with nature. New Therapeutic Mineral Ice provides that assistance... helps your body stimulate the Beta-Endorphins, nature's own pain fighters. Breaking the pain cycle allows your body to

feel... to strengthen... feeling of wellness soon follows. Therapeutic Mineral Ice actually helps nature fight pain better release pain faster.

The body's inflammatory and Rheumatism is not subject to pain, but agonizing stiffness, as well. Therapeutic Mineral Ice understands this. With Therapeutic Mineral Ice, you can triumph over morning stiffness and fatigue. You need not be caged in an aching body, because Therapeutic Mineral Ice miraculously "ices pain away"...

...relaxation... freedom of movement without stiffness... without pain. Remember, inflammation is considered the key to the pain problem and Therapeutic Mineral Ice is the anti-inflammatory pain fighter.

Doctors, Medical Pain Centers, Physical Therapists, Health Clinics, Professional Athletic Teams, U.S. and Russian Olympic Track Teams Praise "Ice Therapy"

The simplest management of pain is preferred by the medical profession. Physicians have a motto "Primum non nocere" which means "above all, do no damage."

Now, so many have been able to eliminate the harsh, damaging internal drugs and the irritating, conflicting external heat rubs. These things can often bring little relief and prove to be very expensive. Therapeutic Mineral Ice provides a totally new and different kind of answer to the Doctor's management of pain. And it is comparatively inexpensive. Doctors now recognize that effective relief can be delivered through the skin and need not be taken internally. Therapeutic Mineral Ice provides all the beneficial relief of non-steroid, anti-inflammatory agents, helping to reduce inflammation, swelling, stiffness and pain, without the side effects and expense of other drugs or drug products you have tried.

Therapeutic Mineral Ice, The Amazing Pain Fighter, Is Not Only Painless, It Also Is Portable To Relief Of Rheumatism, Swelling And Pain In Joints, But Also Provides Relief For All Other Symptoms Of Inflammation, Swelling, Stiffness And Pain.

PAIN, Comes From Many Sources. It's the body's way of telling you there's something wrong. Because Therapeutic Mineral Ice is such a potent pain fighter, on contact, it will dramatically reduce swelling, the accompanying stiffness and joint inflammation and stiffness. Sciatica, Bursitis, Neuritis, Neuralgia, sore shins and knees, muscle strain, back pain, stiff neck and muscle spasm... each symptom also relief of skin problems like Poison Ivy, Herpes, Simplex, Rash and itches.

And Therapeutic Mineral Ice, a cool, blue, absorbent gel, stands between you and your pain with no stain to body or clothes, no grease, no unpleasant after smell. Only you know you have it on. Sleep with it on in complete comfort, apply during the day and put your clothes on immediately. No waiting for it to dry or absorb. Be with friends and family, attend social functions. BRING THERAPEUTIC MINERAL ICE WITH YOU AND YOU'LL ALWAYS HAVE COMFORT AT HAND. IT'S A

VERY SPECIAL SECRET FRIEND, ALWAYS READY TO HELP.

Since Therapeutic Mineral Ice is the body's way of telling you there's something wrong, because Therapeutic Mineral Ice is such a potent pain fighter, on contact, it will dramatically reduce swelling, the accompanying stiffness and joint inflammation and stiffness.

So often you have taken very expensive drugs that do little to relieve the inflammation and pain. And many times, later costly products have helped ease your pain, only to find yourself and your doctor's Therapeutic Mineral Ice realize this and have no more the price prohibitive. On the contrary, the price has been perpetually kept down, so it can be available to as many as possible. Many thousands know that Therapeutic Mineral Ice brings the promised, continuing relief at a price they can afford. Furthermore, we guarantee you relief or your money will be refunded with no questions asked. Just mail us the jar with the unused portion for a full refund. Therapeutic Mineral Ice promises you relief or you pay nothing. Again, there is no cure for Arthritis and Rheumatism, but until there is, there is Therapeutic Mineral Ice. Send for it today. Start enjoying life more tomorrow... a tomorrow free of pain.

MAIL YOUR ORDER TODAY!

The Biopractic Group Inc.
P.O. Box 328
Ridgewood, PA 15077

Please send me _____ jars of Therapeutic Mineral Ice in the 8-oz. (one-half pound) size. (An average 30-40 day supply. If not fully satisfied, I understand my purchase price will be refunded upon return of jar with unused portion. Enclosed is \$8.95 plus \$1.00 handling... total of \$9.95 for each jar.

Total _____ (check or money order only).

Name _____
Address _____ Apt. # _____
City _____ State _____ Zip _____

Sorry, no C.O.D.'s, cash or charge.

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 violation 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 said 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 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, 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 328 Easton Road, in the city of Riegelsville, State of Pennsylvania.
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

I

It is ordered, That respondent Biopractic Group, Inc., a corporation, its successors, assigns, 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 "drug" or "device," as those terms are defined

in 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 representing that such product

- a. Provides relief from the inflammation and joint stiffness that characterizes arthritis and other musculoskeletal ailments;
- b. Stimulates the beta-endorphins present in the human body;
- c. Has been praised as an effective treatment for arthritis and other musculoskeletal ailments by medical doctors, leading medical centers, professional athletic teams, or Olympic teams; or
- d. Has been reported to be a breakthrough in pain management in articles in newspapers, magazines, or in television or radio news reports;

unless at the time of the dissemination of such representation respondent possesses and relies upon adequate substantiation for such representation, including, for the representations described in subparts a and b, competent and reliable scientific or medical evidence in the form of at least two independently conducted, well-controlled, double-blinded clinical studies that conform to acceptable designs and protocols, are conducted by persons who are qualified by training and experience to conduct such studies, and substantiate the representations made by the respondent. *Provided, however*, with respect to any such representation set forth in subparts a and b above for over-the-counter drugs, if the Food and Drug Administration publishes any tentative or final standard which establishes conditions under which a product is safe and effective, then, in lieu of the two double-blinded clinical studies, respondent may possess and rely upon such standard (until such standard is superseded) if it substantiates the representation.

II

It is further ordered, That respondent maintain, for at least three (3) years beyond the last dissemination of any advertisement or promotional material covered by this order, complete business records demonstrating compliance with this order. Such records shall include, but not be limited to, copies of and dissemination schedules for all advertisements and promotional materials; and documents that substantiate or that contradict or qualify any claim made in advertising, promoting or selling any product covered by this order.

III

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in Biopractic Group, Inc., 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.

IV

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions, and to all present and future personnel, agents, or representatives who are engaged in the preparation and dissemination of advertisements and promotional materials and that the respondent shall secure from each such person a signed statement acknowledging receipt of the order.

V

It is further ordered, That the 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 this order.

Commissioner Bailey voted in the negative. Commissioner Azcuenaga abstained.

Complaint

104 F.T.C.

IN THE MATTER OF

B.A.T INDUSTRIES, LTD., ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SEC. 7 OF THE CLAYTON ACT

Docket 9135. Complaint, May 13, 1980—Final Order, Dec. 17, 1984

This Order affirms the Initial Decision of the Administrative Law Judge and dismisses the FTC complaint alleging that acquisition of Appleton Papers, Inc., the leading U.S. producer of chemical carbonless paper (CCP) by B.A.T Industries, Ltd. ("B.A.T") had violated Sec. 7 of the Clayton Act and Sec. 5 of the FTCA, by eliminating the potential for competition between the two companies in the U.S. CCP market. For reasons set forth in its Opinion, the Commission held that the record showed no "clear proof" that B.A.T would have entered the U.S. CCP market independently had it not acquired Appleton.

Appearances

For the Commission: *Steven A. Newborn, John V. Lacci, Sandra G. Wilkof* and *Daniel J. Yakoubian*.

For the respondents: *David Schechter*, in-house counsel, *Jay Topkis, Daniel J. Beller, Eric M. Freedman, and Daniel Victor, Paul, Weiss, Rifkin, Wharton & Garrison*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that B.A.T Industries, Ltd. ("BAT"), and Appleton Papers, Inc. ("Appleton"), respondents herein, have violated Section 7 of the Clayton Act, as amended (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45) through the acquisition by BAT of the assets of the Appleton Papers Division of NCR Corporation ("NCR"), and that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this Complaint, the following definition will apply:

Chemical carbonless paper ("CCP") is any product which uses a