

Complaint

109 F.T.C.

IN THE MATTER OF

WALGREEN CO.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3214. Complaint, June 10, 1987—Decision, June 10, 1987*

This consent order prohibits, among other things, a Deerfield, Ill.-based retail drugstore chain from making unsubstantiated advertising claims for "Advil" pain reliever or any other over-the-counter analgesic drug product.

Appearances

For the Commission: *Donna S. Moffa.*

For the respondents: *Robert L. Wald and Robert A. Skitol, Wald, Harkrader, & Ross, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Walgreen Co., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Walgreen is an Illinois corporation with its principal office or place of business located at 200 Wilmot Road, Deerfield, Illinois.

PAR. 2. Walgreen offers for sale and sells over-the-counter drug products.

PAR. 3. Walgreen has disseminated or caused to be disseminated, advertisements for over-the-counter drug products, which products are "drugs" within the meaning of that term in Section 12 of the Federal Trade Commission Act. These advertisements have been disseminated by various means in or affecting commerce, including newspapers distributed across state lines and radio broadcasts transmitted across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase in or having an effect upon commerce of drugs.

PAR. 4. The acts and practices of Walgreen alleged in this complaint have been in or affecting commerce.

PAR. 5. Typical of Walgreen's advertisements, but not necessarily inclusive thereof, are the Walgreen advertisements attached hereto

as Exhibits A through E. Specifically, the aforesaid Walgreen advertisements contain the following statements:

- a. "Prescription Pain Reliever . . . without a prescription! ADVIL is 200 mg. Ibuprofen for pain. One of the most prescribed pain relievers. Anti-inflammatory and analgesic comfort for people with arthritis." (Exhibit A)
- b. "Now available without prescription. Advanced 'ADVIL' Non-narcotic anti-inflammation Ibuprofen 200 mg. for pain relief." (Exhibit B)
- c. "ADVIL. Generic equivalent of Motrin, No prescription necessary." (Exhibit C)
- d. "An anti-inflammatory and an analgesic, ADVIL is a source of comfort for people who experience arthritis pain." (Exhibit D)
- e. "One of the world's *most-prescribed* pain relievers—known to millions as Ibuprofen—is now available *without* a prescription, at Walgreens! ADVIL . . . a highly effective, non-narcotic, anti-inflammatory pain reliever." (Exhibit E)

PAR. 6. Through the use of the statements referred to in Paragraph Five (a) through (e), and other statements in advertisements not specifically set forth herein, Walgreen has made the following material representations, directly or by implication:

- a. Consumers can substitute "Advil," in over-the-counter dose levels, for prescription ibuprofen, because when so substituted, "Advil" provides all of the same therapeutic benefits to consumers as prescription ibuprofen.
- b. "Advil," in over-the-counter dose levels, provides an anti-inflammatory benefit to consumers.

PAR. 7. Through the use of the statements set forth in Paragraph Five, and others not specifically set forth herein, Walgreen has represented, directly or by implication, that at the time of making the representations set forth in Paragraph Six it possessed and relied upon a reasonable basis for those representations.

PAR. 8. In truth and in fact, at the time of the initial dissemination of the representations set forth in Paragraph Six and each subsequent dissemination, Walgreen did not possess and rely upon a reasonable basis for making such representations. Therefore, Walgreen's representation set forth in Paragraph Seven was and is false and misleading.

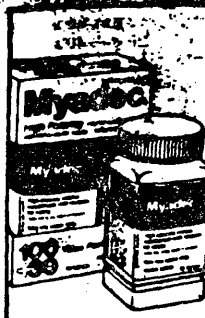
PAR. 9. The acts or practices of Walgreen, as alleged in this complaint, constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Chairman Oliver was recorded as voting in the negative.

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EXHIBIT A



7.99
SALE price
Myadec Vitamins
High potency supplement with minerals for adults. Includes Zinc. Value pack of 100 plus 30 tablets.

Prescription Pain Relievers without a prescription!

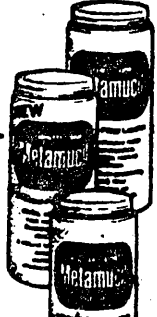


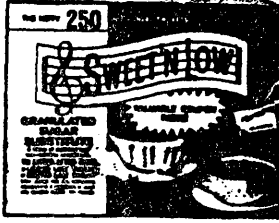
ADVIL
is 200 mg. Ibuprofen for Pain

- One of the most prescribed pain relievers
- Anti-inflammatory and analgesic comfort for people with arthritis

In quantities of 24 tablets, 50 or 100 tablets.

6.99
SALE price
Natural Fiber Laxative by Metamucil
Gentle powder in regular, strawberry or orange flavor. 21 oz.





2.19 SALE price
Sweet'N Low, 250's
Packets of low-cal granulated sugar substitute.



7.99 SALE price
Senokot Laxative Tabs, 100's
Natural vegetable formula gently relieves constipation.



3.99 SALE price
Maximum Strength Super Odrinex
Diet plan tablets, 50's.



4.99 SALE price
Slim-Fast Diet Plan Packets
Chocolate flavor 1 oz. 6's.

Walgreens Coupon



Gillette **TRAC II** **TRAC II, 8's**

Walgreens Coupon



AIR FOAM
ISOLES

Walgreens



Complaint

EXHIBIT B

Walgreens Coupon

CALTRATE 600 TABLETS, 60's

Calcium supplement

5.99

Limit 2 May-June 26, 1964
Redeem Coupon No. 17

Walgreens Coupon

DRISTAN

Deodorant

2.39

Limit 2 May-June 26, 1964
Redeem Coupon No. 20

Walgreens Coupon

FAST RELIEF FOR SORE MUSCLES

SPORTECRAME

For aching joints

1.89

Limit 2 May-June 26, 1964
Redeem Coupon No. 19

The First-Aid Center

BAND-AID plastic strips

5.99

12, 1/2" wide

The Health Center

Walgreens PHARMACY OPEN 365 DAYS A YEAR

Days and Holidays too! We're there when you need us.

Now Available Without Prescription

ADVANCE 24 TABLETS

Non-narcotic anti-inflammation

2.29

Limit 2 May-June 26, 1964
Redeem Coupon No. 21

EXHIBIT B

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EXHIBIT C

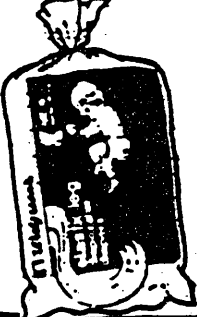
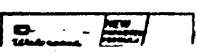
	1.99 LOREAL NAIL POLISH Choice of colors beautiful shades		4.99 WALGREEN'S DIAPERS Choice of 36 medium or 24 large diapers	
	2.79 SEA BREEZE ANTISEPTIC 10 oz. bottle for skin care		2.49 ADVIL Generic equivalent of Motrin. No prescription necessary. Box of 24	
	FASHION COLOR NYLONS 1.49 Sheer-to-waist pantyhose in the newest of spring fashions		1.69 SUDAFED TABLETS Antihistamine, Box of 24	3/4 SALT Free Wrigley Pleasure 17 sticks p Choice of
				89¢

EXHIBIT C

EXHIBIT D

LAS VEGAS

Hospital loses \$8 m

Continued from Page 1
and Jane Casey, chief of the Cook County state's attorney's Civil Action Bureau.
The case was defended by an outside law firm, Winston & Strawn.
Before the case came to trial, the Ahmeds' attorney would have settled for \$2,500,000. The county offered to settle for \$1.5 million, which later was raised

One of the world's most prescribed pain relievers

IBUPROFEN 200 mg.
now available
without prescription
at Walgreens

INTRODUCING

Advil

advanced medicine
for pain

Advil is
ibuprofen
specially
formulated
for use
without
prescription*

Advil comes
in quantities
of 24 tablets,
50 or 100.



An anti-inflammatory and an
analgesic, Advil is a source
of comfort for people who
experience arthritis pain.

Non-narcotic Advil offers effective
relief for the discomfort of headache,
common colds, toothache, muscle pain
and cramps. It helps to reduce fever.

*Non-prescription 200 mg. strength.

First there was aspirin.
Now there is Advil.

Walgreens  The Health Center

EXHIBIT D

Complaint

109 F.T.C.

EXHIBIT E

renADA

Advertising 200 Walnut Road, Deerfield, IL 60015 Phone 312-940-2900

CLIENT WALGREENS/S LIM-FASTDATE 5/22/84ADIO
OPYJOB DESCRIPTION 60 Radio - "Advil & Slim-Fast"Script # WLG-270-60THURSDAY & FRIDAY

TAPES

WALGREENS MUSIC BED #59 UNDER ANNCR.STATION ANNCR
WITH MUSIC UNDER:

NOTE

PROFEN IS PRONOUNCED
"PHE-EN-OC-PRO-FEN"

Here's good news for pain sufferers. One of the world's most-prescribed pain relievers-- known to millions as Ibuprofen -- is now available without a prescription, at Walgreens! Now you can buy it under the brand name ADVIL -- spelled A-D-V-I-L -- ADVIL for the temporary relief of minor arthritis pain ... headaches and toothaches ... muscle and backaches ... and menstrual cramps. ADVIL ... a highly effective, non-narcotic, anti-inflammatory pain reliever. ADVIL ... now available without a prescription, at Walgreens!

And say, how many times have you tried to lose weight if the answer is "too many", better get SLIM-FAST at Walgreens! You won't find a more delicious, new way to lose weight. SLIM-FAST gives you a real chocolate-tasting shake ... a tempting vanilla ... a chocolate pudding you can really sink your teeth into ... and a rich, creamy hot cocoa. Every SLIM-FAST weight-loss meal is complete with vitamins, nine protein, fiber and bran. And the SLIM-FAST Diet practically counts the calories for you. Get it now. Pickup SLIM-FAST at Walgreens, today!

EXHIBIT E

000010

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, its attorneys, 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 Walgreen, Co. is a corporation organized, existing and doing business under an by virtue of the laws of the State of Illinois, with its office and principal place of business located at 200 Wilmot Road, Deerfield, Illinois.

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 Walgreen Co., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Advil," "Nuprin" or any other over-the-coun-

ter analgesic drug product, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication:

A. That any such product can be substituted by consumers, in over-the-counter dose levels, for a prescription form of the product, because when so substituted such product provides all of the same therapeutic benefits to consumers as the FDA-approved label indications for the prescription form of the product, unless at the time of making the representation respondent possesses and relies upon a reasonable basis substantiating such representation. Except as otherwise permitted by the provisions of paragraph IV hereinbelow, such reasonable basis shall consist of at least two adequate and well-controlled double-blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons independently of each other. Such persons shall be qualified by training and experience to conduct such studies.

B. That any such product provides anti-inflammatory benefits for arthritis or other conditions unless at the time of making the representation respondent possesses and relies upon a reasonable basis substantiating such representation. Except as otherwise permitted by the provisions of paragraph IV hereinbelow, such reasonable basis shall consist of at least two adequate and well-controlled double-blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons independently of each other. Such persons shall be qualified by training and experience to conduct such studies.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Advil," "Nuprin," any other over-the-counter analgesic drug product containing ibuprofen, or any other analgesic drug product existing simultaneously in over-the-counter and prescription forms, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that any such product is efficacious for any purpose unless at the time of making the representation respondent possesses and relies upon a reasonable basis substantiating such representation. Except as otherwise permitted by the

provisions of paragraph IV hereinbelow, such reasonable basis shall consist of at least two adequate and well-controlled double-blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons independently of each other. Such persons shall be qualified by training and experience to conduct such studies.

III.

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Advil," "Nuprin" or any other over-the-counter analgesic drug product containing ibuprofen, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, any performance characteristic of any such product (other than those covered by paragraphs I and II hereinabove) unless at the time of making the representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence which substantiates such representation. Except as otherwise permitted by the provisions of paragraph IV hereinbelow, evidence shall be considered "competent and reliable" only if it consists of tests, experiments, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV.

The following provisions apply to paragraphs I through III of this order:

A. The term "analgesic drug product" means an oral dosage form of drug as to which the label indications for over-the-counter use are limited to the relief or reduction of pain, inflammation and/or fever.

B. If FDA promulgates any final standard or any FDA Advisory Review Panel has in effect findings and conclusions establishing that such representation is true, such final standard or findings and conclusions (as long as they remain in effect) shall also constitute a reasonable basis for such representation.

V.

It is further ordered, That respondent, its successors and assigns, for at least three (3) years after the date of the last dissemination of the representation, shall maintain and upon request make available to the staff of the Commission for inspection and copying:

1. All materials possessed and relied upon to substantiate any claim or representation covered by this order.
2. All test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict, qualify or call into question any representation covered by this order.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in 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 this order.

VII.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Chairman Oliver was recorded as voting in the negative.

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

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

Docket C-3191. Complaint, June 25, 1986—Decision, June 25, 1986¹

This consent order, among other things, allows Occidental Petroleum Corp. to proceed with its tender offer for MidCon Corp. and their subsequent merger. Respondent is required to divest MidCon's subsidiary, Mississippi River Transmission Corp. (MRT), within one year after the order becomes final. Additionally, respondent and its subsidiary, Cities Service Oil and Gas Corp., is prohibited from entering into any new agreements to sell natural gas to MRT until the divestiture is completed.

Appearances

For the Commission: *Marc G. Schildkraut.*

For the respondents: *Gerald M. Stein, Occidental Petroleum Corp.,*
Los Angeles, CA. and Paul E. Goldstein, MidCon Corp., Lombard, IL.

COMPLAINT

The Federal Trade Commission having reason to believe that respondent Occidental Petroleum Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent MidCon Corp., in violation of 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), 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(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

a. "*Occidental*" means Occidental Petroleum Corporation, its subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees, agents and representatives; and each

¹ This matter was inadvertently omitted from the Federal Trade Commission Decisions-Volume 107.