

IN THE MATTER OF

JEROME MILTON, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9187. Complaint, Sept. 24, 1984—Decision, Oct. 26, 1987*

This consent order prohibits, among other things, the Chicago, Illinois maker of Shane toothpaste from representing that Shane cures or alleviates the symptoms of canker or cold sores; reduces tooth sensitivity or plaque more effectively than any other toothpaste or oral hygiene product; or cures or alleviates gum problems unless they have reliable evidence that substantiates the representation.

Appearances

For the Commission: *Nancy Warder.*

For the respondents: *Maurice Raizes, Cohon, Raizes, & Regal,*
Chicago, IL.

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 Jerome Milton, Inc., a corporation, and Jerome Milton Schulman, individually and as an officer of Jerome Milton, Inc., hereinafter sometimes referred to as respondents, have 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 Jerome Milton, Inc., is an Illinois corporation with its office and principal place of business located at 4350 W. Ohio Street, Chicago, Illinois.

Respondent Jerome Milton Schulman is an officer of Jerome Milton, Inc. He formulates, directs and controls the acts and practices of Jerome Milton, Inc. His address is the same as that of Jerome Milton, Inc.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are engaged in the advertising, offering for sale, sale and distribution of various dietary and health care products, including Shane toothpaste. In connection with the marketing of

Shane, respondents are now and have been engaged in the dissemination, publication, and distribution of advertisements and promotional material for the purpose of promoting the sale of Shane. As advertised, Shane is a "drug" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. Respondents have caused Shane to be transported from their places of business in various states to purchasers located in other states. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated and caused the dissemination of certain advertisements and promotional materials for Shane, such as the advertising materials attached hereto as Exhibits A through F, through the United States mails and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Through the use of the advertisements and promotional materials referred to in paragraph four, and others not specifically set forth herein, respondents have represented, and now represent, directly or by implication, that:

a. the use of Shane will cure, or alleviate the symptoms of, canker sores (recurrent aphthous stomatitis), cold sores (herpes simplex type I lesions), and the gum problems associated with gingivitis and periodontitis;

b. Shane is superior to other toothpastes in reducing or eliminating plaque; and

c. the use of Shane will lessen the sensitivity of the teeth to hot and cold substances.

PAR. 6. Through the use of the advertisements and promotional materials referred to in paragraph four, respondents have represented and now represent directly or by implication that, at the time of making the representations set forth in paragraph five, they possessed and relied upon a reasonable basis for those representations.

PAR. 7. In truth and in fact, respondents, at the time of making the representations set forth in paragraph five, did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph six was and is unfair and deceptive.

PAR. 8. The use by respondents of the aforesaid unfair and deceptive representation has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representation was and is true and has

induced, or is likely to induce, directly or indirectly, the purchase of Shane.

PAR. 9. The acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid advertisements and promotional materials, were and are all to the prejudice and injury of the public and constituted and now constitute 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.

ORDER

I.

It is ordered, That respondents Jerome Milton, Inc., a corporation, its successors and assigns, and its officers, and Jerome Milton Schulman, individually and as an officer of Jerome Milton, Inc., and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of Shane toothpaste, any other toothpaste, or any other oral hygiene product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product:

- a. cures or alleviates the symptoms of canker sores (recurrent aphthous stomatitis), cold sores (herpes simplex type I lesions), or the gum problems associated with gingivitis and periodontitis;
- b. reduces plaque more effectively than any other toothpaste or oral hygiene product;
- c. reduces the sensitivity of teeth to hot and cold substances; or
- d. has any other therapeutic property

unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence substantiating the representation. For purposes of this order, "competent and reliable evidence" shall mean a test, analysis, research project, or study in which the evidence has been objectively obtained and evaluated by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate results.

II.

It is further ordered, That respondents, their 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 copies of, and dissemination schedules for, every advertisement containing any representation(s) about oral hygiene product(s), copies of all evidence relied on for such representation(s), and copies of any document(s) in the possession or control of respondents, their successors and assigns contradicting or qualifying any such representation.

III.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate 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 the order.

IV.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of five years from the effective date of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

V.

It is further ordered, That the respondents forthwith distribute a copy of this order to each of the corporate respondent's operating divisions and to all present and future employees, agents, or representatives engaged in the preparation and placement of advertising and that the corporate respondent shall secure from each such person a signed statement acknowledging receipt of the order.

VI.

It is further ordered, That the respondents shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, signed by a responsible officer for respondents, setting forth in detail the manner and form in which they have complied with this order.

EXHIBIT A

Radio TV Reports

41 East 42nd Street New York N.Y. 10017
(212) 599-5500

PRODUCT: SHANE TOOTHPASTE

PROGRAM: SECRET OF
DR. KILDARE
WGN-TV

6/20/1
(CHICAGO)

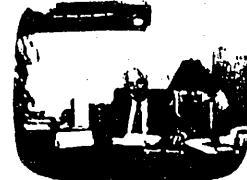
10:08AM



1. JEROME SCHULMAN:
I'm Jerome Schulman.
For years, I've had problems



2. with my gums and teeth, and
sensitivity to hot and cold.



3. I've tried the major brands
of toothpaste with no results.



4. Since I'm a chemist, I
developed a toothpaste



5. called Shane. Now, people
across the country are using
Shane with excellent results.



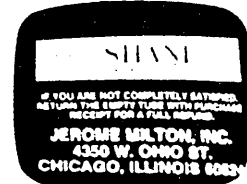
6. Gary Clark, Milwaukee,
writes "Shane is fantastic".



7. and a letter from Chicago,
"The best toothpaste I've
ever used".



8. Buy Shane. If it isn't the finest
toothpaste you've ever used,



9. return the empty tube with
the purchase receipt, and I
will give you a full refund.

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

While Radio TV Reports Inc. endeavors to assure the accuracy of material supplied by it, it cannot be responsible for mistakes or omissions.

Complaint

110 F.T.C.

EXHIBIT B

Radio TV Reports

41 East 42nd Street New York N.Y. 10017
(212) 599-5500

PRODUCT STATION BREAK
PROGRAM WITI-TV (MILWAU.)



1. MAN: Why are more people switching from ordinary toothpaste to Shane? Here's Geri Rosin.



2. GERI ROSIN: In the past, I've had problems with my teeth



3. being sensitive to hot and cold, and also plaque formations, and nothing on the market seemed to work.



4. Then I heard about Shane Toothpaste.



5. I noticed how refreshing it tasted, and it had a very soothing effect on my gums and teeth.



6. Almost immediately, the sensitivity was gone, and within months,



7. the plaque formation



8. almost disappeared.



9. ANNCR: Buy it now at Walgreen's.

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

While Radio TV Reports Inc. endeavors to assure the accuracy of material supplied by it, it cannot be responsible for mistakes or omissions.

EXHIBIT C

JEROME MILTON

WHY ARE MORE CHICAGO AREA PEOPLE SWITCHING FROM ORDINARY TOOTH-
PASTE TO SHANE.

HERE ARE SOME SHANE USERS TO TELL YOU WHY.....

GERI ROSIN OF MENOMENEE FALLS, WISCONSIN, "BY NATURE I AM
SKEPTICAL OF ANY NEW PRODUCT THAT CLAIMS MIRACULOUS RESULTS,
BUT YOUR SHANE TOOTHPASTE DOES EVERYTHING ITS SAID TO DO ---
PLUS MORE! I HAVE GONE THROUGH PERIODONTAL SURGERY TWICE AND
HAVE SUFFERED A GREAT DEAL OF PAIN AND DISCOMFORT. MY GREAT-
EST PROBLEMS WERE SENSITIVITY AND PLAQUE FORMATION, NOTHING
SEEMED TO HELP. I TRIED SHANE AND ALMOST IMMEDIATELY THE
SENSITIVITY TO HOT AND COLD WAS GONE. BEST OF ALL PLAQUE
HAS ALMOST DISAPPEARED AND MY TEETH ARE CLEANER."

AUDRIE KLUSZEWSKI OF CHICAGO, "WHEN I FIRST HEARD THE CLAIMS MADE
FOR SHANE I WAS SKEPTICAL, BEING A PESSIMIST I LET MY HUSBAND
USE SHANE FIRST SINCE HE IS A HEAVY SMOKER AND DRINKS EXCESSIVE
AMOUNTS OF COFFEE. WE WERE AMAZED WITH THE DRAMATIC RESULTS ONE
BRUSHING MADE, IN ADDITION HIS BLEEDING AND TENDER GUMS ARE IN
EXCELLENT CONDITION. SHANE IS BETTER THAN ANY TOOTHPASTE WE'VE
EVER USED."

HALF AS MUCH SHANE PRODUCES BETTER RESULTS THAN ORDINARY TOOTH-
PASTE. THE EXTRA BENEFITS MORE THAN MAKE UP FOR THE ADDED COST.
CAN YOU AFFORD LESS? WHY USE AN ORDINARY TOOTHPASTE WHEN YOU CAN
USE SHANE. SHANE IS AVAILABLE (FOLLOW TAG LIST)

Complaint

110 F.T.C.

EXHIBIT D

:GO SPOT/LIVEANNOUNCER READS:

WHY ARE MORE PEOPLE SWITCHING FROM ORDINARY TOOTHPASTE TO PROFESSIONALLY FORMULATED SHANE? HERE ARE SOME SHANE USERS TO TELL YOU WHY....LOIS GRIFFIN OF ELK GROVE VILLAGE WROTE, "SHANE TOOTHPASTE IS FANTASTIC!" SHE IS ONE WHO MUST HAVE HER TEETH CLEANED EVERY THREE MONTHS AND IT WAS BOTH PAINFUL AND EXPENSIVE. SHE HAS BEEN USING SHANE AND NOW HER DENTIST TELLS HER THAT SHE CAN CUT DOWN ON THE FREQUENCY OF HER VISITS. MARY SWART OF EVERGREEN PARK WROTE THAT SHE HAS HAD CHRONIC PROBLEMS WITH CANKER SORES. SHE LEARNED ABOUT SHANE TOOTHPASTE AND WITHIN THE HOUR AFTER APPLYING SHANE, THE SORENESS WENT AWAY AND IT WAS A JOY TO EAT WITHOUT THE PAIN AND DISCOMFORT. HALF AS MUCH SHANE PRODUCES BETTER RESULTS THAN ORDINARY TOOTHPASTE. THE EXTRA BENEFITS MORE THAN MAKE UP FOR THE ADDED COST. YOU CAN'T AFFORD LESS. WHY USE AN ORDINARY TOOTHPASTE WHEN YOU CAN USE SHANE. IT'S AVAILABLE AT:

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Complaint

EXHIBIT E

JEROME MILTON/SHANE
:60 SPOT/LIVE

8/3/83

ANNOUNCER READS:

WHY ARE MORE PEOPLE SWITCHING FROM ORDINARY TOOTHPASTE TO PROFESSIONALLY FORMULATED SHANE? HERE ARE SOME SHANE USERS TO TELL YOU WHY....PATRICIA KAWA, FROM PHOENIX, ARIZONA, WROTE SHE HAD RECENTLY VISITED HER DENTIST AND WAS TOLD THAT ALL HER BOTTOM TEETH HAD TO BE EXTRACTED. HER GUMS WERE INFECTED, HER TEETH WERE LOOSE AND SHE WAS SENSITIVE TO HOT AND COLD. SHE STARTED USING SHANE TOOTHPASTE AND THREE AND A HALF MONTHS LATER ALL HER PROBLEMS WERE GONE. SHE'S EVEN BACK TO ENJOYING CORN ON THE COB. SHANE TOOTHPASTE IS TRULY A MIRACLE-- SHE SAID IT HAS CHANGED HER LIFE. CLEO LEVINE OF CLEVELAND, OHIO SUFFERED FOR YEARS WITH PLAQUE PROBLEMS AND SENSITIVITY TO HOT AND COLD. SHE STARTED USING SHANE AND ALMOST IMMEDIATELY THE SENSITIVITY TO HOT AND COLD WAS GONE. HER PLAQUE FORMATION HAS DISAPPEARED TOO. SHE THINKS SHANE IS WONDERFUL. HALF AS MUCH SHANE PRODUCE BETTER RESULTS THAN ORDINARY TOOTHPASTE. THE EXTRA BENEFITS MORE THAN MAKE UP FOR THE ADDED COST. YOU CAN'T AFFORD LESS. WHY USE AN ORDINARY TOOTHPASTE WHEN YOU CAN USE SHANE? SHANE IS AVAILABLE AT:

Complaint

110 F.T.C.

EXHIBIT F

JEROME MILTON/SHANE
:60 SPOT/LIVE

8/3/83

ANNOUNCER READS:

WHY ARE MORE PEOPLE SWITCHING FROM ORDINARY TOOTHPASTE TO PROFESSIONALLY FORMULATED SHANE? HERE ARE TWO SHANE USERS TO TELL YOU WHY.....GARY CLARK OF MILWAUKEE SAID HE COULD NOT BELIEVE HOW FAST HIS COLD SORE HEALED: SHANE TOOTHPASTE IS GOOD FOR EVERY MOUTH TROUBLE. HE SAID SHANE IS FANTASTIC! CARL HIX OF AURORA SAID, IN HIS OPINION, SHANE TOOTHPASTE IS THE GREATEST PRODUCT SINCE THE DEVELOPMENT OF THE WD-40 LUBRICANT. NORMALLY HIS DENTIST IS REQUIRED TO USE AN "AIR-HAMMER" AND "BELT SANDER" TO REMOVE STAINS AND TARTER FROM HIS TEETH-- AND EVEN THEN, HE DOESN'T REMOVE ALL. AFTER A SHORT PERIOD, SHANE TOOTHPASTE REMOVED ALL THE STAINS AND IS WORKING ON THE TARTER. "SHANE TOOTHPASTE IS TREMENDOUS!" HE SAID. HALF AS MUCH SHANE PRODUCES BETTER RESULTS THAN ORDINARY TOOTHPASTE. THE EXTRA BENEFITS MORE THAN MAKE UP FOR THE ADDED COST. YOU CAN'T AFFORD LESS. WHY USE AN ORDINARY TOOTHPASTE WHEN YOU CAN USE SHANE. IT'S AVAILABLE AT:

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violations of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Jerome Milton, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4350 West Ohio Street, in the City of Chicago, State of Illinois.
2. Respondent Jerome Milton Schulman is an officer of Jerome Milton, Inc. He formulates, directs, and controls the policies, acts and practices of Jerome Milton, Inc., and his address is the same as that of Jerome Milton, Inc.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondents Jerome Milton, Inc., a corporation, its successors and assigns, and its officers, and Jerome Milton Schulman, individually and as an officer of Jerome Milton, Inc., and re-

spondents' 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 Shane toothpaste, any other toothpaste, or any other oral hygiene product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product:

- a. cures or alleviates the symptoms of canker sores (recurrent aphthous stomatitis) or cold sores (herpes simplex type I lesions);
- b. reduces the sensitivity of teeth to hot and cold substances;
- c. is useful in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;
- d. reduces plaque more effectively than any other toothpaste or oral hygiene product; or
- e. cures or alleviates the gum problems associated with gingivitis or periodontitis,

unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

For purposes of paragraphs a and b, above, "competent and reliable evidence" shall include at least one adequate and well-controlled, double-blind clinical study that conforms to accepted designs and protocols and is conducted by persons qualified by training and experience to do so;

For purposes of paragraphs d and e, above, "competent and reliable evidence" shall include at least two adequate and well-controlled, double-blind clinical studies that conform to accepted designs and protocols and are conducted by different persons, independently of each other, with such persons being qualified by training and experience to conduct such studies;

For purposes of paragraph c, above, "competent and reliable evidence" shall mean test(s), analysis(es), research project(s), or study(ies) in which the evidence has been objectively obtained and evaluated by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate results;

Provided, however, with respect to any representation covered by this part of the order other than a claim concerning superior or comparative efficacy, if the Food and Drug Administration promulgates any standard, or any advisory review panel appointed by the Food and Drug Administration has issued a monograph, establishing that such representation is true, then in lieu of the above studies the respondents may rely on the Food and Drug Administration's standard or the

panel's monograph as long as it has not been superseded and remains in effect.

II.

It is further ordered, That respondents, their 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 copies of, and dissemination schedules for, every advertisement containing any representation(s) about oral hygiene product(s), copies of all evidence relied on for such representation(s), and copies of any document(s) in the possession or control of respondents, their successors and assigns contradicting or qualifying any such representation.

III.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate 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 the order.

IV.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment, each such notice to include the individual respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V.

It is further ordered, That the respondents shall distribute a copy of this order to each of the corporate respondent's operating divisions and to all present and future employees, agents, or representatives engaged in the preparation and placement of advertising and that the

corporate respondent shall secure from each such person a signed statement acknowledging receipt of the order.

VI.

It is further ordered, That the respondents shall, within sixty (60) days after the date of service of this order, file with the Commission a report in writing, signed by the individual respondent and a responsible officer for the corporate respondent, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
TARRANT COUNTY MEDICAL SOCIETY

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

Docket C-3219. Complaint, Nov. 2, 1987—Decision, Nov. 2, 1987

This consent order requires, among other things, the Tarrant County Medical Society, of Fort Worth, Texas, to agree not to restrict, regulate or declare unethical any doctor's truthful advertising. Respondent also is required to provide, for 10 years, written notice to any doctor whose advertising it intends to challenge and allow that doctor a reasonable opportunity to respond.

Appearances

For the Commission: *Roy Conn.*

For the respondents: *William B. Davis, Cantey, Hanger, Gooch, Munn, & Collins, Fort Worth, TX.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (Title 15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Tarrant County Medical Society is a corporation formed pursuant to the laws of the State of Texas, with its mailing address at 3855 Tulsa Way, Fort Worth, Texas.

PAR. 2. Respondent is a professional association formed to represent the interests of physicians who practice in Tarrant County, Texas. Respondent has approximately 1,300 members, constituting a substantial majority of the physicians in Tarrant County.

PAR. 3. Respondent is a component society of the Texas Medical Association, which in turn is a constituent society of the American Medical Association.

PAR. 4. Members of respondent are engaged in the business of providing medical health care services for a fee. Except to the extent that competition has been restrained as herein alleged, members of re-