

IN THE MATTER OF

INSTITUT MERIEUX S.A.

Docket C-3301. Show Cause Order, March 9, 1993

SHOW CAUSE ORDER

On August 6, 1990, the Federal Trade Commission ("Commission") issued an order against Pasteur Merieux Serums et Vaccins S.A., formerly known as Institut Merieux S.A., ("respondent") in Docket No. C-3301. Paragraph II of the order, among other things, requires respondent to have leased on a long-term basis, at reasonable and customary terms, Connaught Bio Sciences, Inc.'s rabies vaccine business ("Connaught's rabies vaccine business"), by January 15, 1991, to a lessee that receives the prior approval of the Commission. Connaught's rabies vaccine business is located in Toronto, Ontario, Canada. Paragraph II also mandates that the lessee must make a lump-sum payment under reasonable and customary terms for the existing inventory of Connaught's rabies vaccine, and requires that the lease include a commitment from the lessee to supply rabies vaccine sufficient to satisfy the Canadian demand for rabies vaccine. Paragraph IV of the order provides for the appointment of a trustee to lease Connaught's rabies vaccine business in the event respondent has not accomplished the lease mandated by paragraph II of the order in a timely manner. Paragraph IX of the order, among other things, states that "in recognition of the sovereign rights of Canada . . . the appointment and term of a trustee, [and] the selection of any lessee . . . shall be subject to the approval of Investment Canada in accordance with Canadian law."¹ Paragraph XI of the order requires respondent to submit in writing to the Commission periodic verified written reports of its compliance with the terms of the order.

To date, respondent has been unable to locate a lessee for

¹ "Investment Canada" is defined in the order to mean "the Agency of the Government of Canada established pursuant to the Investment Canada Act (S.C. 1985, C. 20) of Canada."

Connaught's rabies vaccine business. In its periodic compliance report dated August 12, 1992, and a supplement thereto dated September 1, 1992, respondent reports that it has diligently pursued the lease of the rabies vaccine business for two years, and has contacted all of the parties that would have an interest in the operation. Each potential lessee concluded that it was not interested in pursuing a lease.

Based upon the Commission's review of the information contained in respondent's verified periodic compliance reports, as well as other available information, the Commission believes that respondent's failure to accomplish the required lease is attributable to a combination of elements beyond respondent's control, and not to a lack of a good faith effort to comply with the relevant order provisions. Those elements include, among others, a number of unusual order requirements imposed on any potential lessee, and the fact that there does not appear to be any potential lessee that is interested in the rabies vaccine business or that is likely to receive the necessary governmental approvals. The record in this case establishes that accomplishment of the required lease is, for all practical purposes, a virtual impossibility, despite respondent's good faith efforts to comply with the order. Inasmuch as the Commission did not contemplate imposing an infeasible requirement on the respondent, the costs to respondent of further divestiture efforts are an inequitable and unbargained-for element of the consent order.²

The Commission also believes that a trustee appointed pursuant to paragraph IV of the order to accomplish the mandated lease would be unlikely to have any greater success than respondent in accomplishing the lease of Connaught's rabies vaccine business for the same reasons that respondent has been unsuccessful. In addition, requiring Merieux, or a trustee, to continue pursuing a potential lessee could adversely affect the viability of Connaught's rabies

² We distinguish the costs imposed on a respondent by continued attempts to comply with an impossible order requirement from the kinds of costs ordinarily imposed by an order. For example, certain definable and predictable costs are always associated with a respondent's compliance obligations under a consent order. These costs are accepted by the respondent as part of the settlement of the case.

vaccine business, and thus, its ability to supply the Canadian rabies vaccine needs.

In view of the foregoing, the Commission has determined in its discretion that it is in the public interest to reopen the proceeding in Docket No. C-3301 and modify the order in this case by setting aside the following provisions: subparagraphs I(3), (4), (5); and paragraphs II; III; IV; V; VI; VII; VIII; IX; and XI(A).

In accordance with Section 3.72 of the Commission's Rules of Practice and Procedure, 16 CFR 3.72, respondent has thirty (30) days from the date of service of this order to file an answer to this Order to Show Cause or be deemed to have accepted the action proposed herein.

Complaint

116 F.T.C.

IN THE MATTER OF

ALAN V. PHAN

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3417. Complaint, March 12, 1993--Decision, March 12, 1993*

This consent order prohibits, among other things, a California marketer of “Jazz cigarettes,” a non-tobacco product, from representing that smoking such products poses no health risk, that smoking such products does not pose any of the health risks associated with smoking cigarettes, and that the smoke contains no tar. In addition, the respondent is prohibited from making any representations about the comparative or absolute health or safety attributes, benefits or risks of any cigarette or smoking product, unless it is substantiated by competent and reliable scientific evidence.

*Appearances*For the Commission: *Jeffrey Klurfeld* and *Kerry O'Brien*.For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Alan V. Phan, an individual trading and doing business as Harcourt Companies (“respondent”), 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. Respondent Alan V. Phan is the owner of Harcourt Companies, a California sole proprietorship. His principal office and place of business is located at 10915 Bloomfield Avenue, Los Alamitos, CA.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed smoking products, known as “Jazz Cigarettes” (“Jazz”),