

Complaint

122 F.T.C.

IN THE MATTER OF

JORDAN, McGRATH, CASE & TAYLOR, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3684. Complaint, Sept. 18, 1996--Decision, Sept. 18, 1996*

This consent order requires, among other things, the New York advertising agency for Doan's pills to have competent and reliable scientific evidence, consisting of at least two clinical studies, to support any claim that any over-the-counter analgesic is more effective than any other such drug in relieving any particular kind of pain. In addition, the consent order requires the advertising agency to have scientific evidence to support claims regarding the efficacy, safety, benefits or performance of any over-the-counter internal analgesic.

*Appearances*For the Commission: *Loren G. Thompson and Shira Modell.*For the respondent: *Stuart Friedel, David & Gilbert*, New York,
N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Jordan, McGrath, Case & Taylor, Inc., a corporation ("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 Jordan, McGrath, Case & Taylor, Inc., is a New York corporation with its principal office or place of business at 445 Park Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Ciba-Geigy Corporation or CIBA Self-Medication, Inc., and prepared and disseminated advertisements to promote the sale of Doan's analgesic products. Doan's analgesic products are "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or caused to be disseminated advertisements for Doan's analgesic products, including,

but not necessarily limited to, the attached Exhibits A and B. These advertisements contain the following statements and depictions:

1. If nothing seems to help, try Doan's. It relieves back pain no matter where it hurts. Doan's has an ingredient these pain relievers don't have. [Depiction of large package of Doan's in front of smaller packages of Bayer, Aleve, Advil, and Tylenol]. [Superscript: Magnesium Salicylate]. Doan's. The Back Specialist. [Superscript: The Back Specialist] [Exhibit A: "Activity - Pets" 15-Second Television]

2. There are hundreds of muscles in the back. Any one can put you in agony. That's when you need Doan's. [Depiction of box of Doan's superimposed over boxes of Bayer, Tylenol, Aleve and Advil]. Doan's has an ingredient the leading brands don't. It relieves back pain no matter where it hurts. There are hundreds of muscles in the back. Doan's relieves them all. [Superscript: The Back Specialist] [Exhibit B: "Muscles - Male" 15-Second Television]

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that Doan's analgesic products are more effective than other analgesics, including Bayer, Advil, Tylenol, and Aleve, for relieving back pain.

PAR. 6. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including, but not necessarily limited to, the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 7. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Respondent knew or should have known that the representation set forth in paragraph six was, and is, false and misleading.

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

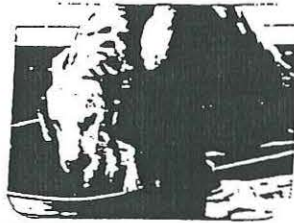
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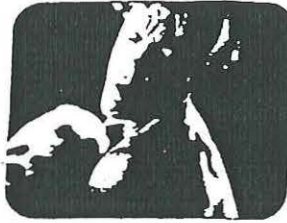
EXHIBIT A

DOAN'S

"ACTIVITY-PETS" 15 TV



ANXIOUS. YOU. His faithful friend



and he's a dog



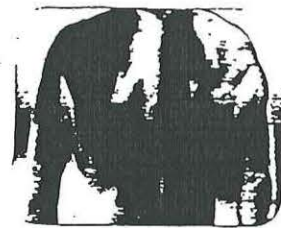
and he's a dog



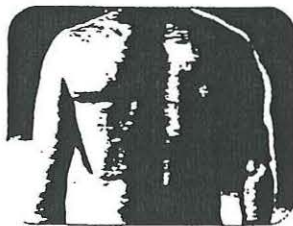
No matter where it hurts



Doan's has an ingredient these pain relievers



Doan's The Back Specialist



No matter where it hurts



Doan's has an ingredient these pain relievers don't have



Doan's The Back Specialist

EXHIBIT A

020002

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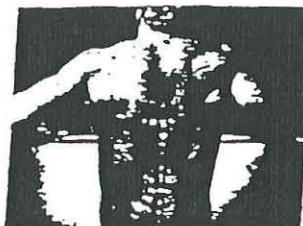
EXHIBIT B

DOAN

"Muscles - Made" 15 TV



AVC There are hundreds of



muscles in the back



And the way out you can



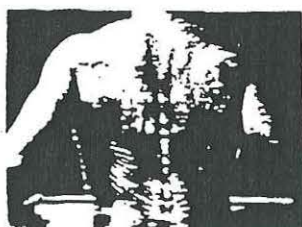
That's when you need Doan's.



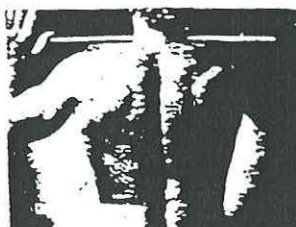
Doan's has an ingredient the leading brands don't



It relieves back pain



no matter where it hurts



There are hundreds of muscles in the back



DOAN'S THE BACK SPECIALIST

Doan's relieves them all

Exhibit B

JORDAN, MCGRATH, CASE & TAYLOR, INC.

JORDAN, MCGRATH, CASE & TAYLOR, INC.

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 the 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 a 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 described 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 Jordan, McGrath, Case & Taylor, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 445 Park Avenue, New York, New York.

2. 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

For purposes of this order:

1. "*Doan's*" shall mean any over-the-counter internal analgesic drug, as "drug" is defined in the Federal Trade Commission Act, bearing the Doan's brand name, including, but not limited to, Regular Strength Doan's analgesic, Extra Strength Doan's analgesic, and Extra Strength Doan's P.M. analgesic.

2. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondent Jordan, McGrath, Case & Taylor, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Doan's or any other over-the-counter analgesic drug, in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that such product is more effective than other over-the-counter analgesic drugs for relieving back pain or any other particular kind of pain, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of Part I of this order, "competent and reliable scientific evidence" shall include at least two adequate and well-controlled, double-blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, each of whom is qualified by training and experience to conduct such studies, independently of each other.

II.

It is further ordered, That respondent Jordan, McGrath, Case & Taylor, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Doan's or any other over-the-counter internal analgesic drug, in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, regarding such product's efficacy, safety, benefits, or performance, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

III.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IV.

It is further ordered, That for a period of five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call

into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered, That respondent shall:

A. Within thirty (30) days from the date of entry of this order, provide a copy of this order to each of its current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of its future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with them or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including, but not limited to, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That this order will terminate on September 18, 2016, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VIII.

It is further ordered, That respondent shall, within sixty (60) days from the date of entry of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

LOCKHEED MARTIN CORPORATION

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-3685. Complaint, Sept. 19, 1996--Decision, Sept. 19, 1996

This consent order requires Lockheed Martin, a Maryland-based corporation, among other things, to divest an air traffic control system-related contract; limits Lockheed Martin's ownership of Loral Space; prohibits Lockheed Martin from providing certain technical services or information regarding satellites to Loral Space; restricts participation and compensation of persons who serve as directors or officers of both Lockheed Martin and Loral Space; and requires firewalls to limit information flows about competitors' tactical fighter aircraft and unmanned aerial vehicles.

Appearances

For the Commission: *Naomi Licker.*

For the respondent: *Ray Jacobsen, Howrey & Simon, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Lockheed Martin Corporation ("Lockheed Martin"), a corporation subject to the jurisdiction of the Commission, has agreed to, among other things, acquire all of the outstanding voting stock of Loral Corporation ("Loral"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such an acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows: