

IN THE MATTER OF

PFIZER INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3841. Complaint, Dec. 14, 1998--Decision, Dec. 14, 1998*

This consent order prohibits, among other things, a New York-based corporation, that manufactures and distributes pharmaceuticals, from making unsubstantiated claims concerning the efficacy of its over-the-counter head lice treatments. The consent order requires the respondent to make certain disclosures in advertisements concerning the use and effectiveness of its head lice treatment products. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, or interpretations of any test, study, or research.

Participants

For the Commission: *Linda Badger, Kerry O'Brien, Jeffrey Klurfeld, and Carolyn Cox.*

For the respondent: *Hugh Latimer, Wiley, Rein & Fielding, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pfizer Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Pfizer Inc. is a Delaware corporation with its principal office or place of business at 235 East 42nd Street, New York, New York.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed over-the-counter pharmaceuticals to the public, including "RID Lice Killing Shampoo." RID Lice Killing Shampoo is a "drug," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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.

4. Respondent has disseminated or has caused to be disseminated advertisements for RID Lice Killing Shampoo, including but not

necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. **"RID erases head lice completely.**

MAXIMUM STRENGTH

Kills lice in just the first treatment.*¹

MAXIMUM STRENGTH RID kills lice completely in minutes. And RID leaves no lasting active residue on the hair. RID rinses away completely.

Not all lice treatments do.

The patented RID egg removal comb is proven 100% effective and can leave hair free of lice eggs¹-a must for many schools when re-admitting children. Many schools also recommend a second treatment. RID directions state to repeat treatment 7 to 10 days later.

RID. Nothing is more effective or safer.

...

*Read label. When used as directed.

¹Data on file, Pfizer Inc."

[The advertisement depicts a woman's hand holding a box of RID as if it were an eraser, wiping the word "LICE" off a blackboard. The box contains the following statement:

"MAXIMUM STRENGTH

RID LICE KILLING SHAMPOO

PEDICULICIDE (LICE TREATMENT)

KILLS LICE & THEIR EGGS

(HEAD LICE, CRAB LICE & BODY LICE)

-100% EFFECTIVE [VE is obscured by the hand]

EGG REMOVAL ['COMB' is obscured by the hand]"

(Exhibit A)

B. **"New clinical study impacts head lice season.**

MAXIMUM STRENGTH

Proven effective in a single treatment.*¹

[The advertisement depicts a graph entitled "Efficacy/Lice Elimination Results at Day 7." The horizontal axis is marked "Percent Cured." The statement **"MAXIMUM STRENGTH RID 100%"** appears above the horizontal axis.]

"A randomized evaluator-blinded clinical study of 190 patients measured the efficacy of MAXIMUM STRENGTH RID, and a competitor product. The results:

- In a single treatment, RID was found 100% effective in controlling head lice (day 7 of the study; n=78).

- RID was also 100% effective after a second treatment (day 14 of the study; n=75). RID directions state to repeat treatment 7 to 10 days after the first treatment. And, RID leaves no lasting active residue.

To eliminate nits, the patented RID egg removal comb provides gentle combing action. It's proven 100% effective.

For unsurpassed efficacy and safety...recommend MAXIMUM STRENGTH RID.

To receive an abstract of the RID study, call 1-800-322-LICE.

...

Nothing is more effective or safer.

¹ 'An evaluator-blinded comparative study of the clinical effectiveness of a pyrethrin-based pediculicide with combing vs a permethrin-based pediculicide with combing.' Presented at the National Association of School Nurses Annual Meeting, June, 1995.

*Read label. When used as directed.

**Estimates of clinical effectiveness were based on percentage of patients with no live lice or nits within .25 inches of the scalp."

[The advertisement depicts a woman's hand holding a box of RID as if it were an eraser, wiping the word "LICE" off a blackboard. The box contains the following statement:

"MAXIMUM STRENGTH

RID LICE KILLING SHAMPOO

PEDICULICIDE (LICE TREATMENT)

KILLS LICE & THEIR EGGS

(HEAD LICE, CRAB LICE & BODY LICE)

-100% EFFECTIVE [VE is obscured by the hand]

EGG REMOVAL ['COMB' is obscured by the hand]"

(Exhibit B)

C. Announcer: "Your child could get lice!"

[The advertisement depicts a blackboard with the word "LICE" written on it.]

Announcer: "To kill lice and their eggs..."

[The advertisement depicts a RID box with the statement "**KILLS LICE & THEIR EGGS**" on the box enlarged. The advertisement contains a statement at the bottom of the screen in a light-colored print: "Read label. Use only as directed."]

Announcer: "get Maximum Strength RID."

[The advertisement depicts a RID box.]

Announcer: "In just the first treatment,"

[The advertisement depicts a woman's hand holding a box of RID as if it were an eraser, wiping the word "LICE" off a blackboard. The advertisement contains a statement at the bottom of the screen in a light-colored print: "Two treatments required."]

Announcer: "it kills lice completely."

[The advertisement depicts the blackboard with the word "LICE" now just a smear on the blackboard, with the statement "Kills lice completely."]

Announcer: "And RID leaves no active residue behind."

[The advertisement depicts a mother hugging her child in front of school bus.]

Announcer: "Nothing"

[The advertisement depicts a woman's hand holding a box of RID as if it were an eraser, wiping the word "LICE" off a blackboard.]

Announcer: "is more effective or safer than RID."

[The advertisement depicts the RID logo on the smeared blackboard, with the statement: "Nothing is more effective."] (Exhibit C)

D. "MAXIMUM STRENGTH RID

LICE KILLING SHAMPOO

PEDICULICIDE (LICE TREATMENT)

KILLS LICE & THEIR EGGS

(HEAD LICE, CRAB LICE & BODY LICE)

-- 100% EFFECTIVE -- EGG REMOVAL COMB* "

(Exhibit D)

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. RID Lice Killing Shampoo cures lice infestations in a single treatment.

B. The RID egg removal comb is one hundred percent effective.

6. In truth and in fact:

A. RID Lice Killing Shampoo does not cure lice infestations in a single treatment. RID Lice Killing Shampoo is based on a pesticide which is not one hundred percent effective against lice eggs. Consequently, a second treatment is required in seven to ten days to kill any lice that have hatched. In addition, consumers are instructed to remove any lice eggs or "nits" from the infested person's hair.

B. The RID comb is not necessarily one hundred percent effective. Lice eggs are difficult to see and to remove. The effectiveness of the comb is largely dependent on the skill and tenacity of the combing.

Therefore, the representations set forth in paragraph five were, and are, false or misleading.

7. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph five, at the time the representation was made. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. Through the means described in paragraph four, respondent has represented, expressly or by implication, that:

A. Clinical studies prove that RID Lice Killing Shampoo cures lice infestations in a single treatment.

B. Clinical studies prove that the RID egg removal comb is one hundred percent effective.

10. In truth and in fact:

A. Clinical studies do not prove that RID Lice Killing Shampoo cures lice infestations in a single treatment. The study relied upon to make this claim included the application of a single treatment along with a thorough combing that removed all lice eggs.

B. Clinical studies do not prove that the RID comb is one hundred percent effective. The studies relied upon to make this claim employed individuals trained in egg removal to comb patients' hair. There is no evidence that the same results are achievable by an average consumer.

Therefore, the representations set forth in paragraph nine were, and are, false or misleading.

11. 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(a) and 12 of the Federal Trade Commission Act.

Complaint

126 F.T.C.

EXHIBIT A

RID® erases head lice completely.

MAXIMUM STRENGTH

Kills lice in just the first treatment.*

MAXIMUM STRENGTH RID kills lice completely in minutes. And RID leaves no lasting active residue on the hair. RID rinses away completely. Not all lice treatments do.

The patented RID egg removal comb is proven 100% effective and can leave hair free of lice eggs—a must for many schools when re-admitting children. Many schools also recommend a second treatment. RID directions state to repeat treatment 7 to 10 days later.

RID. Nothing is more effective or safer.

For answers to your questions, 1-800-RID-LICE (1-800-743-5423).

*Read label. When used as directed. Data on file, Pfizer Inc. ©1995 Pfizer Inc.

EXHIBIT A

New clinical study impacts head lice season.

MAXIMUM STRENGTH



Proven effective in a single treatment.*

Efficacy/Lice Elimination Results at Day 7**

Product	Percent Cured
MAXIMUM STRENGTH RID*	100%

A randomized evaluator-blinded clinical study of 190 patients measured the efficacy of MAXIMUM STRENGTH RID, and a competitor product. The results:

- In a single treatment, RID was found 100% effective in controlling head lice (day 7 of the study; n=78).
- RID was also 100% effective after a second treatment (day 14 of the study; n=75). RID directions state to repeat treatment 7 to 10 days after the first treatment. And, RID leaves no lasting active residue.

To eliminate nits, the patented RID egg removal comb provides gentle combing action. It's proven 100% effective.

For unsurpassed efficacy and safety...recommend MAXIMUM STRENGTH RID. To receive an abstract of the RID Study, call 1-800-322-LICE.

MAXIMUM STRENGTH

Nothing is more effective or safer.



*An evaluator-blinded comparative study of the clinical effectiveness of a competitive brand product with shampoo vs. a competitive brand product with shampoo. Presented at the National Association of School Nurses Meeting, June 1995.
**Read label. When used as directed.
*Efficacy and cure rates listed above were based on percentage of patients with no lice or nits within 0-25 inches of the scalp.
© 1995 Pfizer Inc.
P 3534

EXHIBIT B

Complaint

126 F.T.C.

EXHIBIT C

RID®

"BLACKBOARD" :15 TV

CLIENT: PFIZER INC

COMM'L NO.: PFRD-1503

ANNCR VO: Your child
could get lice!

To kill lice and their eggs...



get Maximum Strength RID.



In just the first treatment,



it kills lice completely.

And RID leaves no active
residue behind.

Nothing



is more effective or safer than RID.

SWEENEY & PARTNERS

EXHIBIT C

847

Complaint

EXHIBIT D

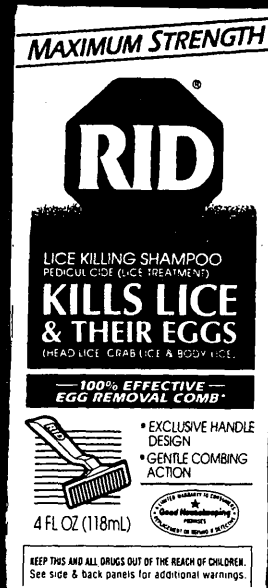


EXHIBIT D

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 San Francisco Regional Office 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 attorney, 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 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 Pfizer Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 235 East 42nd Street, New York, New York.

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

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*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.

2. "*RID Lice Killing Shampoo*" shall mean the pediculicide marketed by respondent which contains the active ingredients of 0.33 percent pyrethrum extract and 4 percent piperonyl butoxide.

3. "*Substantially Similar Product*" shall mean any pediculicide marketed by respondent which contains the active ingredients of pyrethrum extract and piperonyl butoxide, and is covered by the Food and Drug Administration's Final Monograph on OTC Pediculicide Drug Products.

4. Unless otherwise specified, "*respondent*" shall mean Pfizer Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

5. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

6. "*Drug*" and "*device*" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55.

7. "*Pesticide*" shall mean as defined in Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136(u).

8. "*Clearly and prominently*" shall mean as follows:

A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement or promotional material, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of RID Lice Killing Shampoo, or any Substantially Similar Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product cures a lice infestation in a single application unless the representation is true and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That, for a period of two (2) years from the date of service of this order, respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of RID Lice Killing Shampoo or any other Substantially Similar Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, in print advertisements or promotional materials about the efficacy of such product in the removal or elimination of lice or the treatment of lice infestations ("triggering representation"), unless it makes the following disclosure, clearly and prominently, in such advertisements or promotional materials containing the triggering representation:

Reapplication and egg removal are required
to ensure complete effectiveness.
See label for important information.

Provided, however, that the above disclosure shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that the product is effective for the complete elimination of all lice and lice eggs in a single application.

Provided, further, that the above disclosure shall not be required in a particular piece of promotional material if such promotional material constitutes "labeling of a pediculicide drug product" subject

to the labeling requirements of the Food and Drug Administration's Final Monograph on OTC Pediculicide Drug Products, 21 CFR 358.650.

III.

It is further ordered, That, for a period of two (2) years from the date of service of this order, respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of RID Lice Killing Shampoo or any other Substantially Similar Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, in advertisements communicated through an electronic medium, about the efficacy of such product in the removal or elimination of lice or the treatment of lice infestations ("triggering representation"), unless it makes the following disclosure, clearly and prominently, in the video portion of such advertisements (or in the audio portion if the advertisement is audio only) containing the triggering representation:

Two Treatments Required.

Provided, however, that if the respondent makes any representation, in any manner, expressly or by implication, about directions for use of such product in advertisements communicated through an electronic medium utilizing both video and audio, the disclosure shall be presented in both the video and the audio portions of such advertisements.

Provided, further, that the above disclosure shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that the product is effective for the complete elimination of all lice and lice eggs in a single application.

IV.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any drug or device for the treatment of lice in humans, or any pesticide for treatment of lice in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

V.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any drug or device for the treatment of lice in humans, or any pesticide for treatment of lice in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, regarding the efficacy of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates the representation.

VI.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in the 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.

VII.

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

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

It is further ordered, That respondent Pfizer Inc., and its successors and assigns shall deliver a copy of this order to each of its

principals, officers, managers, employees, agents, and representatives engaged in the preparation, review or placement of advertising or other materials covered by this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and, for a period of five (5) years from the date of issuance of this order, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

It is further ordered, That respondent Pfizer Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondent Pfizer Inc., and its successors and assigns shall, within sixty (60) days after the date of service 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.

XI.

This order will terminate on December 14, 2018, 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 had never been 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.

STATEMENT OF CHAIRMAN PITOFSKY AND
COMMISSIONERS ANTHONY AND THOMPSON

We write to express our views about the concerns Commissioner Swindle raises regarding the disclosure remedy in these cases. The orders require that, for two years, whenever a claim is made regarding the efficacy of the lice removal products, the respondents include a disclosure about the necessity for a second application of their product. The disclosure remedy in these cases is fencing-in relief, designed to prevent purchasers of respondents' products from being deceived by *future* advertising.¹ The triggered disclosure about the need for two treatments provides additional assurance that consumers will not be misled by future ads. We are satisfied that the triggered disclosures in these orders are appropriate and reasonable.

STATEMENT OF COMMISSIONER ORSON SWINDLE

I have voted in favor of issuance of the final orders in these cases because there is reason to believe that the respondents have violated

¹ It is also worth noting that the Commission has distinguished triggered disclosures such as those in these cases from corrective advertising, which is required regardless of the contents of the ad. *Removatron Int'l Corp.*, 111 FTC 206, 311-12 n. 28 (1988), *aff'd*, 884 F.2d 1489 (1st Cir. 1989). *See also American Home Prods. Corp. v. FTC*, 695 F.2d 681, 700 (3rd Cir. 1982).

the law and most of the relief contained in the orders is necessary and appropriate. However, I continue to have concerns with regard to the need for and scope of one of the disclosure requirements contained in the orders.

The complaints include the allegation that the respondents claimed that their respective lice products eradicate a lice infestation after a single treatment. In truth, reapplication and careful combing are required to complete the treatments. To address this allegedly false claim, the orders prohibit the respondents from making, expressly or by implication, any claim that their lice treatment products work in only one treatment, unless that claim is true and substantiated. I agree that this prohibition is necessary and appropriate.

The orders, however, go further. For a period of two years, whenever the respondents make any efficacy claim for one of their lice treatment products, they must disclose "Two Treatments Required." The majority of the Commission has cast this provision as a "triggered disclosure requirement" and concluded that it is "appropriate and reasonably related to the alleged violations of Section 5." Even if this is a triggered disclosure requirement,¹ I do not believe that it is either necessary or appropriate.

The majority apparently believes that consumers will be misled if the respondents do not disclose that two treatments are required whenever they make an efficacy claim for their products. However, if a respondent makes a one-treatment claim that is false or unsubstantiated, the Commission can bring an action for violating the injunctive provisions of the order, and thus the two-treatment disclosure requirement would be unnecessary. On the other hand, if a respondent makes a one-treatment claim that is true and substantiated, the disclosure itself -- "Two Treatments Required" -- would be false, because the product would require only one treatment to be effective. Consequently, the disclosure requirement is not needed to prevent the respondents from making the misleading claim that their lice products work in one treatment.

¹ The majority is correct that the requirement has the form of a triggered disclosure, but the substance of the requirement is indistinguishable from corrective advertising. The disclosure will be required whenever the respondents make any express or implied claim that their products are efficacious, which likely would include all or virtually all of the ads they run for their lice treatment products. The disclosure also is required for only a limited period of time, which is also consistent with being a corrective advertising measure.

Even if some sort of disclosure requirement were needed to prevent deception, the disclosure requirement imposed here is not appropriate. It appears both overbroad and inadequate in duration. The triggered disclosure must be made whenever an efficacy claim is made, but not every efficacy claim (*e.g.*, the product "works") creates the impression that the product will work in only one treatment. Without such an impression, there may well be no need to disclose that two treatments are required. Moreover, the triggered disclosure requirement is inadequate because it terminates after two years. If the disclosure in fact is necessary to prevent deception, then why does it end after two years? If the Commission decides to impose a triggered disclosure requirement to prevent future ads from being deceptive, it should be triggered by a claim that would be deceptive in the absence of the information to be disclosed and should continue as long as necessary to prevent deception.

I support the Commission's move toward stronger remedies. The injunctive provisions of these orders, together with the FDA-mandated labeling,² should ensure that consumers have truthful and accurate information before and after purchase. The disclosure requirement here, however, is unnecessary and inappropriate.

² The FDA requires the following statement on the label of any shampoo formulated to treat head lice: "Apply to affected area until all the hair is thoroughly wet with product. Allow product to remain on area for 10 minutes but no longer. Add sufficient warm water to form a lather and shampoo as usual. Rinse thoroughly. A fine-toothed comb or special lice/nit removing comb may be used to help remove dead lice or their eggs (nits) from hair. A second treatment must be done in 7 to 10 days to kill any newly hatched lice."

IN THE MATTER OF
MEDTRONIC, INC.

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-3842. Complaint, Dec. 21, 1998--Decision, Dec. 21, 1998

This consent order allows Medtronic, Inc., a Minnesota-based corporation that manufactures and sells medical devices, to acquire Physio-Control International Corporation's automated external defibrillator business, and requires, among other things, that Medtronic limit its interest in SurVivaLink to that of a passive investor, and prohibits Medtronic from naming a member to SurVivaLink's Board of Directors.

Participants

For the Commission: *Norman Armstrong, Jr., Andrew J. Topps, Ann Malester, William Baer, Bart Wilson, and Jonathan Baker.*

For the respondent: *Philip Larson, Hogan & Hartson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Medtronic, Inc. ("Medtronic"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting stock of Physio-Control International Corporation ("Physio-Control"), a corporation subject to the jurisdiction of the Commission, 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 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:

I. DEFINITIONS

1. "*Automated External Defibrillators*" means portable, automated devices used in emergency situations by persons with limited or no medical training to diagnose and treat persons suffering from sudden cardiac arrest.