

Complaint

128 F.T.C.

IN THE MATTER OF

CONOPCO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3914. Complaint, Dec. 22, 1999--Decision, Dec. 22, 1999*

This consent order, among other things, prohibits the New York-based corporation, that manufactures and distributes personal care products, from disseminating advertisements, for Vaseline® Brand Intensive Care® Antibacterial Hand Lotion or any other antimicrobial product, containing claims as to the effectiveness of the product in protecting users against germs unless, the respondent possesses competent and reliable scientific substantiation.

Participants

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

For the respondent: *Nancy Schnell*, in-house counsel, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Conopco, Inc., doing business as Unilever Home & Personal Care USA, 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 Conopco, Inc. is a New York corporation with its principal office or place of business at 390 Park Avenue, New York, New York. Conopco, Inc. does business as "Unilever Home & Personal Care USA" and "Chesebrough-Pond's" at 33 Benedict Place, Greenwich, CT.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including Vaseline® Brand Intensive Care® Antibacterial Hand Lotion. Vaseline® Brand Intensive Care® Antibacterial Hand Lotion 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 Vaseline® Brand Intensive Care® Antibacterial Hand Lotion, including but not necessarily limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions:

A. "NEW Vaseline® Brand Intensive Care® Lotion
Anti-Bacterial Hand Lotion
STOPS GERMS LONGER THAN WASHING ALONE

.....
GERM PROTECTION

.....
New Vaseline Intensive Care Antibacterial lotion combines:

- *A moisturizing formula to help restore and revitalize rough, dry skin.*
- *An anti-bacterial ingredient that helps keep your hands safe from germs for hours.*

Use it every day, after washing hands, doing chores, changing diapers... anytime you need extra protection. It's the skin-caring way to stop germs while you moisturize.

New Vaseline Intensive Care Anti-Bacterial Lotion - Long-lasting moisturization with anti-bacterial protection.

Indication: To help reduce bacteria that can potentially cause disease."
(Exhibit A).

B. "Arm your hands

With The Only Hand Lotion That Heals Dryness
With Proven Vaseline® Moisturizers And Stops Germs For Hours."
(Exhibit B).

C. "IT'S TIME TO ARM YOUR HANDS

AGAINST DRYNESS. AND AGAINST GERMS.

The first anti-bacterial hand lotion from Vaseline® Intensive Care® is here.

[The advertisement depicts a woman's hand holding a bottle of Vaseline® Brand Intensive Care® Anti-bacterial Hand Lotion.

The bottle contains the following statement:

'NEW Vaseline® Brand Intensive Care® Lotion
Anti-Bacterial Hand Lotion

STOPS GERMS LONGER THAN WASHING ALONE

.... GERM PROTECTION.']" (Exhibit C).

D. "We won't stop until all of you have the means to arm your hands.

[The advertisement depicts a woman in a kitchen.]

Against dryness. And against germs.

[The advertisement depicts a teacher in a classroom.]

Wherever you are....

[The advertisement depicts a bathroom.]

With the first anti-bacterial hand lotion from Vaseline Intensive Care.

[The advertisement depicts a person working at a computer keyboard. Next, it depicts a person marching in a marching band. Then, it depicts a woman in a kitchen.]

.... It's time to arm your hands." (Exhibit D).

E. "Somewhere in America, A teacher is mastering a new form of self defense. A salesman is learning hand to hand combat. A mother is launching a counterattack. Now it's your turn. Arm your hands against dryness and against germs. The first Anti-Bacterial Hand Lotion from Vaseline Intensive Care is here. It's time to arm your hands." (Exhibit E).

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

A. Vaseline® Brand Intensive Care® Antibacterial Hand Lotion stops germs on hands longer than washing alone.

B. Vaseline® Brand Intensive Care® Antibacterial Hand Lotion provides continuous protection from germs for hours.

C. Vaseline® Brand Intensive Care® Antibacterial Hand Lotion is effective against disease-causing germs, such as cold and flu viruses.

6. 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.

7. 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 representations were made. While the active ingredient in Vaseline® Brand Intensive Care® Antibacterial Hand Lotion, triclosan, can reduce the number of germs on a user's hands, the degree and duration of germ protection has not been scientifically established. In addition, triclosan has not been proven effective against many disease-causing germs, including viruses, which are the cause of the most common diseases suffered by consumers, including colds and influenza. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. 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.

Commissioner Leary not participating.

EXHIBIT A



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EXHIBIT B

EXHIBIT B

TRY NEW

Vaseline Intensive Care

ANTI-BACTERIAL

MOISTURIZERS

VITAMINS

GERM KILLING

HAND LOTION

6 oz. (176 ml)

Arm your hands

With The Only

Hand Lotion That

Keeps Hands Soft

With Proven Vaseline®

Moisturizers And

For Hours.

SAVE \$1.00

When you purchase any Vaseline® Intensive Care® Anti-Bacterial Hand Lotion product (on 2.5 oz. or larger)

07182

VOID

0052111776 1 (8100)3 07182

SAVE 60¢

When you purchase any Vaseline® Intensive Care® Lotion product (on 6 oz. or larger)

07181

VOID

0052111060 1 (8100)3 07181

EXHIBIT C



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EXHIBIT D

McCANN-ER

EXHIBIT D

Client: Chesebrough-Ponds

Title: "Won't Stop"

Art Director: Steve Ohler

Product: VIC Anti-Bacterial Hand Lotion

Time: 30 Seconds

Writer: Steve Ohler

Comml. No.: CBIL 7073

Date Aired: 9/15/97

Producer: Dean Shoukas



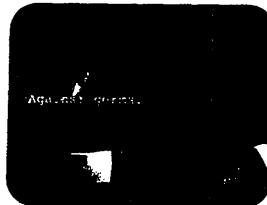
(MUSIC UNDER THROUGHOUT)



(SFX: KNOCK, KNOCK)

ANNCR: (VO) We won't stop until all of
you have the means to arm your hands.

Against dryness.



And against germs.

(SFX: SHOWER) Wherever you are.
WOMAN: (VO) Is that you honey?ANNCR: (VO) With the first anti-bacterial
hand lotion from Vaseline Intensive Care.

WOMAN: Hmm.

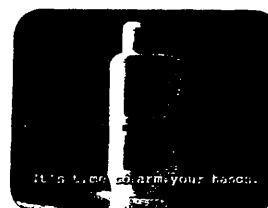
ANNCR: (VO) Please. It's time to arm
your hands.

EXHIBIT D

EXHIBIT D-1

VICL-AB
"The Drop" :30/:15
"Won't Stop" :30/:15

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EXHIBIT E

EXHIBIT E

VICABHL RADIO
8/12/97

AVO:

Somewhere in America,
A teacher is mastering a new form of self defense.
A salesman is learning hand to hand combat.
A mother is launching a counterattack.
Now it's your turn.
Arm your hands against dryness and against germs.
The first Anti-Bacterial Hand Lotion
from Vaseline Intensive Care is here.
It's time to arm your hands.
Now available at K-Mart.

EXHIBIT E

EXHIBIT E-1

Vaseline Intensive Care 8/12/97
"Somewhere in America Revised":30
A-7-30-0496 (REVISED 8/12/97)
Produced by: McCann-Erickson

McCANN-ERICKSON

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 Conopco, 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 located at 390 Park Avenue, 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. Unless otherwise specified, "*respondent*" shall mean Conopco, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.

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

4. "*Germ*" shall mean any microscopic organism that is capable of causing disease, including bacteria, viruses, fungi, and protozoa.

5. "*Antimicrobial product*" shall mean any product represented as antimicrobial, antibacterial, germicidal, or otherwise represented to prevent, control or destroy any germ(s).

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 Vaseline® Brand Intensive Care® Antibacterial Hand Lotion or any other antimicrobial product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that:

A. Such product is as effective as, or more effective than, washing alone in protecting users against germs;

B. Such product has a continuous effect against germs;

C. Such product has any effect on any specific germ; or

D. Such product treats, cures, alleviates the symptoms of, prevents, or reduces the risk of developing colds, allergies, influenza, food-borne illnesses or any other disease or disorder;

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

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.

III.

For the purposes of this order, "antimicrobial product" shall not include any product sold or distributed to consumers by third parties under private labeling agreements with respondent, its successors or assigns, provided respondent, its successors or assigns, does not participate in any manner, directly or indirectly, in the funding, preparation or dissemination of any advertising of said products to consumers.

IV.

It is further ordered, That respondent Conopco, 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.

V.

It is further ordered, That respondent Conopco, Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and

shall secure from each such person a signed and dated statement acknowledging receipt of the 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.

VI.

It is further ordered, That respondent Conopco, 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. 20580.

VII.

It is further ordered, That respondent Conopco, 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.

VIII.

This order will terminate on December 22, 2019, 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.

Commissioner Leary not participating.

IN THE MATTER OF

TENET HEALTHCARE CORPORATION, ET AL.

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

Docket 9289. Complaint, Aug. 19, 1998—Final Order, Dec. 23, 1999

This final order dismisses the administrative complaint in the proceeding regarding the acquisition agreement between Tenet Healthcare Corporation and Doctors Regional Medical Center.

Participants

For the Commission: *Garry Gibbs, Peter Gulyn and William Baer.*

For the respondents: *Charles James, George Manning and Daryl Marsch, Jones, Day, Reavis & Pogue, Washington, D.C.*

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 ("Commission"), having reason to believe that the respondents, Tenet Healthcare Corporation ("Tenet") and Poplar Bluff Physicians Group, Inc. doing business as Doctors Regional Medical Center ("DRMC"), corporations subject to the jurisdiction of the Commission, have entered into an agreement whereby Tenet will acquire the stock and assets of DRMC; that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that the proposed acquisition, if consummated, would violate 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 by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

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