

Complaint

95 F.T.C.

IN THE MATTER OF

SAN-MAR LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3003. Complaint, Jan. 15, 1980—Decision, Jan. 15, 1980*

This consent order requires, among other things, two Elmsford, N.Y. firms and their corporate president, engaged in the manufacture and marketing of "Acne Lotion 22," the "Acne Masque," and the "Home Acne Kit," to cease disseminating advertisements which represent that their products can cure acne or eliminate bacteria-caused skin blemishes; or which misrepresent or make unsubstantiated claims regarding the superiority, efficacy, and performance of their products; the extent to which their products have been tested; and the results of the tests. Respondents are required to inform purchasers of their right to request and receive refunds; and honor refund requests in a timely manner. Additionally, respondents are required to maintain specified records for a period of three years.

*Appearances*For the Commission: *Mark A. Heller.*For the respondents: *Burt Bauman, New York City.*

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 San-Mar Laboratories, Inc. (hereinafter "San-Mar") and Maison Drug Company, Inc. (hereinafter "Maison Drug"), corporations, and Marvin Berkrot, (hereinafter "Berkrot") as an individual and corporate officer, hereinafter at times referred to as respondents, having 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. "San-Mar" and "Maison Drug" are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal places of business located at 399 Executive Boulevard, Elmsford, New York. "San-Mar" and "Maison Drug" manufacture, market and advertise health-related products. "Maison Drug" is a wholly-owned subsidiary of "San-Mar."

PAR. 2. "Berkrot" is an individual and corporate president of "San-Mar" and "Maison Drug." He formulates, directs and controls the acts and practices of "San-Mar" and "Maison Drug," including the acts and practices described herein. "Berkrot's" business address is 399 Executive Boulevard, Elmsford, New York.

PAR. 3. Respondents have been and now are engaged in the business of marketing and advertising health-related products, including but not limited to products known as Acne Lotion 22 or Special Lotion 22 (hereafter "Acne Lotion 22"); and Special Acne Protein Menthol Therapy Masque or Protein Therapy Masque (hereafter "Acne Masque"). The aforesaid products were and are offered alone and as part of a program for the treatment of acne known as the Special Home Acne Treatment Kit (hereafter "the Home Acne Kit"). In connection with the manufacture and marketing of said products respondents "Berkrot" and "San-Mar," through "San-Mar's" subsidiary, respondent "Maison Drug," have disseminated, published and distributed, and now disseminate, publish and distribute advertisements and promotional material for the purpose of promoting the sale of said products for human use. These products, as advertised, are "drugs" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said businesses, the respondents have disseminated and caused the dissemination of certain advertisements concerning "Acne Lotion 22," "Acne Masque," and "the Home Acne Kit" through the United States mails and by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in magazines and newspapers with national circulations, and advertisements in the form of a booklet, entitled "Acne Its Control and Treatment" which was, and is, sent through the United States mail, for the purpose of inducing and which was likely to induce, directly or indirectly, the purchase of the products "Acne Lotion 22," "Acne Masque," and "the Home Acne Kit," and have disseminated and caused the dissemination of advertisements concerning said products by various means, including but not limited to the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly the purchase of said products in commerce.

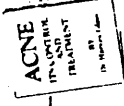
PAR. 5. Typical of the statements and representations in said advertisements disseminated as previously described, but not necessarily inclusive thereof, are the following:

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These photographs of Dr. Glass's patient were taken approximately one month apart.



WHEN YOU ORDER RIGHT NOW, YOU WILL RECEIVE ABSOLUTELY FREE THIS VALUABLE \$3.00 BOOKLET, "ACNE, ITS CONTROL AND TREATMENT"

Mail Your Order Today To:
VANOWEN PRODUCTS, Dept. 192, 10635 Vanowen St., Burbank, CA 91505

Please rush me _____ 30 Day Supply of Special Home Acne Treatment Kit Consisting of Special Lotion 22, Pore Therapy Masque and Acne Mask. Total value \$9.50 plus \$3.00 post & insured for each 30 day supply ordered. Enclosed is a check of \$3.00 for _____

Name _____
 Address _____
 City _____
 State _____ Zip _____

MONEYBACK GUARANTEE if help you get does not completely satisfy you. Cash Refunds And Applicable Sales Tax

AT LAST — NEW HOPE FOR ACNE SUFFERERS!
If You Have ACNE — NOW!
Doctor's Special Treatment
For Lasting Help!

This new treatment is the result of years of experience by Dr. Harvey Glass, M.D., dermatologist and Medical Director of Phase IV Acne Clinics.

Let me first explain what acne is. It is a condition in which the skin's pores and the Sebaceous (oil) glands in which the cores of the skin are blocked by unwhipped blackheads, whiteheads, pimples and spots. Sebaceous glands produce a substance called Sebum. Gladly causes irritation and oily inflammation. It is a skin disease that is most prevalent in teenagers and young adults but can also strike at any age.

Discovered After Years of Treating Acne Patients

What I discovered in my Acne Clinics is that you can do more than just remove the surface of the skin. The pores openings must be cleaned, cleared and opened and the C-Acne Bacteria beneath the skin surface must be removed.

After years of treating acne, I developed a special special compress solution. Acne Lotion 22 containing among its ingredients, a mild surfactant that breaks the skin surface tension for deep action by the ingredients. Included also is a Therapeutic Drawing Mask with sublimed sulfur that dries and quenches the skin.

Dr. Glass is a Distinguished Dermatologist and the Medical Director of the Phase IV Acne Clinics.

Dr. Harvey Glass
 DR. HARVEY GLASS, M.D.

ACNE LOTION 22

THE 2 SIMPLE STEPS OF THE DOCTOR'S ACNE TREATMENT

1 Apply Lotion 22 to the entire face. No darts, no pain, blackheads, whiteheads, pimples, spots, comedone clogged pores, blackheads, whiteheads, spots and various glands inflamed areas. Continue to flush out C-Acne Bacteria in a few minutes blackheads, whiteheads, pimples, spots and bacteria are wiped away with compress.

2 Apply Special Acne Pore Therapy Masque with sublimed sulfur for 15 minutes healing drawing and drying. After 15 minutes wash off with Acne Mask. Continue treatment twice daily. After 10 days of treatment that only a maintenance treatment 1-3 times a week.

A Full 30 Day Supply In Each Kit

ACNE MASK



PAR. 6. Through the use of said advertisements and other advertisements referred to in Paragraphs Four and Five, respondents represented, and now represent, directly or by implication that:

a. Use of "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," will cure acne regardless of the severity of the condition.

b. "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," can penetrate the pores of the skin to eliminate the bacteria responsible for pimples, blackheads, whiteheads, and other acne blemishes.

c. Several minutes after use of "Acne Lotion 22" the bacteria responsible for acne are flushed out of the pores of the skin and can be easily eliminated from the skin surface.

d. "Acne Lotion 22" and "Acne Masque," either alone or as part of "the Home Acne Kit," have been medically and scientifically proven effective in the treatment of acne by clinical testing.

PAR. 7. In truth and in fact:

a. Use of "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," will not cure acne.

b. "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," cannot penetrate the pores of the skin to eliminate the bacteria contributively responsible for pimples, blackheads, whiteheads and other acne blemishes.

c. The bacteria contributively responsible for acne cannot be flushed out of the pores of the skin and easily eliminated from the skin surface.

d. "Acne Lotion 22" and "Acne Masque," either alone or as part of "the Home Acne Kit," are not medically or scientifically proven effective in the treatment of acne by clinical testing.

Therefore, the advertisements referred to in Paragraphs Four and Five were and are misleading in material respects and constituted, and now constitute, false advertisements, and the statements and representations set forth in Paragraph Six, were and are false, misleading or deceptive.

PAR. 8. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondents represented, and now represent that:

a. Use of "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," will result in skin free of pimples,

blackheads, whiteheads, other blemishes associated with acne and scarring, regardless of the severity of the disease.

b. "Acne Lotion 22" and/or "Acne Masque," either alone or as part of "the Home Acne Kit," are superior to all prescription and/or over-the-counter acne preparations in the treatment of acne.

c. "The Home Acne Kit" is superior in the treatment of acne to any other treatment, including but not limited to treatments offered by dermatologists other than Dr. Harvey Glass, whose endorsement of "the Home Acne Kit" appears in said advertisements.

PAR. 9. In truth and in fact, there existed at the time of the first dissemination of the representations in Paragraphs Six and Eight no reasonable basis for making them, in that respondents lacked competent and reliable scientific evidence to support each such representation. Therefore, the making and dissemination of said representations as alleged constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, the respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals representing or engaged in the over-the-counter and prescription drug industries.

PAR. 11. The use by respondent of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents 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 aforesaid draft of complaint, a statement that the signing of such 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that 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. Respondents San-Mar Laboratories, Inc. and Maison Drug Company, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their principal offices and places of business at 399 Executive Boulevard, Elmsford, New York.

2. Respondent Marvin Berkrot is an individual and corporate officer of San-Mar Laboratories, Inc., and Maison Drug Company, Inc., and maintains an office at 399 Executive Boulevard, Elmsford, New York.

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

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It is ordered, That respondents San-Mar Laboratories, Inc. and Maison Drug Company, Inc., corporations, and Marvin Berkrot, individually and as a corporate officer, their successors and assigns, either jointly or individually, and the corporate respondents' officers, agents, representatives, and employees, directly or through any corporation, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisements by means of the United States mail or by any means in or

