

Complaint

95 F.T.C.

IN THE MATTER OF
HOOPER HOLMES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT
REPORTING ACT

Docket C-3020. Complaint, June 11, 1980—Decision, June 11, 1980

This consent order requires, among other things, a Basking Ridge, N.J. firm, through its Credit Index Division, a consumer reporting and collection agency, to cease violating federal credit laws by failing to maintain reasonable procedures designed so as to ensure that reports are furnished only for lawful purposes and assure the maximum accuracy of reported information. In its role as a debt collector, the agency is required to include in collection communications prescribed notices informing consumers of their rights under federal credit laws. Consumers requesting information in their credit files must be provided with a copy of this information. Additionally, the agency is required to mail to its subscribers, each year for a five-year period, a prescribed notice informing them of their statutory obligations.

Appearances

For the Commission: *Rachel Wolkin Sesser.*

For the respondent: *Edmund Burke, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hooper Holmes, Inc., a corporation, through its Credit Index Division, hereinafter referred to as respondent, has violated the provisions of said Acts, 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. Respondent, Hooper Holmes, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 170 Mt. Airy Road, Basking Ridge, New Jersey.

COUNT I

Alleging violations of the Fair Credit Reporting Act and Section 5 of

the Federal Trade Commission Act, the allegations of Paragraph One hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 2. Respondent, Hooper Holmes, Inc., operating through its Credit Index Division (hereinafter "Credit Index" or "respondent"), is now and for some time in the past has been, for monetary fees, regularly engaged in the practice of assembling or evaluating consumer credit information for the purpose of furnishing to third parties consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act. Respondent regularly uses a means or facility of interstate commerce for the purpose of preparing and furnishing said consumer reports. Therefore, respondent is a consumer reporting agency, as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. Respondent in the ordinary course and conduct of its business as aforesaid is now, and subsequent to April 25, 1971 has been, engaged in the preparation, offering for sale, sale and distribution of consumer reports, as defined in Section 603(d) of the Fair Credit Reporting Act.

PAR. 4. In the ordinary course and conduct of its business, as aforesaid, respondent utilizes an automated information retrieval system which produces consumer reports containing designated information concerning all individuals having a specified mailing address and the same, or similar, last name to the person inquired upon. In a substantial number of instances, using this system respondent has furnished and is furnishing consumer reports on individuals not involved in the extension of credit or other business transaction. Respondent's system uses no identifiers in addition to the last name and street address to ensure that information concerning separate individuals with the same or similar last name at a specific mailing address are not reported and, therefore, respondent has failed to follow reasonable procedures designed to limit the furnishing of consumer reports for the purposes listed under Section 604 of the Fair Credit Reporting Act and has, therefore, violated Section 607(a) of that Act.

PAR. 5. In the ordinary course and conduct of its business as aforesaid respondent produces consumer reports which it alleges contain information on a single applicant at a specific mailing address using the same or a similar last name and a different first name for the purposes of defrauding the respondent's subscribers. Respondent uses no system of supplementary identifiers to identify with more specificity items which may relate to neighbors, relatives or spouses of the applicant, and in a substantial number of instances, the information items included in the respondent's reports relate not to the applicant but to neighbors, relatives or spouses of the applicant. By and through

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use of respondent's present information retrieval and reporting system respondent has failed and is failing to follow reasonable procedures designed to assure the maximum possible accuracy of the information concerning the individual about whom the report relates as required by Section 607(b) of the Fair Credit Reporting Act.

PAR. 6. The acts and practices set forth in Paragraphs Four and Five were and are in violation of the Fair Credit Reporting Act, and pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5(a) of the Federal Trade Commission Act.

COUNT II

Alleging violations of Section 5 of the Federal Trade Commission Act in connection with respondent's debt collection activities. The allegations of Paragraphs One, Two and Three are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 7. Respondent is now, and for some time last past has been, engaged in the practice of collecting or attempting to collect debts owed or due or asserted to be owed or due another.

PAR. 8. In the course and conduct of its business as aforesaid, respondent solicits and receives accounts for collection from businesses located in the State of New Jersey and in various other States of the United States, which accounts the respondent seeks thereafter to collect from consumer debtors. In the further course and conduct of its business, respondent transmits through the mail collection messages from its place of business within the State of New Jersey to debtors located in the various States of the United States. The respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 9. In the course and conduct of its business, and at all times mentioned herein, respondent has been and now is, in competition in commerce with other corporations, firms and individuals in the attempted collection and collection of consumer debts on behalf of creditors.

PAR. 10. In the course and conduct of its business as aforesaid, and for the purpose of inducing consumers to pay allegedly delinquent accounts, respondent has transmitted and caused to be transmitted, and is now transmitting and causing to be transmitted unsolicited form letters demanding payment which are attached hereto as Exhibits 1 and 2.

Typical and illustrative of the statements and representations made

in said forms and printed materials, but not all inclusive, are the following:

1. We have received a report from your creditor on your overdue account. This information is being included in our computerized national delinquent debtor file, and will be reported to any one of the credit granting firms using our service should they order a credit report on you.

2. *Your record will remain in our system for at least five years unless you take action now to settle this account.*

3. Your credit file will show this seriously past due amount with. . . .

4. *Enclose this letter, with payment in full today.*

5. Your creditor must notify us of any change in the status of your credit record.

6. You must realize how very important it is to protect a most valuable asset . . . *your credit rating.*

7. Credit Index is a consumer credit reporting agency which maintains a computerized national delinquent debtor file. *Delinquent accounts are included in this file and reported to credit granting organizations using our service.*

8. We have been requested by your creditor to advise you that because of the seriousness of your delinquency, *your credit record may be placed in our national delinquent debtor file.*

9. Our information shows your very serious delinquency with. . . .

10. You can still avoid this unnecessary and unpleasant action by paying the total balance of your overdue account. *Enclose this letter with payment in full today, using the envelope provided.*

PAR. 11. By and through the use of said forms and the aforesaid statements and representations set forth therein, respondent, operating by utilizing its position as a consumer reporting agency for debt collection purposes, is acting in an oppressive or coercive manner by intimidating consumers while it is engaged in debt collection activities and has failed to exercise its responsibilities as a consumer reporting agency in a fair and impartial manner. Respondent's use of said forms therefore constitute unfair acts or practices.

PAR. 12. By and through the use of said forms and the aforesaid statements and representations set forth therein, respondent, when utilizing its position as a consumer reporting agency for debt collection purposes, has failed to apprise collection-letter addressess of their statutory rights to obtain disclosure of the information in their files and to dispute inaccurate or incomplete information in respondent's file under the Fair Credit Reporting Act. By and through the use of said forms and the aforesaid statements and representations set forth therein, respondent threatens that if a consumer not act immediately to settle his account, the consumer's record will remain in its system for at least five years and will be reported to any one of the credit-granting firms utilizing its services. Respondent, by emphasizing the importance of one's credit rating and the injury to it that may result from failure to pay the amount alleged due while at the same time

failing to apprise collection-letter addressees of their rights under the Fair Credit Reporting Act has failed to disclose material facts to consumers concerning the nature of its responsibilities as a consumer reporting agency engaged in debt collection activities. Respondent thereby, has engaged in unfair acts and practices.

PAR. 13. The use by respondent of the aforementioned statements, representations and forms and the failure to apprise collection-letter addressees of their rights under the Fair Credit Reporting Act has had, and now has, the tendency and capacity to coerce the recipients of these forms into the payment of accounts to respondent or its subscribers without exercising their statutory right to dispute debts they do not owe or have an offsetting claim or defense to paying.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public, and constituted, and now constitute, unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation of Section 5 of the Federal Trade Commission Act in connection with respondent's consumer reporting activities. The allegations of Paragraphs One, Two and Three are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 15. Respondents in the ordinary course and conduct of its business as a consumer reporting agency includes in its consumer reports a "Summary Item" which indicates the aggregate number of items of derogatory information in respondent's file at the mailing address of the person inquired on and which contains the derogatory information received by respondent in a form not identifiable to an individual consumer. In a substantial number of instances information in the Summary Item is used by creditors to deny credit to the individuals inquired on based on the paying habits of other individuals who have or sometime in the past had the same mailing address. Since the Summary Item results in the exclusion of some consumers from credit transactions based on the paying habits of prior residents, neighbors and relatives, its use by respondent constitutes an unfair act or practice.

PAR. 16. Respondent in the ordinary course and conduct of its business as a consumer reporting agency includes in its consumer reports a "Activity Summary Item" which records the number of creditor inquiries made concerning persons with names which are not the same or similar to the person inquired upon but who have the same

mailing address specified for the person inquired on during the last six months. In a substantial number of instances information in the Activity Summary Item is used by creditors to deny credit to individuals inquired on based on information concerning other individuals who have, or sometime in the past had, the same mailing address. Since the Activity Summary Item results in the exclusion of some consumers from credit transactions based on information concerning prior residents, neighbors and relatives, its use by respondent constitutes an unfair act or practice.

PAR. 17. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public, and constituted, and now constitute, unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended and the Fair Credit Reporting Act, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Hooper Holmes Corporation 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 170 Mt. Airy Road, in the City of Basking Ridge, State of New Jersey.

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 I

It is ordered, That respondent, Hooper Holmes, Inc., a corporation, through its Credit Index Division, its successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection, assembling or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law No. 91-508, 15 U.S.C. 1681, *et seq.*), shall forthwith cease and desist from:

(1) Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports for the purposes listed under Section 604 of the Fair Credit Reporting Act.

(2) Failing, when preparing a consumer report, to follow reasonable procedures designed to assure maximum possible accuracy of the information concerning the individual about whom the report relates as required by Section 607(b) of the Fair Credit Reporting Act.

(3)(a) Providing reports containing information concerning accounts of individuals having inconsistent courtesy titles, different first names, different last names, different mailing addresses or inconsistent suffixes from the creditor's inquiry unless the respondent can show on a statistically valid basis that its reporting system is reasonably designed to retrieve and report such information only in instances in which the individual consumer inquired on is using different first names and identical or similar last names as a means of deceiving respondent or its subscribers. Respondent shall provide the Commission with copies of any such statistical studies not less than 90 days prior to implementing changes to its system based on such studies and if requested by the Commission will delay implementation of changes an additional 120 days.

(3)(b) For the purposes of this order:

(i) The last name of the individual reported upon shall not be considered different from the last name of the inquiry if;

(A) the last name contains five or more letters and all but two of the letters are identical to the letters of the last name of the inquiry; or,

(B) the last name has four letters and all but one are identical to the letters of the last name of the inquiry; and

(C) the address used in the inquiry under either A or B is a full street address (specific house or building number plus street name) or post

office box number, and does not contain an inconsistent apartment number, a rural route number, general delivery or similar mailing address, and

(D) the inquiry contains a full first name, not initials, which, subject to the tolerances provided in (A) and (B) for last names, is not inconsistent with the first name or initial on the report.

(ii) A first initial which is not inconsistent with the individual's first name shall not be considered a different first name, if respondent:

(A) instructs its subscribers to use the full first name, whenever available, in making inquiries or submitting information to the file; and

(B) the address used in the inquiry is a full street address (specific house or building number plus street name) or post office box number, and does not contain an inconsistent apartment number, general delivery, rural route number or similar mailing address; and

(C) the inquiry is not made with an inconsistent courtesy title or suffix.

(iii) A first name which is a commonly accepted nickname for the first name of the individual inquired upon shall not be considered a different first name.

(4) Including in any consumer report a "Summary Item", "Activity Summary Item" or other information concerning the creditworthiness of other individuals with the same mailing address as, but with a different last name from, the individual inquired on, provided that the above restriction on Summary Items and Activity Summary Items does not apply to summary or activity reports generated by respondent internally for use by respondent identifying credit applications for which respondent will conduct additional investigation but respondent shall not reject, recommend rejection or otherwise directly or indirectly issue a negative report based solely on a summary or activity item, or on the applicant's failure to respond to a request for additional information from respondent.

ORDER II

It is ordered, That respondent, Hooper Holmes, Inc., a corporation, through its Credit Index Division, its successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the collection of consumer debts, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Failing to disclose to consumers, in any communication relating to debt

collection activities, their rights under the Fair Credit Reporting Act and Fair Debt Collection Practices Act as set forth in the exact facsimile of Exhibit A attached hereto.

A. *It is further ordered*, That respondent, each year for a five year period, mail to each subscriber the following notice in not less than 12 point boldface type:

IMPORTANT NOTICE

Credit Index is a consumer reporting agency subject to the provisions of the Federal Fair Credit Reporting Act. As a user of these reports you also are subject to the requirements of this law. If you use any information reported by Credit Index in whole or in part in your decision to deny credit, employment or insurance, you must notify the rejected applicant of that fact and provide our name, street address and phone number. Your failure to do so would violate Federal law.

[Insert Name, street address and phone number.]

Additionally, Credit Index, upon request and proper identification will disclose all information in its file to consumers by mail and we would appreciate your including this information in your notice also.

B. *It is further ordered*, That respondent make the disclosures required by Sections 609 and 610 of the Fair Credit Reporting Act for credit reports issued by its Credit Index subsidiary, by mailing a copy of all information (except medical information) in its files on the consumer at the time of the request (or a transcription of all such information) to the consumer upon request and proper identification or, in lieu thereof, in person or by telephone upon specific request by the consumer. If the consumer is provided with a copy of the actual report, he shall also be provided with all information necessary to decode the report.

C. *It is further ordered*, That respondent herein shall deliver a copy of this order cease and desist to all present and future personnel of its Credit Index division, including employees and representatives, engaged in the preparation of reports including consumer reports, and engaged in the disclosure and reinvestigation of information in said reports, and that respondent secure a signed statement acknowledging receipt of said order from each person.

D. *It is further ordered*, That respondent shall provide each consumer who requests disclosure of information in his or her file in accordance with the Fair Credit Reporting Act, with an exact facsimile of Exhibit B attached hereto.

E. *It is further ordered*, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of

subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

Decision and Order

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EXHIBIT 1



170 MT. AIRY RD. BASKING RIDGE, N. J. 07920

Credit Index is a consumer credit reporting agency which maintains a computerized national delinquent debtor file. Delinquent accounts are included in this file or reported to credit granting organizations using our service.

We have been requested by your creditor to advise you that because of the seriousness of your delinquency, your credit record may be placed in our national delinquent debtor file.

Our information shows your very serious delinquency with

You can still avoid this unnecessary and unpleasant action by paying the total balance of your overdue account. Enclose this letter with payment in full today, using the envelope provided. If the information stated is inaccurate, contact either your creditor or us, using this letter for comments.

Thank you for your cooperation.

Sincerely Yours,

FILE MAINTENANCE DEPT.
CREDIT INDEX

P.S. PLEASE USE SPACE BELOW FOR COMMENTS.

HOOPER HOLMES, INC.

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EXHIBIT 2



170 MT. AIRY RD. BASKING RIDGE, N. J. 07920

We have received a report from your creditor on your overdue account. This information is being included in our computerized national delinquent debtor file, and will be reported to any one of the credit granting firms using our service should they order a credit report on you.

Your record will remain in our system for at least five years unless you take action now to settle this account.

Your credit file will show this seriously past due amount with

Enclose this letter with payment in full today. Use the envelope provided. If the information stated is inaccurate, contact either your creditor or us, using this form for comments. Your creditor must notify us of any change in the status of your credit record. We strive to maintain accurate credit files and you must realize how very important it is to protect a most valuable asset your credit rating.

Sincerely Yours,

A handwritten signature in cursive script that reads 'J. L. Marino'.

FILE MAINTENANCE DEPT.
CREDIT INDEX

P.S. PLEASE USE SPACE BELOW FOR COMMENTS.

FEDERAL TRADE COMMISSION DECISIONS

Modifying Order

95 F.T.C.

IN THE MATTER OF
STANDARD OIL COMPANY OF CALIFORNIA, ET AL.
MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8827. Decision, Nov. 26, 1974—Modified Order, June 16, 1980

This order modifies a Nov. 26, 1974 order, 84 F.T.C. 1401, 40 FR 13488, against a San Francisco, Calif. distributor of gasoline and other petroleum products and its New York City advertising agency, requiring compliance with a court of appeals decision that the "blanket" order provision as to all advertising of "any" product was wholly unwarranted based on three misleading advertisements. The order is modified to cover only advertising of its additive, F-310.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Ninth Circuit petitions for review of the Commission's cease and desist order issued herein on November 26, 1974; and the Court having rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the time for filing a petition for certiorari having expired and no petition for certiorari having been filed:

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

I.

It is ordered, That respondent Standard Oil Company of California, a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist from:

1. Representing directly or by implication that such product:

- (a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or
 - (b) Will eliminate or reduce air pollution caused by motor vehicles; or
 - (c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;
- that:
- (d) Such gasoline additive product has any other quality, performance ability or other characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations;

Unless and only to the extent that each and every such representation is true and has been fully and completely substantiated by competent scientific tests. The results of said tests, the original data collected in the course thereof and a detailed description of how said tests were performed shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that:

(a) Automotive exhaust has certain observable or measurable characteristics in all or any number or group of motor vehicles when such is not the fact; or

(b) Any machines, measuring devices or technical instruments have particular characteristics or capacities when such is not the fact; or

(c) Such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product; or

(d) Such product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

II.

It is ordered, That respondent Standard Oil Company of California, a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist directly or indirectly from:

1. Advertising by or through the use of or in conjunction with any test, experiment, or demonstration, or the result thereof, or any other information or evidence that appears or purports to confirm or prove, or is offered as confirmation, evidence, or proof of any fact, product characteristic or the truth of any representation, which does not accurately demonstrate, prove, or confirm such fact, product characteristic, or representation.

2. Using any pictorial or other visual means of communication with

or without an accompanying verbal text which directly or by implication creates a misleading impression in the minds of viewers as to the true state of material facts which are the subject of said pictures or other visual means of communication.

3. Misrepresenting in any manner or by any means any characteristic, property, quality, or the result of use of such gasoline additive product.

III.

It is ordered, That respondent Batten, Barton, Durstine & Osborn, Inc., a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of the additive F-310, forthwith cease and desist from:

1. Representing directly or by implication that such product:

- (a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or
- (b) Will eliminate or reduce air pollution caused by motor vehicles; or
- (c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

or that:

- (d) Such gasoline additive product has any other quality, performance ability or other characteristic; or
- (e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations;

Unless and only to the extent that respondent has a reasonable basis for such representation based upon competent scientific tests by it or its client. The results of said tests and the data collected in the course thereof relied upon by respondent shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that:

- (a) Automotive exhaust has certain observable or measurable characteristics in all or any number or group of motor vehicle when such is not the fact; or
- (b) Any machines, measuring devices or technical instruments have particular characteristics or capacities when such is not the fact; or
- (c) Such product has any effectiveness in reducing air pollution or

any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product; or

(d) Such product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

IV.

It is ordered, That respondent Batten, Barton, Durstine & Osborn, Inc., a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist directly or indirectly from:

1. Advertising by or through the use of or in conjunction with any test, experiment, or demonstration, or the result thereof, or any other information or evidence that appears or purports to confirm or prove or is offered as confirmation, evidence or proof of any fact, product characteristic, or of the truth of any representation which does not accurately demonstrate, prove, or confirm such fact, product characteristic, or representation unless the respondent can establish it neither knew, nor had reason to know, nor upon reasonable inquiry could have known that such was the case.

2. Using any pictorial or other visual means of communication with or without an accompanying verbal text which directly or by implication creates a misleading impression in the minds of viewers as to the true state of material facts which are the subject of said pictures or other visual means of communication unless the respondent can establish it neither knew nor had reason to know nor upon reasonable inquiry could have known the true facts.

3. Misrepresenting in any manner or by any means any characteristic, property, quality, or the result of the use of such gasoline additive product unless the respondent can establish it neither knew nor had reason to know nor upon reasonable inquiry could have known that such representations are false.

It is further ordered, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents herein shall notify the

Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service of the order upon them, file with the Commission a written report, signed by the respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Commissioner Pitofsky did not participate.

Complaint

IN THE MATTER OF
JORDAN-SIMNER, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3022. Complaint, June 19, 1980—Decision, June 19, 1980*

This consent order requires, among other things, a Ft. Lauderdale, Florida manufacturer of pharmaceutical products to cease making any misrepresentations of the efficacy or novel performance characteristics of its vaginal contraceptive suppository products. The order specifically prohibits any exaggerated efficacy claims for the products such as "highly" or "extremely" effective. Additionally, respondent is prohibited from making claims of efficacy without a reasonable basis consisting of a consistent body of valid and scientific evidence.

Appearances

For the Commission: *Susan Lerner.*

For the respondents: *Raymond D. McMurray, Hamel, Park, McCabe & Saunders, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jordan-Simner, Inc., a corporation, and Robert Cohen, individually and as an officer of said corporation (hereinafter "respondents"), have violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Jordan-Simner, Inc. is a Florida corporation with its principal place of business at 6852 N.W. 12th Ave., Ft. Lauderdale, Florida.

Respondent Robert Cohen is an officer of said corporation. He formulates, directs and controls its acts and practices, including the acts and practices hereafter set forth. His business address is the same as said corporation.

Allegations stated in the present tense include the past tense.

PAR. 2. For purposes of this complaint the following definitions shall apply:

(1) A "vaginal contraceptive suppository" is a spermicidal contraceptive product which is inserted into the vagina prior to coitus. Body temperature or vaginal secretions dissolve the suppository and spread its sperm killing agent through the vaginal cavity.

(2) "Use effectiveness" means that level of effectiveness which is obtained when the contraceptive method is used by large numbers of subjects not all of whom follow the instructions accurately or use the contraceptive method each time they have sexual relations.

(3) "Commerce" means commerce as defined in the Federal Trade Commission Act, as amended.

PAR. 3. Respondents engage in the manufacturing, advertising, offering for sale and sale of pharmaceutical products, including a vaginal contraceptive suppository product named "S'Positive", a "drug" within the meaning of Section 15 of the Federal Trade Commission Act.

PAR. 4. Respondents cause their products when sold, to be shipped and distributed from their place of business to purchasers located in various other States of the United States and the District of Columbia. Respondents maintain a substantial course of trade in all their products, including their product S'Positive, in or affecting commerce.

PAR. 5. In the course and conduct of their business respondents disseminate or cause to be disseminated certain advertisements concerning S'Positive (1) by United States mails, or by various means in or having an effect upon commerce, including but not limited to insertion in newspapers or magazines of interstate dissemination for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of S'Positive, or (2) by various means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of S'Positive in or having an effect upon commerce.

PAR. 6. Among the advertisements and other sales promotion materials, and typical of the statements and representations made in respondents' advertisements, but not all inclusive thereof, are the advertisements identified as Attachments 1 and 2.

PAR. 7. Through the use of such advertisements, and others not specifically set forth herein, respondents represent, directly or by implication, that:

1. S'Positive has an extremely high use effectiveness, approaching the level of oral contraceptives (hereinafter "the pill") or intrauterine devices (hereinafter "IUD").

2. S'Positive has novel contraceptive performance characteristics.

PAR. 8. In truth and in fact:

1. S'Positive's use effectiveness is approximately that of other vaginal contraceptive products. It is not considered to have a use effectiveness on the level of the pill or IUD.

2. S'Positive does not have novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery. Its sperm killing ingredient, nonoxynol 9, has been in use for many years in various contraceptive products.

Therefore, the advertisements and representations referred to in Paragraphs Six and Seven are false, deceptive or misleading.

PAR. 9. Furthermore, through the use of the advertisements referred to in Paragraphs Five and Six, respondents represent, directly or by implication, that:

1. S'Positive has an extremely high use effectiveness.
2. S'Positive has novel contraceptive performance characteristics.
3. S'Positive has undergone years of successful medical or consumer testing.

PAR. 10. At the time respondents made the representations alleged in Paragraph Nine, respondents had no reasonable basis for making those representations. Therefore, the making and dissemination of such representations constitute deceptive acts or practices in or affecting commerce.

PAR. 11. Furthermore, respondents market or advertise S'Positive without disclosing to the purchasing public through their advertising that:

1. For best protection against pregnancy, it is essential that one follow instructions.
2. Women for whom pregnancy presents a special health risk should make a contraceptive choice in consultation with their physician.
3. Some S'Positive users experience irritation.
4. S'Positive requires a waiting period of fifteen minutes before intercourse to ensure effectiveness.
5. S'Positive is approximately as effective as vaginal foam contraceptives in actual use.

PAR. 12. The facts described in Paragraph Eleven are material with respect to the consequences which may result from use of S'Positive as a contraceptive under such conditions as are customary or usual. Respondents' failure to disclose these material facts renders the advertisements referred to in Paragraphs Five and Six false, deceptive or misleading.

PAR. 13. Furthermore, through the use of the advertisements referred to in Paragraphs Five and Six, respondents, directly or by implication, favorably compare some characteristics of S'Positive to

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the pill or the IUD and represent in the same advertisement that S'Positive has an extremely high use effectiveness. Favorable comparison of S'Positive to certain characteristics of the pill or IUD has the tendency and capacity to lead members of the public into the erroneous and mistaken belief that S'Positive's use effectiveness is equal to that of the pill or IUD. Respondents fail to disclose the fact that S'Positive has a use effectiveness below that of the pill or IUD and approximately the same as other vaginal foam contraceptive products.

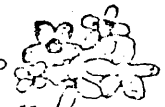
PAR. 14. The fact described in Paragraph Thirteen is material in light of the comparative representations made in respondents' advertisements. Respondents' failure to disclose this material fact in advertisements containing such comparative representations renders the advertisements referred to in Paragraphs Five and Six false, misleading or unfair.

PAR. 15. In the course and conduct of its business, and at all times mentioned herein, respondents are in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of drugs or contraceptive products of the same general kind and nature as advertised or sold by respondents.

PAR. 16. The use by respondents of the aforesaid false, misleading, deceptive or unfair statements, representations, acts or practices, and the dissemination of the aforesaid false advertisements has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondents' products or services by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition or unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

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S'POSITIVE. 
 A new, medically tested,
 positive method of birth control.

S'Positive looks like a pill. But it isn't. Yet it does all the things you want the pill to do. And none of the things you don't want it to do. No harmful side effects and no effect upon your normal balance.

It's a new, one-step contraceptive. You see, S'Positive is a suppository, but unlike any other you've ever seen or heard about.

Here's how it works: As soon as it is inserted directly to the cervix, the chemistry of your body fights the pill takes over, dissolving the S'Positive. This process allows the S'Positive to expand, blanketing the cervix and inner vaginal area with a medically safe and proven effective spermicide.

S'Positive is not detectable and its delicately scented formula acts as a gentle lubricant. There is no embarrassing messiness, no applicators, and nothing to remove, thereby eliminating troublesome before-and-after steps.

S'Positive comes in an attractive package that includes your own personal Retro-Matic (TM) Dispenser. Completely hygienic, the convenient 12-unit dispenser can easily be carried in pocket or purse. Ask your druggist for S'Positive. If it is not available in your area, write: Jordan Simner, Inc., 15490 Northwest 7th Avenue, Miami, Florida 33159.

S'Positive. Thoroughly tested and proven effective. The modern method for today's modern women.



**IF YOU HAVE A PROBLEM
CHOOSING A RELIABLE
BIRTH CONTROL METHOD
...YOU NO LONGER HAVE A PROBLEM.**

After years of successful medical and consumer testing, S POSITIVE is now available to you.

This proven method of birth control is different from anything else you may have tried. It's an easy-to-use, tiny vaginal suppository called S POSITIVE and it protects you against unwanted pregnancy two ways.

First. The formula contains a medically-tested and proven-effective spermicide. After insertion, the natural vaginal fluids dissolve the S POSITIVE suppository, dispersing the spermicide throughout the vaginal area.

Second. Simultaneously, a combination of ingredients forms a blanket of protection which seals the uterine opening and physically blocks sperm.

Unlike other vaginal contraceptives, there is no mess or inconvenience. Just insert S POSITIVE and forget it. There. Rest of all S POSITIVE was proven extremely effective in extensive clinical tests. When no contraceptive method is guaranteed, when used as directed, S POSITIVE can end your worry over birth control.

S POSITIVE suppositories are a welcome relief from messy, messy side effects of the pill, and other unpopular birth control appliances. Now, for the comfort of women in Europe and the United States, rely with confidence on the effectiveness of S POSITIVE. Ask your doctor or pharmacist about S POSITIVE today. Available without prescription in handy 12 unit dispenser at leading pharmacies.

S POSITIVE
Double Birth Control Protection



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