

IN THE MATTER OF

SORGA, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3058. Complaint, March 13, 1981—Decision, March 13, 1981.*

This consent order requires, among other things, a New York City advertising agency to cease, in connection with the advertising and sale of Semicid, or similar over-the-counter vaginal contraceptive suppository products, misrepresenting or failing to substantiate claims relating to the product's effectiveness, safety and performance characteristics. The firm is further prohibited from disseminating advertisements using performance or quality heightening modifiers such as "highly" or "extremely," in conjunction with words like "effective" or "reliable." Additionally, the order requires the company to disclose, in print, radio and TV consumer advertising, certain facts material to contraceptive suppository use; and to maintain business records for a period of three years.

Appearances

For the Commission: *Shirley F. Sarna and Paula K. Stein.*

For the respondent: *Evan A. Davis, Clearly, Gottlieb, Steen & Hamilton, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Sorga, Inc., a corporation, (hereinafter "respondent") has 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. Sorga, Inc. is a New York corporation with its principal place of business at 300 East 42nd St., New York, New York. Sorga, Inc. previously did business under the name of Kelly, Nason-Univas, Inc. The name change to Sorga, Inc. was accomplished by amendment to the certificate of incorporation on June 29, 1979.

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 nor 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. Respondent was an advertising agency for American Home Products Corporation. In such capacity respondent has prepared and placed advertising for publication and has caused dissemination of advertising, including the advertising referred to herein, to promote the sale of a vaginal contraceptive suppository product named "Semicid", a "drug" within the meaning of Section 15 of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business respondent has disseminated or caused the dissemination of certain advertisements concerning Semicid (1) by United States mail, or by various means in or having an effect upon commerce, including but not limited to insertion in newspapers or magazines of interstate dissemination and radio and television broadcasts of interstate transmission, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Semicid, or (2) by various means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of Semicid in or having an effect upon commerce.

PAR. 5. Among the advertisements and other sales promotion materials, and typical of the statements and representations made in respondent's advertisements, but not all inclusive thereof, are the advertisements identified as Attachments 1 through 4.

PAR. 6. Through the use of such advertisements, and others not specifically set forth herein, respondent represents, directly or by implication, that:

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

2. Semicid has novel contraceptive performance characteristics.

PAR. 7. In truth and in fact:

1. Semicid'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. Semicid 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 Five and Six are false, deceptive or misleading.

PAR. 8. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondent represents, directly or by implication, that:

1. Semicid has an extremely high use effectiveness.
2. Semicid has novel contraceptive performance characteristics.
3. Semicid has been scientifically or medically proven to have an extremely high use effectiveness.

PAR. 9. At the time respondent made the representations alleged in Paragraph Eight, respondent had no reasonable basis for making those representations. Therefore, the making and dissemination of such representations constitute deceptive or unfair acts or practices in or affecting commerce.

PAR. 10. Furthermore, respondent advertises Semicid without disclosing to the purchasing public through its 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 Semicid users experience irritation.
4. Semicid requires a waiting period of fifteen minutes before intercourse to ensure effectiveness.
5. Semicid is approximately as effective as vaginal foam contraceptives in actual use.

PAR. 11. The facts described in Paragraph Ten are material with respect to the consequences which may result from use of Semicid as a contraceptive under such conditions as are customary or usual. Respondent's failure to disclose these material facts renders the advertisements referred to in Paragraphs Four and Five false, deceptive or misleading.

PAR. 12. Furthermore, through the use of the advertisements referred to in Paragraphs Four and Five, respondent, directly or by

implication, favorably compares some characteristics of Semicid to the pill or the IUD and represents in the same advertisements that Semicid has an extremely high use effectiveness. Favorable comparison of Semicid 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 Semicid's use effectiveness is equal to that of the pill or IUD. Respondent fails to disclose the fact that Semicid has a use effectiveness below that of the pill or IUD and approximately the same as other vaginal foam contraceptive products.

PAR. 13. The fact described in Paragraph Twelve is material in light of the comparative representations made in respondent's advertisements. Respondent's failure to disclose this material fact in advertisements containing such comparative representations renders the advertisements referred to in Paragraphs Four and Five false, misleading or unfair.

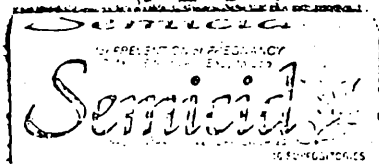
PAR. 14. In the course and conduct of its business, and at all times mentioned herein, respondent is in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of services of the same general kind and nature as are sold by respondent.

PAR. 15. The use by respondent 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 respondent's products or services by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondent as herein alleged, including the dissemination of false advertising, are all to the prejudice and injury of the public and of respondent's 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 respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

Commissioner Pitofsky did not participate.

Now you can say
 goodbye to
 the pill,
 the IUD,
 diaphragms,
 foams, creams
 and chippy jellies



Semicid is here

A medically tested, vaginal contraceptive
 suppository developed for the woman of today.

As a contemporary woman, you know about birth control. You know what works, what feels right, what is aesthetically pleasing.

Whatever method you choose, you want it to be effective, safe and easy to use.

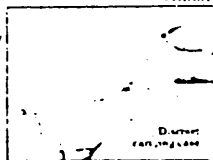
Now there's a non-hormonal contraceptive to satisfy your contemporary needs. Semicid.

Proven to be effective.

Semicid is an effective vaginal contraceptive for the prevention of pregnancy. It is a non-hormonal, vaginal mini-suppository that safely kills sperm in seconds. Semicid's active ingredient is nonoxonyl-9, a spermicide used effectively by millions of women for over 10 years.

Laboratory tested. Doctor tested.

A U.S. clinical study of hundreds of women of childbearing age over a four year period, proved Semicid's high degree of effectiveness. This study was conducted by a gynecologist and was carefully designed to compare the efficacy of Semicid with published reports of other contraceptive methods. Semicid is known to be effective in the majority of women of the average



Semicid is safe.

Semicid contains no hormones. As a result, none can enter your bloodstream. What's more, Semicid is safer than the IUD, because it cannot pierce the uterine walls. Semicid is so safe that you can purchase it without a prescription, and it is non-irritating based on reports from doctors and from women using the product.

Easy and convenient to use.

Within minutes, Semicid dissolves and spreads a protective covering over the cervical opening and adjoining vaginal walls. And because Semicid is quick and easy to insert, it will not interfere with spontaneity.

The Semicid package is so small and discreet that it can be kept anywhere. Semicid has no application, so there is nothing to fill, clean or remove.

Semicid is lubricating and has no unpleasant taste or odor. It was formulated for the kind of life you are living today. Ask your doctor for the nearest

Semicid is from Whitehall Laboratories, one of the world's leading pharmaceutical companies. It's available at your local drugstore. Use only as directed.

SEMICID. Today's contraceptive for today's woman.

Now. A safe, simple way to prevent pregnancy.

It's Semicid, a safe, easy-to-use vaginal contraceptive suppository with an active ingredient proven effective by millions of women.

If you're dissatisfied with your present birth control method, you should know about Semicid, a real alternative in contraception from Whitehall Laboratories, one of the world's leading pharmaceutical companies.

Semicid is safe and effective. It contains the maximum allowable level of nonoxynol-9, an ingredient which safely kills sperm in seconds. It's the spermicide doctors recommend most and has been used effectively by millions of women for over 10 years. Now this tested, proven ingredient is available in Semicid.

Semicid is safe, too. Unlike the pill, it has no hormonal side effects. And unlike the IUD, it can't damage uterine walls. Furthermore, Semicid does not effervesce the way the other vaginal suppository does. Semicid is non-irritating to most women. There's also no unpleasant odor. Neither you nor your partner will notice Semicid is there at all.

Semicid is neat and convenient. Slim, only an inch long, Semicid is so simple and easy to use. There's no applicator, so there's nothing to fill, clean, or remove. Semicid is not messy like foams, creams and jellies. And it's not awkward like the diaphragm. It lets love-making happen naturally, spontaneously.

Within minutes after you insert it, Semicid dissolves and spreads a protective covering over the cervical opening and adjoining vaginal walls.

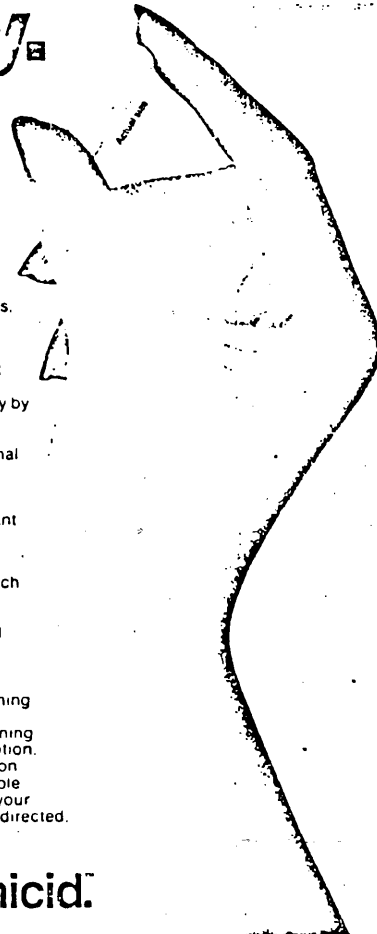
Semicid comes in a small, discreet dispenser containing 10 suppositories. You can purchase it without a prescription.

For more information about this remarkable contraceptive, ask your doctor. Use only as directed.

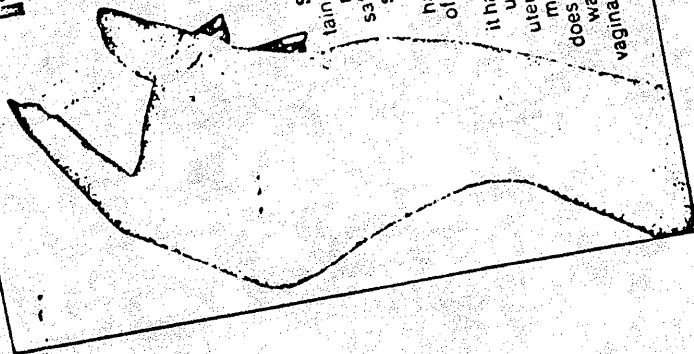


Discreet carrying case

Semicid.



Now. A safe, simple way to prevent pregnancy.



It's Semicid, a safe, easy-to-use vaginal contraceptive suppository with an active ingredient proven effective by millions of women.

Safe and effective. Semicid contains the maximum allowable level of nonoxonyl-9, an ingredient which safely kills sperm in seconds. It's the spermicidal ingredient in most, and doctors recommend by millions has been used effectively by millions of women for over 10 years.

Semicid is safe, too. Unlike the pill, it has no hormonal side effects. And unlike the IUD, it can't damage uterine walls. Further, Semicid does not interfere the way the other vaginal suppository does.



© 1974, Whitehall Laboratories, Inc.

Neat and convenient. Slim, only an inch long. Semicid is so simple and easy to use, it's not messy like foams. It's not awkward like the diaphragm. It lets love-making happen naturally, spontaneously.

Within minutes after you insert it, Semicid dissolves and spreads a protective covering over the vaginal walls. Ask your doctor about opening and adjoining vaginal walls. Semicid. It's from Whitehall Laboratories. And, it's available without a prescription. Use only as directed.

Semicid

"It's birth control on my terms. Semicid."



I've always felt birth control was *my* responsibility. (After all, it's *my* body.) And there are certain things I *expect* from a contraceptive: it has to be safe, uncomplicated and...effective.

That's why I choose Semicid. It's a slim, inch-long vaginal suppository. It's easy to insert, has no hormonal side effects, and is highly effective.

I trust it to prevent pregnancy. Semicid contains the contraceptive ingredient used effectively by millions of women for over 10 years. That gives me confidence. What's more, this ingredient is the one in products doctors recommend most, and it safely kills sperm in seconds.


No hormonal side effects for me. I won't take a chance with the Pill, or the I.U.D. I want a contraceptive that's safe. Semicid *is*. It contains no hormones. And it doesn't effervesce like the other vaginal suppository. Semicid is not irritating to most women. I like that.

It doesn't interrupt the mood. The last thing I want is a contraceptive that's awkward. (I know myself: it *has* to be easy to use.) I don't want anything drippy. Or anything that smells or tastes unpleasant.

That's why Semicid's for me. It's *neat* and it gives me all the contraceptive protection I need. Within minutes after I insert it, Semicid dissolves and forms a protective barrier over the cervical opening and adjoining vaginal walls. This protection lasts for an hour.

It's portable, too. Semicid comes in a tiny carrying case of 10 suppositories. It's available at your local drug or food store *without* a prescription.

Ask your doctor about Semicid. You, too, may discover it's birth control *on your terms*.



Semicid

Trial offer from Semicid
Vaginal Contraceptive Suppositories.

Please send me a sample pack. Sample will be discreetly wrapped. Clip entire coupon and send with you (in check or money order) for postage and handling to:

Whitehall Laboratories, Inc., 611 Third Avenue,
N.Y., N.Y. 10017. Att: Semicid.

**For the woman
who's got everything
under control.**

Name _____
Address _____
City _____ State _____ Zip _____

This offer is made available in person over 18 years of age. Subject to state and local regulations. Offer good in the State of New York and where taxed, restricted or prohibited by law. Offer expires September 30, 1972. Good only in N.Y.A.

DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Sorga, Inc. is a New York corporation with its principal place of business at 300 East 42nd St., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

This Order applies to respondent Sorga, Inc., its successors, assigns, officers, agents and employees, whether acting directly or through any corporation, subsidiary, division or other device. Except as otherwise provided, order provisions apply to any act taken in connection with respondent's advertising, offering for sale, sale or distribution of Semicid or any OTC (over-the-counter) contraceptive product in or affecting commerce within the United States, including

the Commonwealth of Puerto Rico and any territory or possession of the United States. The reasonable basis standards used in this Order are not intended to set a standard for drug products other than OTC contraceptives.

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

1) "*Use effectiveness*" or effectiveness "*in actual use*" 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.

2) "*Method effectiveness*" means that level of effectiveness which is attained in a well-controlled clinical trial utilizing highly motivated volunteers who reportedly use the contraceptive method correctly with every act of sexual intercourse.

3) "*Semicid*" means the vaginal contraceptive suppository product marketed under the tradename Semicid, or any vaginal contraceptive suppository product of substantially the same chemical formulation.

4) "*Advertisement*" means any written, verbal or audiovisual statement, illustration, depiction or presentation, which is designed to effect the sale of any OTC contraceptive product, or to create interest in the purchasing of such products (except a package or package insert) whether same appears in a brochure, newspaper, magazine, leaflet, circular, mailer, book insert, catalog, billboard, public transit card, point-of-sale display, film strip, video presentation, or in a radio or television broadcast or in any other media, regardless of whether such statement, illustration, depiction or presentation is characterized as promotional, educational or informative; *provided, however*, that the term advertisement does not include material which solely refers to the product without making any claims for the product.

5) "*Product or use characteristic*" includes but is not limited to efficacy, safety or convenience.

I

It is ordered, That respondent cease and desist from:

- A. Making in consumer (lay) advertisements any contraceptive effectiveness claims regarding Semicid which use the words "effective" or "reliable" in conjunction with any performance or quality heightening modifiers such as "highly", "extremely" and the like.
- B. Misrepresenting, directly or by implication, the effectiveness

of any OTC contraceptive product; unless respondent neither knew nor should have known that the representation was false, deceptive or misleading.

C. Representing, directly or by implication, that Semicid has novel contraceptive performance characteristics except as to the characteristics associated with its method of delivery.

D. Representing, directly or by implication, the results of any study of method effectiveness of any OTC contraceptive product as a measure of the use effectiveness of any such product.

E. Making any representation, directly or by implication, concerning the effectiveness of any OTC contraceptive product unless respondent has a reasonable basis for such representation consisting of a consistent body of valid and reliable scientific evidence; *provided, however*, that respondent may represent that Semicid is effective or reliable or make other effectiveness claims as permitted by this Order (for example, "Semicid provides reliable protection against pregnancy").

II

It is further ordered, That respondent make the following affirmative disclosures in any consumer (lay) print advertisement for Semicid:

A. For best protection against pregnancy, it is essential to follow package instructions.

B. If your doctor has told you that you should not become pregnant, ask your doctor if you can use Semicid.

C. Some Semicid users experience irritation in using the product.

D. It is essential that you insert Semicid at least fifteen minutes before intercourse.

E. Semicid is approximately as effective as vaginal foam contraceptives in actual use.

The above affirmative disclosures shall be made clearly and conspicuously. Disclosures C, D and E shall be made in the exact language indicated above; *provided, however*, that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "fifteen minutes" in Disclosure D consistent with such reasonable basis. Disclosures D and E shall be made in typeface at least as large as the typeface of the major portion of the text of the advertising copy. Disclosures D and E shall be separate and distinguishable from the main body of the advertisement for a period of 24 months following the date of service of this

Order or 27 months from the date of signing of this Order, whichever expires earlier.

III

It is further ordered, That respondent make the following affirmative disclosure in any consumer (lay) print advertisement for Semicid in which any product or use characteristic of Semicid is compared, directly or by implication, to any product or use characteristic of oral contraceptives (hereinafter "the pill") or intrauterine devices (hereinafter "IUD"):

Semicid is approximately as effective as vaginal foam contraceptives in actual use, but is not as effective as the pill or IUD.

OR

Semicid is not as effective as the pill or IUD in actual use, but is approximately as effective as vaginal foam contraceptives.

Either above affirmative disclosure shall be made, where required, in lieu of Disclosure II.E above. The disclosure shall satisfy the requirements regarding exact language, size of type and relation to the main body of the advertisement specified for Disclosure II.E.

IV

It is further ordered, That respondent make the following disclosures in any consumer (lay) TV advertisements for Semicid:

- A. Follow directions exactly, including the fifteen minute waiting period.
- B. Approximately as effective as contraceptive foams.

The above disclosures shall be made clearly and conspicuously as video supers and in the exact language indicated above; *provided, however,* that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "fifteen minutes" in Disclosure A consistent with such reasonable basis.

V

It is further ordered, That respondent make the following disclosure in any consumer (lay) radio advertisements for Semicid:

Semicid's effectiveness is approximately equal to contraceptive foams.

The above disclosure shall be made clearly and conspicuously and in the exact language indicated above.

VI

It is further ordered, That respondent shall make the following disclosures in ethical (professional) advertisements for Semicid:

- A. Irritation accompanies use of the product in some instances.
- B. Semicid must be inserted according to product instructions and at least fifteen minutes before intercourse.
- C. Semicid is approximately as effective as vaginal foam contraceptives in actual use, but is not as effective as the pill or IUD.

OR

Semicid is not as effective as the pill or IUD in actual use, but is approximately as effective as vaginal foam contraceptives.

Affirmative Disclosures A and B shall be made in language the same or substantially similar to the language set forth above; *provided, however,* that if respondent has a reasonable basis, consisting of valid scientific test(s) or study(ies), respondent may modify the words "fifteen minutes" in Disclosure B consistent with such reasonable basis. Disclosure C shall be made in the exact language indicated above, in typeface at least as large as the typeface of the major portion of the text of the advertising copy.

VII

It is further ordered, That respondent cease and desist from:

- A. Disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States, which contains any of the representations prohibited in Paragraph I.A-D of this Order or fails to include any of the disclosures required by this Order.
- B. Disseminating, or causing to be disseminated, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of Semicid or any OTC contraceptive product in or affecting commerce within the United States, including the Commonwealth of Puerto Rico and any territory or possession of the United States, any advertisement which contains any of the

representations prohibited in Paragraph I.A-D of this Order or fails to include any of the disclosures required by this Order.

VIII

It is further ordered, That in advertisements in languages other than English, exact language disclosures required by this Order shall be made in the non-English language equivalent and convey the same meaning as the English language disclosures.

IX

It is further ordered, That respondent maintain complete business records relative to the manner and form of its compliance with this order. Such records shall include but not be limited to, copies of and dissemination schedules for all advertisements and documents which substantiate or contradict any claim made in advertising, promoting or selling the product. Such records shall be retained for at least three (3) years beyond the last dissemination of any relevant advertisement. Upon thirty (30) days notice respondent shall make any and all such records available to Commission staff for inspection or photocopying.

X

It is further ordered, That respondent forthwith deliver a copy of this Order to each operating division and to all employees or agents now or hereafter engaged in the sale or offering for sale of Semicid or in any aspect of the preparation, creation or placing of advertising for Semicid on behalf of respondent. A statement acknowledging receipt of this Order shall be obtained in each case.

XI

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in said corporation which may affect compliance obligations arising out of this Order.

XII

It is further ordered, That respondent shall, within sixty (60) days

after service upon it of this Order, file with the Commission a report setting forth in detail the manner and form in which it has complied with this Order.

Commissioner Pitofsky did not participate.

IN THE MATTER OF
TED BATES & COMPANY, INC.

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

Docket C-3059. Complaint, March 17, 1981—Decision, March 17, 1981

This consent order requires, among other things, a New York City advertising agency to cease referring to any test or survey of "experts" or "consumers" when making representations regarding the performance, benefit, choice or superiority of a product, unless the referenced test or survey has been scientifically designed, executed and evaluated by experts; and provides substantiation for the representations. The firm is further barred from representing, by reference to a test or survey, that experts or consumers surveyed or tested recommended or used a particular brand of product, without disclosing that an equal or greater percentage of such respondents had not indicated any brand preferences. Additionally, the order requires the company to maintain, for a period of three years, records substantiating advertising claims.

Appearances

For the Commission: *Mitchell Paul* and *Julie Niemasik*.

For the respondent: *Elhanan C. Stone*, in-house counsel.

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 Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondent, has 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. Respondent Ted Bates & Company, Inc. ("Ted Bates") is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 1515 Broadway, New York, New York.

PAR. 2. Respondent Ted Bates was for some time an advertising agency of Standard Brands, Inc. ("Standard Brands") and prepared and placed for publication and caused the dissemination of advertising material, including but not limited to the advertising referred to

herein, to promote the sale of Standard Brands' "Fleischmann's Margarine" products.

PAR. 3. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements concerning "Fleischmann's Margarine" products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of advertisements printed in magazines and newspapers distributed by the mail and across state lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said "Fleischmann's Margarine" products.

PAR. 4. Among the advertisements so disseminated or caused to be disseminated by respondent are the advertisements attached as Exhibits A through D hereof.

PAR. 5. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) When a doctor chooses margarine, chances are it's Fleischmann's;
- b) Twice as many doctors recommend Fleischmann's margarine as any other brand of margarine;
- c) Twice as many doctors personally use Fleischmann's margarine as any other brand of margarine;
- d) Twice as many doctors recommend and personally use Fleischmann's as any other brand of margarine;
- e) Every 15 seconds a doctor recommends Fleischmann's margarine.

PAR. 6. In Exhibits A through D and others substantially similar thereto, respondent has represented directly or by implication that a survey of doctors proves the representations in Paragraph Five above.

PAR. 7. In Exhibits C and D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) Of those doctors who recommend a polyunsaturated margarine, twice as many recommend Fleischmann's as any other brand of margarine;
- b) Of those doctors who recommend a polyunsaturated margarine,

twice as many personally use Fleischmann's as any other brand of margarine;

c) Of those doctors who recommend a polyunsaturated margarine, twice as many recommend and personally use Fleischmann's as any other brand of margarine.

PAR. 8. In Exhibits C and D and others substantially similar thereto, respondent has represented directly or by implication that the aforementioned survey proves the representations in Paragraph Seven above.

PAR. 9. In truth and in fact, the aforementioned survey, conducted for Standard Brands by William Douglas McAdams, Inc. and entitled "Marketing Insights Into Physicians' Attitudes and Opinions Concerning Lipids and Cardiovascular Disease (General Medicine)" (hereinafter referred to as the "McAdams survey"), does not prove the representations in Paragraphs Five and Seven for reasons including but not limited to the following:

a) Of those survey respondents who were asked the question, "Which brand(s) of margarine do you recommend?", most (84.5%) did not state that they recommended Fleischmann's margarine;

b) Of those survey respondents who were asked the question, "Which brand(s) of margarine do you recommend?", most (at least 67.5%) did not recommend a specific name brand of margarine;

c) Of those survey respondents who were asked the question, "Do you use margarine at home? If yes: Which brand?", most (82.2%) did not state that they personally used Fleischmann's margarine;

d) Of those survey respondents who were asked the question, "Do you use a margarine at home? If yes: Which brand?", nearly one-half (47.1%) did not state that they used margarine or were unaware of the specific name brand of the margarine they personally used;

e) The survey respondents neither were asked nor stated the frequency of their recommendations of Fleischmann's margarine to their patients or to anyone else.

Therefore, the representations referred to in Paragraphs Six and Eight were and are unfair and deceptive.

PAR. 10. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent represented directly or by implication that, in responding to the survey, respondents had used their medical expertise in recommending, using, or choosing Fleischmann's Margarine.

PAR. 11. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent represented directly

or by implication that it possessed and relied upon a reasonable basis for the representations in Paragraphs Five, Six, Seven, Eight and Ten at the time of their initial and each subsequent dissemination.

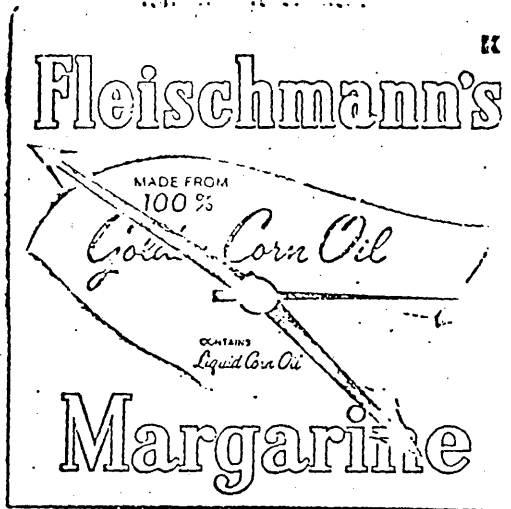
PAR. 12. In truth and in fact, respondent did not possess or rely upon a reasonable basis for the representations in Paragraphs Five, Six, Seven, Eight and Ten at the time of their initial and each subsequent dissemination. Therefore, such representations were and are unfair and deceptive.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ted Bates has been, and now is, in substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with other advertising agencies.

PAR. 14. The use by respondent of the aforesaid unfair and/or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of Fleischmann's margarine manufactured by Standard Brands.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

Every 15 seconds
a doctor recommends
Fleischmann's Margarine



Somewhere right about now a doctor is telling a patient to watch his cholesterol and advising him to eat sensibly. And one product he may recommend is Fleischmann's Margarine. A recent survey shows that twice as many doctors recommend Fleischmann's as any other margarine. In fact, based on the frequency with which those doctors made a recommendation, a doctor somewhere is recommending Fleischmann's Margarine every 15 seconds.

Many of those same doctors practice what they preach. The survey also showed twice as many doctors personally use Fleischmann's at home.



Fleischmann's is the only leading margarine made from 100% corn oil. Fleischmann's was part of a clinical test that lowered serum cholesterol levels an average 17%. In that test Fleischmann's was part of a total dietary program along with reduced fats, fewer eggs and skim milk.

Many doctors also recommend Egg Beaters, Fleischmann's fresh-frozen, cholesterol-free egg substitute. With Egg Beaters instead of two eggs for breakfast you can save 450 mgs. of cholesterol and still enjoy the good taste of eggs.

Can you afford not to serve your family Fleischmann's?

Fine products of Standard Brands

Fleischmann's makes sensible eating delicious.

FL-5505

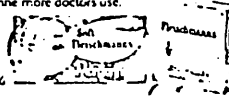
The advertisement features several packages of Fleischmann's Margarine. At the top, a large, stylized hash symbol (#) is prominently displayed. Below it, there are several boxes of margarine, some showing the brand name and logo. The central text reads: "More doctors use and recommend Fleischmann's than any other margarine." Below this headline, there is a section containing several lines of text, likely testimonials or medical endorsements, which are partially obscured by noise. At the bottom right, there is a small circular logo with the number 888 inside. The overall image is high-contrast and grainy.



**When a doctor chooses margarine,
chances are it's Fleischmann's.**

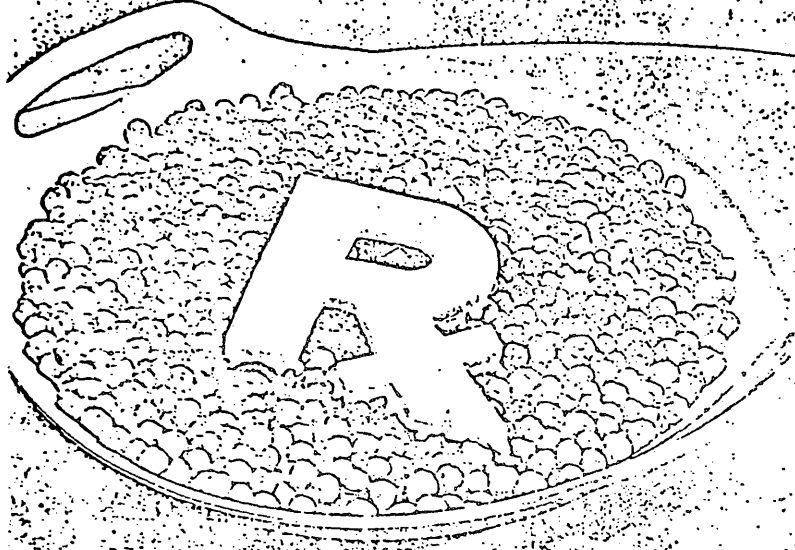
A recent survey of doctors who believe cholesterol levels can be lowered through a total dietary program proved they practice what they preach! Of those doctors who recommend a polyunsaturated margarine to their patients, twice as many recommend and personally use Fleischmann's as any other brand.

But doesn't make you reach for Fleischmann's when you shop, remember it's the only leading margarine made from 100% corn oil. It's high in polyunsaturates and low in saturated fats. Fleischmann's is ideal in a total dietary program designed to lower serum cholesterol. Clinical tests show corn oil is unsurpassed among vegetable oils for lowering serum cholesterol. And 100% corn oil means light, delicious flavor your family will love. Serve your family the margarine more doctors use.



Another fine product of *Heinz of America*

Is the margarine most recommended by doctors?



a recent survey, doctors who recommended polyunsaturated margarines to their patients were asked which brand they chose. Twice as many doctors recommended Fleischmann's® Margarine any other brand.

And twice as many personally used Fleischmann's, too.

Fleischmann's contains no cholesterol, is the only leading margarine made from 97% corn oil. And even it is low in trans fats.

...actually reducing serum cholesterol levels.

Of course, you're aware that no one food will significantly reduce serum cholesterol levels. But used in a total dietary program... along with lean meats, fewer eggs and skim milk... Fleischmann's 100% corn oil margarine can help lower your patients' serum cholesterol levels.

By as much as 17% as shown in clinical tests.

And what's more, Fleischmann's has a light, delicious taste. So compliance to the patients.

You see, like you, we believe an ounce of prevention is worth a pound of cure.



Ask for Egg Beaters® and Fleischmann's Margarine at your favorite restaurant. Another fine product of Borden's.

FL/1312 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such 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 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 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 Ted Bates & Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 1515 Broadway, New York, New York. Ted Bates/New York Division is the sole operating division of Ted Bates & Company, Inc.

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

Part I

It is ordered. That respondent Ted Bates & Company, Inc., a corporation (hereinafter referred to as respondent) and its successors, assigns, officers, agents, representatives and employees, direct-

ly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, of any product whose advertising account is: (1) currently or in the future assigned to Ted Bates/New York Division; or (2) currently or in the future assigned to Ted Bates/New York Division and is transferred from Ted Bates/New York Division to any subsidiary of Ted Bates & Company, Inc., do forthwith cease and desist from:

1. Making representations, directly or by implication, by reference to a survey or test of "experts" or "consumers" (as hereinafter defined in Part II of this Order), or the results thereof, concerning the performance or any characteristic, benefit, recommendation, usage or choice of or other preference for such Product, unless:

(a) such survey or test of experts or consumers is designed, executed and analyzed in a competent and reliable scientific manner; and

(b) such survey or test of experts or consumers substantiates the claim(s) represented by providing a reasonable basis therefor; and

(c) in regard to any claims of superiority based thereon, such survey test of experts or consumers establishes that such Product is superior to each compared product in respect to which the specific representation is made to a degree that will be discernible to or of benefit to consumers or potential consumers to whom the representation is directed.

2. Representing, directly or by implication, by reference to a survey or test that experts or consumers surveyed or tested:

(a) recommend such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not recommend a specific brand of the product, without disclosing such fact(s); or

(b) use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not use a specific brand of the product, without disclosing such fact(s); or

(c) use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents are not aware of the specific brand of the product which they do use, without disclosing such fact(s).

3. Representing, directly or by implication, by reference to a

survey or test of experts, that experts recommend, use, choose, or otherwise prefer such Product in any respect unless:

(a) such experts in fact possess the expertise to evaluate such Product with respect to such representation; and

(b) such experts actually exercised their expertise by evaluating or testing such Product, and based their stated preferences, findings, or opinions on such exercise of their expertise; and

(c) such representation, to the extent it expresses or implies a product comparison, is supported by an actual comparative evaluation or test by such experts; and

(d) such representation, to the extent it expresses or implies that such Product is superior to competing products, is supported by an actual comparative evaluation or test by such experts and by a conclusion therefrom that such Product is superior in fact to the competing products with respect to the feature(s) so represented as compared.

4. Representing, directly or by implication, by reference to a survey or test of consumers that consumers recommend, use, choose, or otherwise prefer such Product in any respect unless and only to the extent that respondent has a reasonable basis for such representation. A reasonable basis shall consist of any competent and reliable evidence which substantiates a statement or representation.

5. Failing to maintain records

(a) which provided the basis upon which respondent relied at the time of the initial and each subsequent dissemination of the claim; and

(b) which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by respondent or any division or subsidiary of respondent.

Part II

For purposes of this Order, each of the terms listed below is defined as follows:

1. The term *experts* shall be deemed to be an individual(s), group(s) or institution(s), possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

2. The term *consumers* shall be deemed to be any person(s) who is a user or potential user of the product.

3. An advertising claim which is a personal endorsement of a product reflecting solely the subjective opinion of the endorser shall not be deemed to be a test.

Part III

It shall be an affirmative defense to any compliance action brought pursuant to this Order alleging that an advertisement was, in whole or in part, unsubstantiated, or not supported by a reasonable basis, for respondent to show that, prior to disseminating an advertisement containing a statement or representation challenged in such compliance action, respondent submitted to its client in writing all the claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that the advertiser possessed and relied upon a reasonable basis for those claims.

It shall be an affirmative defense to any compliance action brought pursuant to this Order alleging that an advertisement was, in whole or in part, false, misleading or deceptive, for respondent to show that, prior to disseminating an advertisement containing a statement or representation challenged in such compliance action, respondent submitted to its client in writing all the claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that those claims were neither false, misleading nor deceptive when placed by respondent.

Provided, however, that nothing in this Order shall be deemed to deny or limit respondent with respect to any other right, defense, or other affirmative defense to which respondent may otherwise be entitled by law in such compliance action or any other action; nor shall any inference adverse to respondent be drawn in any case from its failure to invoke this paragraph or to rely on the procedures provided herein.

It is further ordered, That respondent shall, within 60 days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

It is further ordered, That respondent shall forthwith distribute a copy of this Order to the senior executive officer of each account assigned to respondent's Ted Bates/New York Division and the executive in charge of research for such Division.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the 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 this Order.

IN THE MATTER OF
STANDARD BRANDS, INC.

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

Docket C-3060. Complaint, March 17, 1981—Decision, March 17, 1981

This consent order requires, among other things, a New York City manufacturer of various products, including "Fleischmann's Margarine" products, to cease referring to any test or survey when making representations regarding the performance, benefit, choice or superiority of a product, unless referenced test or survey has been scientifically designed, executed and analyzed; and provides substantiation for those claims. The firm is further barred from representing that survey respondents recommend or use a particular brand of product more often than a competitive brand, unless the company discloses the fact that an equal or greater percentage of such respondents have no brand preference. Additionally, the order requires the firm to maintain, for a period of three years, records substantiating advertising claims.

Appearances

For the Commission: *Mitchell Paul and Julie Niemasik.*

For the respondent: *C. Henry Freas, Jr.,* in-house counsel.

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 Standard Brands, Inc., a corporation hereinafter referred to as respondent, has 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. Respondent Standard Brands, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 625 Madison Ave., New York, New York.

PAR. 2. Standard Brands, Inc. is now, and for some time in the past has been, engaged in the manufacture, distribution, advertising and sale of various products, including "Fleischmann's Margarine" products.

PAR. 3. Respondent Standard Brands causes the said products, when sold, to be transported from its place of business in various

States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Standard Brands maintains, and at all times mentioned herein has maintained, a course of trade in said products in and affecting commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements concerning "Fleischmann's Margarine" products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of advertisements printed in magazines and newspapers distributed by the mail and across state lines and transmitted by television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said "Fleischmann's Margarine" products.

PAR. 5. Among the advertisements so disseminated or caused to be disseminated by respondent are the advertisements attached as Exhibits A through D hereof.

PAR. 6. In Exhibits A through D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) When a doctor chooses margarine, chances are it's Fleischmann's;
- b) Twice as many doctors recommend Fleischmann's margarine as any other brand of margarine;
- c) Twice as many doctors personally use Fleischmann's margarine as any other brand of margarine;
- d) Twice as many doctors recommend and personally use Fleischmann's as any other brand of margarine;
- e) Every 15 seconds a doctor recommends Fleischmann's margarine.

PAR. 7. In Exhibits A through D and others substantially similar thereto, respondent has represented directly or by implication that a survey of doctors proves the representations in Paragraph Six above.

PAR. 8. In Exhibits C and D and others substantially similar thereto, disseminated as aforesaid, respondent has represented directly or by implication that:

- a) Of those doctors who recommend a polyunsaturated margarine,

