

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)	
)	
SCHERING-PLOUGH HEALTHCARE)	DOCKET NO. C-3741
PRODUCTS, INC.)	DECISION AND ORDER
a corporation.)	
)	
)	

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 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 violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 complaint, a statement that the signing of the 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 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 § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Schering-Plough Healthcare Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office or place of business at 3030 Jackson Avenue, Memphis, Tennessee 38151.

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

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

A. "Sun protection product" shall mean any product intended for, or promoted as, providing users with protection against the harmful effects of sun exposure or ultraviolet radiation, including but not limited to products containing a sunscreen ingredient.

B. "Children's sun protection product" shall mean any sun protection product that uses the word "babies," "children," "kids," or words of similar import in the name or promotion of the product, or that is advertised or promoted for use primarily by children under the age of twelve (12).

C. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

IT IS ORDERED that respondent, Schering-Plough Healthcare Products, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Coppertone Kids or any other children's sun protection product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

A. The length of time that a single application of the product will provide protection from the sun for individuals engaged in sustained vigorous activity in and out of the water; or

B. The efficacy of such product in providing protection against any harmful effect of sun exposure or ultraviolet radiation,

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, Schering-Plough Healthcare Products, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any sun protection product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

III.

Nothing in this Order shall prohibit respondent from making any representation for any sun protection product that is specifically permitted in labeling for any such product under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IV.

IT IS FURTHER ORDERED that respondent shall design, produce and print a color brochure concerning the importance of sunscreen usage by children, which contains all of the following messages or themes:

- A. The importance of sunscreens in preventing skin damage, including skin cancer, sunburn and premature skin aging;
- B. Regular use of a high SPF sunscreen during childhood can significantly reduce the risk of certain types of skin cancers later in life;
- C. A single bad sunburn during childhood can significantly increase a child's risk of developing skin cancer later in life;
- D. The importance of proper application of sunscreens;
- E. The need to reapply sunscreens after toweling or sustained vigorous activity; and

- F. The need to use sunscreens during outdoor activities -- not only in connection with water activities.

Respondent shall submit a draft of the brochure, and a draft plan for its dissemination, no later than sixty (60) days after the date of service of this Order, to the Associate Director of the Commission's Division of Advertising Practices for review and approval. No later than sixty (60) days after the Associate Director's approval of the brochure and the dissemination plan, respondent shall disseminate 150,000 copies of the brochure to parents or organizations with access to parents or others who work with or care for children under the age of 12.

V.

IT IS FURTHER ORDERED that, for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating any such representation; and
- B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers or governmental organizations.

VI.

IT IS FURTHER ORDERED that the provisions of this Order shall not apply to any label or labeling printed prior to the date of service of this Order and shipped by respondent to purchasers for resale prior to one hundred (100) days after service of this Order.

VII.

IT IS FURTHER ORDERED that respondent, its successors and assigns, shall:

- A. Within thirty (30) days after the date of service of this Order, provide a copy of this Order to each of respondent's current principals, officers, and directors, and to all personnel, managers, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

- B. For a period of five (5) years from the date of service of this Order, provide a copy of this Order to each of respondent's principals, officers, and directors, and to all personnel, managers, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order within three (3) days after the person assumes his or her position.

VIII.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, 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 under this Order.

IX.

THIS ORDER will terminate on May 16, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; **provided, however**, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

X.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: May 16, 1997