

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from proposed respondents Johnson & Collins Research, Inc. and Gregor A. von Ehrenfels, an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for "Total Body Reshaping System" and "Super Total Body Reshaping System" (collectively referred to herein as "TBRS"). These products are booklets or pamphlets containing advice on dieting and exercise in order to achieve weight loss and body toning. The advertisements ran in teen-oriented magazines.

The Commission's complaint charges that proposed respondents falsely represented that users of the TBRS are not required to consciously diet to lose weight. The complaint also alleges that proposed respondents lacked a reasonable basis when they made the following claims: (1) TBRS is effective in causing fast and significant weight loss; (2) TBRS is effective in significantly reducing body fat and cellulite; (3) TBRS is effective in causing weight loss, fat reduction, and increased muscle tone in specific, desired areas of the body; and (4) TBRS is effective in burning excess calories, modifying caloric intake, and converting food into energy instead of fat. Finally, the complaint alleges that, in light of their representations, proposed respondents' failure to disclose in advertisements that TBRS consists only of booklets or pamphlets containing advice concerning techniques for reducing caloric intake and/or increasing exercise, and that reducing caloric intake and/or increasing exercise is required to lose weight, was a deceptive practice.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that TBRS, or any substantially similar product, does not require dieting. Part II requires proposed respondents to

possess competent and reliable scientific evidence before making any of the representations alleged to be unsubstantiated in the complaint for any weight-loss product; as well as any representation that any such product has any effect on users' weight, body size or shape, body measurements, or appetite.

Part III of the proposed order provides that nothing in Parts I and II prohibits proposed respondents from making representations which promote the sale of books and other publications, provided that, the advertising only purports to express the opinion of the author or to quote the contents of the publication; the advertising discloses the source of the statements quoted or derived from the contents of the publication; and the advertising discloses the author to be the source of the opinions expressed about the publication. Part III does not apply to any publication or its advertising that is used to promote the sale of some other product as part of a commercial scheme.

Part IV prohibits proposed respondents from representing that TBRS, or any substantially similar product, has any effect on weight or body size, unless they disclose clearly and prominently that the product consists solely of a booklet or pamphlet containing information and advice on weight loss. Part V requires proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary.

Part VI requires Johnson & Collins Research to distribute a copy of the order to certain current and future company personnel. Part VII requires proposed respondents to maintain, for five years, all materials that support, contradict, qualify, or call into question any representations they make that are covered by the proposed order. Under Part VIII of the proposed order, Johnson & Collins Research is required to notify the Federal Trade Commission at least thirty days prior to any proposed change in its corporate structure that may affect compliance with the order's obligations. Part IX requires that Gregor A. von Ehrenfels, for a period of three years, notify the Commission of his affiliation with any new business or employment involving the advertising, offering for sale, sale, or distribution of any weight-loss product. Part X provides for the termination of the order after twenty years under certain circumstances. Part XI obligates proposed respondents to

file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96-7292 Filed 3-25-96; 8:45 am]

BILLING CODE 6750-01-M

[File No. 952-3099]

NW Ayer, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the New York City-based advertising agency from misrepresenting the absolute or comparative amounts of cholesterol, total fat, saturated fat, or any other fatty acid in eggs or in any meat, dairy, or poultry product and from misrepresenting the existence or results of any test or study. The consent agreement settles allegations arising from Ayer's role in creating advertisements that conveyed allegedly deceptive claims regarding the effect of Eggland's Best eggs on blood cholesterol.

DATES: Comments must be received on or before May 28, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

C. Lee Peeler, Federal Trade Commission, S-4002, 6th and Pennsylvania Ave, NW., Washington, DC, 202-326-3090.
Justin Dingfelder, Federal Trade Commission, S-4302, 6th and Pennsylvania Ave., NW., Washington, DC, 202-326-3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

[File No. 952 3099]

In the Matter of *N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc.* a corporation; Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of *N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc.*, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between *N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc.*, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent *N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc.* is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Eighth Avenue, New York, New York 10019.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its

complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this order, the phrase "covered food product" shall mean only eggs and any meat, dairy, or poultry product. For purposes of this definition, "meat product" shall include any food product for human consumption that is

made in whole or in substantial part of the meat of cattle, sheep, swine, or goats; "dairy product" shall include any food product for human consumption that is made in whole or in substantial part from milk; and "poultry product" shall include any food product for human consumption that is made in whole or in substantial part of the meat of any fowl.

I

It is ordered that respondent *N.W. Ayer & Son, Inc. d/b/a NW Ayer, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food 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, through numerical or descriptive terms or any other means, the absolute or comparative amount of cholesterol, total fat, saturated fat or any other fatty acid in such covered food product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, or, if applicable, the United States Department of Agriculture, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in such regulation.

II

It is further ordered that respondent *N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc.*, 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative effect of such covered food product on serum cholesterol, whether or not such covered food product is consumed as part of an unrestricted diet or as part of any specific dietary regimen, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific

evidence substantiating such representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative health benefits of such covered food product, including but not limited to its effect on heart disease, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation.

IV

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any covered food 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.

V

Nothing in this order shall prohibit respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to

the Federal Meat Inspection Act or the Poultry Products Inspection Act.

VI

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this order, respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., 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 such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation, including complaints from consumers and complaints or inquiries from governmental organizations.

VII

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall, within thirty (30) days after service upon it of this order, distribute a copy of the order to each of its operating divisions, each of its managerial employees, and each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

VIII

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

IX

It is further ordered that respondent N.W. Ayer & Son, Inc. d/b/a NW Ayer, Inc., shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X

This order will terminate twenty years from the date of its issuance, 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.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from NW Ayer & Son, Inc. d/b/a NW Ayer, Inc. ("Ayer").

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising claims made by Ayer, an advertising agency, for eggs marketed by Egglund's Best, Inc. Egglund's Best, Inc. is subject to a Commission consent order (Docket No. C-3520), issued on August 15, 1994. A separate consent decree with Egglund's Best regarding alleged violations of that consent order relating to the same advertisements will be filed in United States District Court.

The Commission's complaint in this matter charges Ayer with engaging in unfair or deceptive practices in

connection with the advertising of Eggland's Best eggs. According to the complaint, Ayer represented, without adequate substantiation, that eating Eggland's Best eggs (1) will not increase serum cholesterol, and (2) will not increase serum cholesterol as much as eating ordinary eggs. The complaint also alleges that Ayer falsely represented that (1) clinical studies have proven that adding twelve Eggland's Best eggs per week to a low-fat diet does not increase serum cholesterol, (2) Eggland's Best eggs are low in saturated fat, and (3) Eggland's Best eggs are lower in saturated fat than ordinary eggs.

Finally, the complaint alleges that Ayer knew or should have known that these claims were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Ayer from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Ayer from misrepresenting the absolute or comparative amount of cholesterol, total fat, saturated fat, or any other fatty acid in eggs, or any meat, dairy, or poultry product ("covered food product"). Part I also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration ("FDA") or United States Department of Agriculture ("USDA") must comply with the qualifying amount set forth in that regulation.

Part II of the order prohibits Ayer from making any representation about the absolute or comparative effect of any covered food product or serum cholesterol unless it possesses and relies upon competent and reliable scientific evidence substantiating the representation at the time it is made.

Part III of the order prohibits Ayer from making any representation about the absolute or comparative health benefits of the covered food product unless it possesses and relies upon competent and reliable scientific evidence substantiating the representation at the time it is made.

Part IV of the order prohibits Ayer from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test or study.

Part V of the order provides that representations that would be specifically permitted in food labeling, under certain regulations issued by the FDA or USDA are not prohibited.

Part VI of the order requires Ayer to maintain copies of all materials relied upon in making any representation covered by the order for five years.

Part VII of the order requires Ayer to distribute copies of the order to its operating divisions and to various officers, agents and representatives of Ayer.

Part VIII of the order requires Ayer to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part IX of the order requires Ayer to file with the Commission one or more reports detailing compliance with the order.

Part X of the order is a "sunset" provision, stating that the order will terminate twenty years from the date it is issued unless a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96-7291 Filed 3-25-96; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHs.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requirement abstracted below has been submitted to the Office of Management and budget (OMB) for review and comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for

which approval has expired; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill; *Form No.:* HCFA-1450; *Use:* Medicare reimbursement of claims. This form is the standardized form used in the Medicare/Medicaid program to apply for reimbursement for covered services by all providers that accept Medicare/Medicaid assigned claims. It will reduce cost and administrative burdens associated with claims since only one coding system is used and maintained. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal Government, and State, local or tribal government; *Number of Respondents:* 123,432,041; *Total Annual Hours Requested:* 1,890,490.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 14, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96-7222 Filed 3-25-96; 8:45 am]

BILLING CODE 4120-03-P

National Institutes of Health

Proposed Data Collection Available for Public Comment and Recommendations

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that Federal agencies provide a 60-day notice in the Federal Register concerning each proposed collection of information. The National Institute of Dental Research (NIDR) of the National Institutes of Health is publishing this notice to solicit public comment on a proposed data collection: 1996-1997 National Survey of the Oral Health of U.S. School Children (OHSC III).

Comments are invited on: (a) The need for the information (b) its practical utility, (c) the accuracy of the agency's burden estimate, and (d) ways to minimize burden on respondents. Send comments to Dr. Thomas F. Drury,