

STATEMENT OF COMMISSIONER ORSON SWINDLE CONCURRING IN PART AND DISSENTING IN PART

in Novartis Corporation et al., Dkt. No. 9279

The Commission recently issued a decision in this case in which it concluded that the respondents made the unsubstantiated claim that Doan's is superior to other over-the-counter analgesics in treating back pain. To remedy this deception, the Commission ordered the respondents to make a specified corrective statement in Doan's advertising (except radio and television ads of 15 seconds or less in duration), including on product packages. The Order requires that the corrective statement be made for one year and until respondent has expended on Doan's advertising a sum equal to the average amount spent annually during the eight years of the challenged campaign." I dissented from the imposition of this corrective advertising remedy because, among other things, the evidence did not prove that any false belief created by the deceptive advertising had lingered and was likely to continue to linger until July 2000, that is, until the end of the one-year period during which corrective advertising was required. *Novartis Corporation et al., Dkt. No. 9279 (May 13, 1999) (Statement of Commissioner Orson Swindle, concurring in part and dissenting in part).*

The respondents have petitioned the Commission to reconsider the corrective advertising

whatever lingering false belief the deceptive advertising campaign created. The majority specifically reasons that because the "deceptive advertising campaign lasted for eight years, the corrective advertising order should last no longer than an equivalent number of years after that campaign ended." Novartis Corporation et al. v. FTC, No. 9279, Order Modifying Order, Denying Petition for Reconsideration, and Denying as Moot Application for Stay at 2 (July 2, 1999). Because the respondents have not run their deceptive advertisements since May 1996, that is, three years ago, the corrective advertising provision "will remain in effect for five additional years." *Id.* The practical effect of the modification is that the respondents very likely will have to make the corrective statement on Doan's packages until five years after the ~~modification~~ becomes effective, that is, until September 2004.

3. Because the Commission has modified the original Order, I support the Commission's decision to deny the respondents' motion to stay the original Order since the motion is moot.