

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
JOHNSON & JOHNSON)
CONSUMER PRODUCTS, INC.,)
)
a corporation.)
)
)
)

DOCKET NO. C-3636

COMPLAINT

The Federal Trade Commission, having reason to believe that Johnson & Johnson Consumer Products, Inc., ("respondent"), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent Johnson & Johnson Consumer Products, Inc., a wholly-owned subsidiary of Johnson & Johnson, is a New Jersey corporation with its offices and principal place of business at 1999 Grandview Road, Skillman, New Jersey 08588.

PARAGRAPH TWO: Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed K-Y Plus Nonoxynol-9 Spermicidal Lubricant ("K-Y Plus"), and other products to consumers. K-Y Plus is a "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PARAGRAPH THREE: The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondent has disseminated or has caused to be disseminated advertisements for K-Y Plus, including but not necessarily limited to the attached Exhibits A-C. These advertisements contain the following statements:

- A. "K-Y Plus, because one out of every six condoms develops tiny holes during use. Holes invisible to the naked eye, but big enough for sperm, HIV and other viruses to pass through. K-Y Plus Brand Spermicidal Lubricant with Nonoxynol-9 provides double protection. First, the natural-feeling lubrication guards your condom against friction that can cause holes. Second, it contains a highly effective spermicide, doctor-recommended Nonoxynol-9, to give you peace of mind in case your condom fails. Ask your doctor about K-Y Plus. For your own protection.

Condom Insurance.

The safer choice."

[Exhibit A (Print: "Condom Insurance")]

- B. **"New K-Y Plus, because one out of six condoms fails.** Anyone can make a mistake, or a condom can develop tiny holes during use - invisible to the eye, but big enough for sperm, HIV and other viruses to pass through. So new K-Y Plus Brand with Nonoxynol-9 just makes good sense for personal lubrication. It provides double protection.

First, the clean-rinsing and natural-feeling lubrication of K-Y Plus guards your condom against friction that can cause invisible holes. Second, it contains a highly effective spermicide, doctor-recommended Nonoxynol-9, to give you peace of mind in case your condom fails.

Introducing condom insurance.

The safer choice."

[Exhibit B (Print: "Introducing Condom Insurance.")]

- C. "Studies show that up to 18.5% of condoms will fail - leaving patients vulnerable to pregnancy and STDs.

. . . .
Like regular K-Y BRAND Jelly - available as always - new K-Y PLUS is crystal clear and provides safe water-soluble lubrication to guard against friction and condom breakage. New K-Y PLUS also contains proven nonoxynol-9 for extra protection against unplanned pregnancy.

**NEW K-Y PLUS Spermicidal Lubricant
An extra layer of protection."**

[Exhibit C (Print: "Protect the Protector")]

PARAGRAPH FIVE: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisement attached as Exhibit C, respondent has represented, directly or by implication, that scientific tests or studies show that up to eighteen and one half percent of condoms will fail, leaving users vulnerable to pregnancy and sexually transmitted diseases.

PARAGRAPH SIX: In truth and in fact, scientific tests or studies do not show that eighteen and one half percent of condoms will fail, leaving users vulnerable to pregnancy and sexually transmitted diseases. Therefore, the representation set forth in PARAGRAPH FIVE was, and is, false and misleading.

PARAGRAPH SEVEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that:

- A. One out of six condoms develops tiny holes during use which are big enough for sperm, HIV and other viruses to pass through.
- B. One out of six condoms fails due to mistakes in using condoms or through the development of tiny holes during use.
- C. K-Y Plus provides protection against the development of tiny holes in condoms during use.
- D. K-Y Plus provides protection against HIV and other viruses.

PARAGRAPH EIGHT: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that at the time it made the representations set forth in PARAGRAPHS FIVE and SEVEN, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH NINE: In truth and in fact, at the time it made the representations set forth in PARAGRAPHS FIVE and SEVEN, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH EIGHT was, and is, false and misleading.

PARAGRAPH TEN: The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, on this eighteenth day of January, 1996, has issued this complaint against respondent.

By the Commission.



Donald S. Clark
Secretary

SEAL:



Condom Insurance

K-Y•Plus, because one out of every six condoms develops tiny holes during use. Holes invisible to the naked eye, but big enough for sperm, HIV and other viruses to pass through. K-Y•Plus Brand Spermicidal Lubricant with Nonoxynol-9 provides double protection. First, the natural-feeling lubrication guards your condom against friction that can cause holes. Second, it contains a highly effective spermicide, doctor-recommended Nonoxynol-9, to give you peace of mind in case your condom fails. Ask your doctor about K-Y Plus. For your own protection.



The safer choice™

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This advertisement created by:

LINTAS:NEW YORK

Ad No: P4-1129

Client: Johnson & John

Title: Condom Insurance.

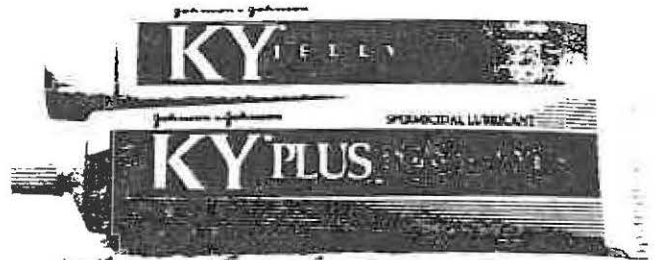
EXHIBIT A



Introducing
condom insurance.

New K-Y® Plus, because one out of six condoms fails. Anyone can make a mistake, or a condom can develop tiny holes during use — invisible to the eye, but big enough for sperm, HIV and other viruses to pass through. So new K-Y® Plus Brand with Nonoxynol-9 just makes good sense for personal lubrication. It provides double protection.

First, the clean-rinsing and natural-feeling lubrication of K-Y® Plus guards your condom against friction that can cause invisible holes. Second, it contains a highly effective spermicide, doctor-recommended Nonoxynol-9, to give you peace of mind in case your condom fails. And if you don't need a spermicide, regular K-Y® Brand Jelly is the water-based lubricant that won't erode latex condoms like petroleum jelly and other oil-based products can. Ask your doctor about regular K-Y® Jelly and new K-Y® Plus.



The safer choice

EXHIBIT B

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N O W

Protect the Protector

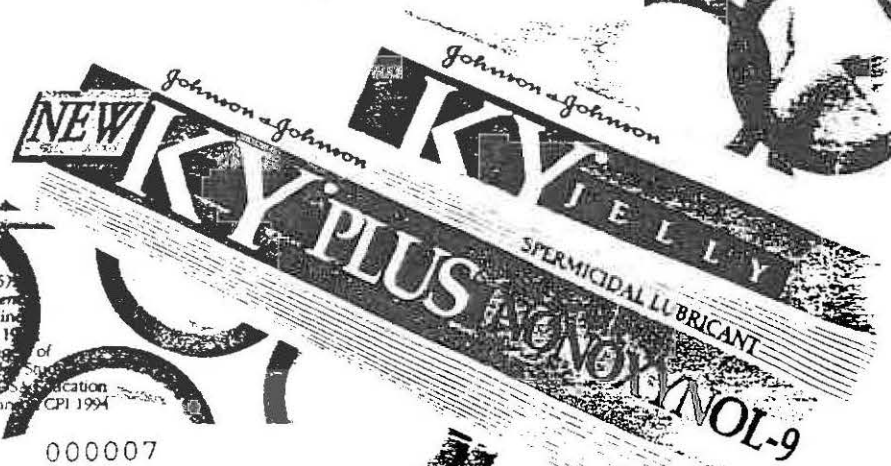
It's a risky world out there for some of your sexually active patients. That's why you recommend the condom. But the condom can also be vulnerable. That's why your patients need new K-Y® PLUS BRAND Spermicidal Lubricant with nonoxynol-9.

Studies show that up to 18.5% of condoms will fail¹—leaving patients vulnerable to pregnancy and STDs. Choosing petroleum- or oil-based products for lubrication is a major factor.²⁻⁴ And about 20% of condom users make that risky choice.⁵ Studies show that:

Within just 60 seconds of exposure to oil-based products, latex condoms suffer a 90% loss of strength,³ which may cause microscopic rips and tears. In contrast, latex condoms maintained their full integrity even after 30 minutes of exposure to new K-Y PLUS.⁶

By protecting the latex condom, new K-Y PLUS helps prevent pregnancy and STDs. Like regular K-Y® BRAND Jelly—available as always—new K-Y PLUS is crystal clear and provides safe water-soluble lubrication to guard against friction and condom breakage. New K-Y PLUS also contains proven nonoxynol-9 for extra protection against unplanned pregnancy.

NEW K-Y PLUS Spermicidal Lubricant
An extra layer of protection.



References: 1. Choice of contraceptive. *The Medical Letter*, 1992;34(885):111-114. 2. Azberger FW]. Condoms. *Technical Guide. The Female Patient*, 1993;18:16-26. 3. Fowler B, Coulson JH, Bernstein GS, Nakamura RM. Mineral oil lubricants and condom deterioration. *Contraception*, 1979;24:39(1):95-101. 4. White H, Shuler J, Kowalski A, et al. J. Morris C. Damage of lubricants to latex condoms. *Contraception*, 1988;33:19. 5. The Ropes Organization. Data base. *J&J CPI*, 1992. 6. Fowler B. MAKING OF lubrication. *J&J CPI*, 1993.

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