

June 20, 2012

Honorable Jon Leibowitz, Chairman
Honorable J. Thomas Rosch, Commissioner
Honorable Edith Ramirez, Commissioner
Honorable Julie Brill, Commissioner
Honorable Maureen Ohlhausen, Commissioner
The Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

RE: Merck & Co. Inc. and Dreamworks Animation LLC's Unfair and Deceptive Marketing of Children's Claritin Allergy Medication to Children

Dear Mr. Chairman and Members of the Commission:

We are writing to request that the Federal Trade Commission use its authority under Section 5 of the Federal Trade Commission Act to investigate Merck & Co. Inc.'s current use of Dreamworks Animation LLC's *Madagascar 3: Europe's Most Wanted* licensed characters to market its Grape-Flavored Chewable Children's Claritin tablets and grape-flavored syrup over-the-counter (OTC) allergy medication to children (Exhibit A). This campaign is in violation of longstanding FTC precedent to protect children from child-directed marketing of OTC supplements and, by extension, OTC drugs. Dreamworks licensed its Madagascar characters for use on a number of children's food products including General Mills' fruit-flavored gummy snacks (Exhibit B) and fruit-flavored Airheads candy (Exhibit C). The use of the same licensed characters on fruit-flavored OTC allergy medication, children's candy and children's gummy snacks creates a very real danger of product confusion and may induce children to over-consume Grape-Flavored Children's Claritin allergy medication.

The Commission's Prohibition of Child-Directed Marketing of Vitamin Supplements to Children Logically Extends to OTC Drugs

The Commission addressed child-directed advertising of vitamin supplements in *In re Hudson Pharmaceutical Co.*, 89 F.T.C. 82 (1977). At issue in *Hudson Pharmaceutical* were advertisements on children's television and print advertisements in comic books using Spider-Man to market vitamins directly to children. The Commission clearly stated that "[c]hildren are unqualified by age or experience to decide for themselves whether or not they need or should use vitamin supplements in general or an advertised brand in particular, thus the directing of advertisements of...vitamin supplements to children is in itself an unfair practice."¹ The same holds true, if not more so, with respect to OTC drugs. Adult caregivers are the appropriate audience for information about such products. Marketing materials designed to appeal to children, like those used in Merck's *Madagascar 3* campaign for its Children's Claritin products, violate the Commission's longstanding precedent in this area and are inherently unfair and deceptive.

¹ *In re Hudson Pharmaceutical Co.*, 89 F.T.C. 82, 86 (1977).

Merck's *Madagascar 3* Grape-Flavored Children's Claritin Campaign

Merck's current campaign was designed to coincide with the June 2012 release of Dreamworks' *Madagascar 3* children's movie. *Hudson Pharmaceutical* contains a limited exception for depictions of licensed characters on product packaging. Merck's *Madagascar 3* campaign extends well beyond product packaging. The advertising agency Squat Design described the Children's Claritin tie-in as follows:

As Children's Claritin first entertainment product tie-in, Claritin created customized *Madagascar 3* packaging for their Grape Chewables and Grape Syrup products. Additionally, there is a "Free Movie Ticket Offer" promotion with a Claritin purchase at Walgreens, Claritin's Facebook page offers a free, downloadable *Madagascar* Inspired Circus Activity Guide and a *Madagascar* themed "Circus Stackers" game, and other traditional advertising means and social media programs.²

There are eight activity guides for free download via Facebook (Exhibit D), and product packaging of Children's Claritin included "5 Free Stickers" of *Madagascar* characters (Exhibit A).

In addition, Merck activated its "Children's Claritin Mom Crew" members to hold *Madagascar*-themed viewing parties. Mom Crew members are bloggers who have been selected by Merck to be product endorsers. With respect to the *Madagascar 3* campaign, one Mom Crew member wrote on her blog that Merck distributed "full size Claritin product featuring *Madagascar 3*, product samples and coupons to share with my mommy friends, stickers for the kids, popcorn boxes and *Madagascar 1* and *2* DVDs"³ (Exhibit E).

PHAI conducted a Google search using the terms "Claritin mom crew *Madagascar*." Of the first 40 search results, 31 were unique accounts of Children's Claritin *Madagascar* viewing parties held by Claritin Mom Crew members from across the country (Exhibit F). Photographs posted on Mom Crew member blogs show tables with children's food and product samples of Children's Claritin Grape-Flavored Chewable tablets (Exhibit G), party favors that mixed toys, stickers and other favors with Children's Claritin samples (Exhibit H), and children holding Claritin product samples (Exhibit I).

One Claritin Mom Crew member wrote that after receiving her Children's Claritin *Madagascar* viewing party materials:

I...decided to host our *Madagascar* Viewing Party and at my two youngest[] [children's] preschool.... There are about 6 kids in their class so this was a perfect number to watch the movie and have some fun! I decided to make the party fun and I

² *Top 15 "Madagascar 3: Europe's Most Wanted" Advertising Campaigns*. Squatters' Talk [blog] (June 8, 2012). Retrieved from: <http://squatdesign.com/blog/squat-design-advertising-top-15-madagascar-3-europes-most-wanted-marketing-campaigns/>.

³ *Children's Claritin Mom Crew Madagascar Viewing Party*. DustinNikki Mommy of Three [blog] (June 2, 2012). Retrieved from: <http://www.dustinnikimommyofthree.com/2012/06/childrens-claritin-mom-crew-madagascar-viewing-party.html>.

made popcorn (organic of course) and we had Madagascar coloring pages AND I gave out a TON of Claritin Samples for my parents.⁴

She made a photo-montage showing her children's pre-school classroom and the top of a child's head looking down onto a table covered with Children's Claritin samples (Exhibit J).

Merck's campaign materials are designed to appeal to children by making Children's Claritin branded *Madagascar 3* viewing guides, games and activities for children featuring Madagascar licensed characters on boxes of Children's Claritin, including stickers with boxes of Children's Claritin, and using its network of mom endorsers to bring groups of children together for Children's Claritin-themed viewing parties of movies from Dreamworks' Madagascar series.

The Use of Madagascar Licensed Characters Simultaneously on Grape-Flavored Children's Claritin, Fruit-Flavored Airheads Candy and General Mills' Fruit-Flavored Gummy Snacks Creates a Very Real Danger of Product Confusion

The central issue in *Hudson Pharmaceutical* was the danger that child-directed marketing of vitamins had "the tendency and capacity to induce children to take excessive amounts of vitamin supplements which may cause injury to their health."⁵ Merck's use of Madagascar characters in its marketing campaign for OTC Grape-Flavored Children's Claritin allergy chewable tablets and syrup creates the same danger.

Dreamworks licensed its Madagascar characters to at least 15 major companies in advance of the *Madagascar 3* movie's June 2012 release. These include the following children's food products: Dole bananas, Airheads candy, Blue Bunny ice cream bars, General Mills (Betty Crocker label) fruit snacks, McDonald's Happy Meals, House Foods organic tofu, Lance sandwich crackers, and Sun-Maid raisin mini-packs.⁶ Dreamworks Madagascar characters are also featured in the Viacom cartoon series *The Penguins of Madagascar* shown on the Nick children's television channel. *The Penguins of Madagascar* are licensed to General Mills (Betty Crocker label) fruit snacks.

Commercial advertisements for *Madagascar 3*-themed Airheads candy are currently running on the children's cable television channel Nick. The use of Madagascar characters on fruit-flavored Airheads candy and fruit-flavored gummy snacks creates a situation whereby children may perceive Grape-Flavored Children's Claritin chewable tablets and syrup as candy.

As a case in point, one Claritin Mom Crew member gave out General Mills' *The Penguins of Madagascar* gummy fruit snacks at her Children's Claritin Madagascar viewing party. As she stated on her blog: "I set up a small gathering of friends, complete with popcorn, Claritin samples (because allergies are still going crazy here in Florida), and penguin gummies"⁷ (Exhibit K). The number of

⁴ *Madagascar Viewing Party*. Bossy Girl in the City [blog] (June 4, 2012). Retrieved from: <http://bossygirl1980.com/2012/06/madagascar-viewing-party/>.

⁵ *In re Hudson Pharmaceutical Co.*, 89 F.T.C. 82, 86 (1977).

⁶ *Top 15 "Madagascar 3: Europe's Most Wanted" Advertising Campaigns*. Squatters' Talk [blog] (June 8, 2012). Retrieved from: <http://squatdesign.com/blog/squat-design-advertising-top-15-madagascar-3-europes-most-wanted-marketing-campaigns/>.

⁷ *Claritin & Madagascar 3 Preview Party*. Not Your Typical Mommy [blog] (June 2, 2012). Retrieved from: <http://www.notyourtypicalmommy.com/2012/06/claritin-madagascar-3-preview-party.html>.

children's food products featuring Madagascar licensed characters creates a very real danger of product confusion that may lead children to over-consume Merck's grape-flavored allergy medication.

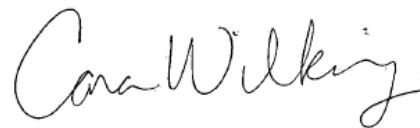
The Use of Licensed Characters to Market OTC Drugs Unfairly and Deceptively Generates Child Requests for OTC Drugs

As the Commission found in *Hudson Pharmaceutical*, children are unqualified to know whether or not they need or should use generic, let alone brand-name, vitamins or, by extension, OTC drugs. Merck's use of Madagascar characters exploits this vulnerability and is unfair and deceptive. The Madagascar campaign for Children's Claritin may induce children to request Merck's brand-name OTC drug, describe symptoms in order to get a sticker or to get medicine perceived to be candy. In addition, the inclusion of stickers with Children's Claritin is an invitation for children to seek out the drug on their own.

Conclusion

Merck's *Madagascar 3* campaign is its "first entertainment product tie-in" for Children's Claritin. Before this trade practice becomes widespread, the FTC must send a clear message that child-directed marketing of OTC drugs is unfair and deceptive and violates longstanding FTC precedent. The use of Dreamworks' Madagascar characters simultaneously on fruit-flavored children's candy and gummy snacks and Grape-Flavored Children's Claritin chewable tablets and syrup creates the impression that the OTC drug is candy. Moreover, children's descriptions of allergy symptoms or requests for OTC allergy medication should be based solely on how they are feeling and not on sophisticated child-directed marketing campaigns. We ask that immediate enforcement action be taken to protect children from this practice. Thank you for your attention to this matter.

Sincerely,



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Organizational Signers:
Berkeley Media Studies Group
Campaign for a Commercial-Free Childhood
Center for Digital Democracy
ChangeLab Solutions (formerly Public Health Law & Policy)
Corporate Accountability International

Eat Drink Politics
Public Citizen
The Public Good Law Center
Public Health Institute
Prevention Institute

cc: David Vladeck, Director, Bureau of Consumer Protection
Mary K. Engle, Associate Director, Division of Advertising Practices

EXHIBIT A

Madagascar 3 Box of Children's Claritin With Stickers



Grundig, J. (April 18, 2012). *Children Claritin Teams Up with Madagascar*. Mom's Favorite Stuff [blog]. Retrieved from: <http://www.momsfavoritestuff.com/2012/04/18/childrens-claritin-teams-up-with-madagascar/>.

EXHIBIT B

General Mills *Madagascar 3* Fruit Snacks Box



Top 15 "*Madagascar 3: Europe's Most Wanted*" Advertising Campaigns. Squatters' Talk [blog] (June 8, 2012). Retrieved from: <http://squatdesign.com/blog/squat-design-advertising-top-15-madagascar-3-europes-most-wanted-marketing-campaigns/>.

EXHIBIT C
Airheads Candy *Madagascar 3* Webpage



Airheads webpage for “Madagascar 3 Europe’s Most Wanted” (screenshot: June 14, 2012). Retrieved from: <http://www.airheads.com/>.

EXHIBIT D

Children's Claritin-Branded *Madagascar 3* Activity Guides for Free Download via Facebook

The image is a screenshot of a Facebook advertisement. At the top, the Facebook logo is on the left, and login fields for 'Email or Phone' and 'Password' are on the right, with a 'Log In' button. Below the login fields are options for 'Keep me logged in' and 'Forgot your password?'. The main content area features a blue background with a white central box. The text in the white box reads: 'BIG TIME RELIEF. BIG TOP FUN. With Children's Claritin® and Madagascar 3'. Below this, it says 'BE A STAR and download all 8 Madagascar 3-Inspired Circus Activity Guides'. A blue banner says 'NEW GUIDE EVERY WEEK!'. Below the banner, it says 'CHECK BACK SOON for the next act!'. To the right of the text are images of activity guides and coloring pages. Below the white box, a white arrow points to the text 'CREATE YOUR OWN CIRCUS AT HOME!'. At the bottom, there are images of a Madagascar 3 DVD case (labeled 'EUROPE'S MOST WANTED' and 'JUNE 8'), a box of Children's Claritin, and a box of Claritin. To the right of these images, text reads: 'ONLY Children's Claritin® provides 24 Hour Non-Drowsy Allergy Relief* #1 Pediatrician Recommended Non-Drowsy Allergy Brand Great Grape Taste'. At the very bottom, there is a small disclaimer: 'Click: HERE for more information about Children's Claritin®'. The footer of the Facebook page includes 'Facebook © 2012 - English (US)' and a list of navigation links: 'Mobile · Find Friends · Badges · People · Pages · About · Advertising · Create a Page · Developers · Careers · Privacy · Cookies · Terms · Help'.

facebook

Email or Phone Password Log In

Keep me logged in Forgot your password?

Claritin Madagascar 3 Like

BIG TIME RELIEF. BIG TOP FUN.
With Children's Claritin® and Madagascar 3

BE A STAR
and download all 8
Madagascar 3-Inspired Circus
Activity Guides

CHECK BACK SOON
for the next act!

NEW GUIDE EVERY WEEK!

CREATE YOUR OWN CIRCUS AT HOME!

**ONLY Children's Claritin® provides
24 Hour Non-Drowsy Allergy Relief***
**#1 Pediatrician Recommended
Non-Drowsy Allergy Brand**
Great Grape Taste

Click: [HERE](#) for more information about Children's Claritin®

*Based on leading OTC Children's Brands
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Claritin *Madagascar 3* Facebook page (screenshot: June 18, 2012). Retrieved from:
https://www.facebook.com/Claritin/app_422455564448144.

EXHIBIT E

Contents of Madagascar Viewing Party Kit Sent to Claritin Mom Crew Members



Madagascar Party Kit. Mom to Food Allergy Kid [blog] (May 18, 2012). Retrieved from: <http://momtofoodallergykid.blogspot.com/2012/05/claritinmadagascar-party-kit.html>.

EXHIBIT F

Unique Mom Crew Hits from first 40 results of June 11, 2012 Google Search: “Claritin Mom Crew Madagascar”

1. <http://www.dustinnikkimommyofthree.com/2012/06/childrens-claritin-mom-crew-madagascar-viewing-party.html>
2. <http://www.choosinglove.net/2012/06/madagascar-celebration-childrens-claritin-mom-crew-style/>
3. <http://toughcookiemommy.com/2012/06/madagascar-viewing-party-childrensclaritinparty.html>
4. <http://www.notyourtypicalmommy.com/2012/06/claritin-madagascar-3-preview-party.html>
5. <http://www.savingsaidssimply.com/2012/06/claritin-moms-crew-and-madagascar-3.html>
6. http://www.longwaitforisabella.com/2012/05/claritin-mom-madagascar-party.html?utm_source=rss&utm_medium=rss&utm_campaign=claritin-mom-madagascar-party
7. <http://www.mnmrheinlander.com/2012/06/camping-with-claritin-madagascar.html>
8. <http://beyourbestmom.com/2012/06/madagascar-3-opens-friday-june-8th-childrensclaritinparty/>
9. <http://www.thriftymommastips.com/2012/06/last-pd-day-of-year-madagascar-and.html>
10. <http://rockinrebeldeals.blogspot.com/2012/06/my-madagascar-movie-viewing-party.html>
11. <http://7onashoestring.com/2012/06/madagascar-movie-viewing-party-from-childrens-claritin-childrensclaritinparty.html>
12. <http://mommydoesblog.com/2012/06/madagascar-3europes-most-wanted-childrensclaritinparty/>
13. <http://thepennywisemama.com/2012/06/madagascar-movie-viewing-party-childrensclaritinparty.html>
14. <http://www.kitchentable4.com/2012/06/how-claritin-is-keeping-my-kids-allergy.html>
15. <http://daybydayinourworld.com/2012/06/madagascar-viewing-fun-in-the-summertime-childrensclaritinparty/>
16. <http://girlsinwhitedresses.wordpress.com/2012/06/01/claritin-and-madagascar-and-schools-out-oh-my/>
17. <http://ohhthejoysofboys.blogspot.com/2012/06/childrens-claritin-madagascar-3-party.html>
18. <http://massholemommy.com/2012/05/26/our-madagascar-movie-party-childrensclaritinparty/>
19. <http://bossygirl1980.com/2012/06/madagascar-viewing-party/>
20. <http://www.theshoppingduck.com/>
21. <http://fullpricenever.com/madagascar3-europe%E2%80%99s-most-wanted-party-childrensclaritinparty/>
22. <http://sidetrackedmom.net/other-news-misc/madagascar-3-europes-most-wanted-viewing-party-childrensclaritinparty-momselect-crowdtap/>
23. <http://bargainswithbarb.blogspot.com/2012/06/my-childrens-claritin-madagascar-party.html>
24. <http://www.partyof5andcounting.com/2012/06/childrensclaritinparty-our-madagascar.html>
25. <http://tracifishbowl.blogspot.com/2012/06/madagascar-viewing-party.html>
26. <http://unorganizedmommyof3.com/?p=1522>
27. <http://mama-nibbles.blogspot.com/2012/06/childrensclaritinparty-giveaway-our.html>
28. <http://www.mommygratitude.com/>
29. <http://momknowsbest15.blogspot.com/2012/06/my-childrens-claritin-madagascar-party.html>
30. <http://www.twobearsfarm.com/2012/05/madagascar-party-with-childrens.html>
31. <http://teachme2save.com/2012/06/our-madagascar-3-and-childrens-claritin-party-childrensclaritinparty/>

EXHIBIT G

Table Set Up for Viewing Parties with Children's Food and Grape-Flavored Chewable Children's Claritin Samples



Madagascar Movie Viewing Party. Minta's Creations [blog] (May 30, 2012). Retrieved from: <http://mintascreations.blogspot.com/2012/05/madagascar-movie-viewing-party.html>.



Florida Allergies Put a Damper on Our Claritin/Madagascar Party. The Nurse Mommy [blog] (May 27, 2012). Retrieved from: <http://www.thenursemommy.com/2012/05/allergies-in-florida-are-in-full-bloom.html>.

EXHIBIT H

Party Favor Basket with Slinky, Stickers and Claritin Product Samples



Madagascar DVD Party by Claritin Moms Crew. Kitchen Table [blog] (June 1, 2012). Retrieved from: http://www.kitchentable4.com/2012_06_01_archive.html.

Girls Holding Party Favors Containing Toys and Children's Claritin Samples



Claritin and Madagascar and School's Out . . . Oh My! Girls in White Dresses [blog] (June 1, 2012). Retrieved from: Claritin & Madagascar 3 Preview Party. Not Your Typical Mommy [blog] (June 2, 2012). Retrieved from: <http://www.notyourtypicalmommy.com/2012/06/claritin-madagascar-3-preview-party.html>.

EXHIBIT I

Children Holding Claritin Samples at Madagascar Viewing Party



Madagascar Movie Viewing Party. Minta's Creations [blog] (May 30, 2012). Retrieved from: <http://mintascreations.blogspot.com/2012/05/madagascar-movie-viewing-party.html>.

EXHIBIT J

Children's Claritin Madagascar Viewing Party Held at a Preschool with Product Samples



Madagascar Viewing Party. Bossy Girl in the City [blog] (June 4, 2012). Retrieved from: <http://bossygirl1980.com/2012/06/madagascar-viewing-party/>.

EXHIBIT K

Children's Claritin Madagascar Viewing Party Where
General Mills *Penguins of Madagascar* Fruit Snacks Were Served
Along with Children's Claritin Marketing Materials and Product Samples



Claritin & Madagascar 3 Preview Party. Not Your Typical Mommy [blog] (June 2, 2012). Retrieved from:
<http://www.notyourtypicalmommy.com/2012/06/claritin-madagascar-3-preview-party.html>.