

that can popularize these trade names become the effective ones and thereby become insulated against the generic firms who are in the market and selling at a lower price. So there are very large profits to be gained by a larger firm entering the market, even for an unpatented product.

Senator NELSON. So then you are describing a situation where a company, because of its distinction, can then effect a nominal differentiation simply by the use of a brand name and then, by effectively advertising its brand name to the medical profession—because that is where they advertise—convince the majority of the profession to prescribe that brand name. Once a firm is able to do that, it can artificially set the price higher. Is that what you are saying?

Dr. SCHIFRIN. Yes, sir.

Senator NELSON. And continue to compete because there is no price competition. There is merely promotional brand name competition in the head of the physician who knows the name?

Dr. SCHIFRIN. That is right.

Senator NELSON. Is that what you are saying?

Dr. SCHIFRIN. Yes, sir. The people who have appeared here, many of them, have referred to this, the competition that you are talking about, as the competition for the ear and the eye of the physician.

Senator NELSON. To give you a hypothetical case, you could very well have an unknown minor company that is not established by reputation—that is, by name reputation. It may be a very fine company, but it is not known widely to the medical profession. That small company could discover a new and very good drug and go into the marketplace with that drug. Even though they will get some kind of a reputation based upon this one drug, it would not be a reputation that could match the reputation of 50 or 100 years of advertising and standing in the medical community achieved by the big companies. So then theoretically, you could have a case where a brand name company that is established, could move in, once the patent has expired, and get a position in the marketplace because of their acceptance by the medical profession, charge an artificially high price and occupy a large percentage of the market even though they would be selling exactly the same product as the small firm which developed the drug.

Dr. SCHIFRIN. Yes.

Senator NELSON. Even though the originating company may put their product out at a much lower price and other generic companies may come in at a still lower price. Is that what you are saying?

Dr. SCHIFRIN. Yes, and going beyond that—the example posed by this hypothetical case, is something that could result after the patent had expired.

But supposing a smaller company did have this development you are talking about. The larger company would not have to wait until the patent expired. Through molecule manipulation, they could come up with a drug with a different chemical structure which would warrant a separate patent, but still be very close to the drug marketed by the smaller company. And shortly after the development made by the smaller firms, the larger firm could come out with its product, which is not an improvement now, and through very heavy promotion, take away even those initial gains that the small firm hoped to make. So the