

Complaint

79 F.T.C.

IN THE MATTER OF

UNION CARBIDE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8811. Complaint, Mar. 25, 1970★—Decision, July 26, 1971

Consent order requiring a New York City manufacturer and seller of an automobile antifreeze described as Prestone antifreeze to cease advertising such product by presenting a demonstration which is performed unfairly or deceptively exaggerates or distorts the normal condition of use.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Union Carbide Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 270 Park Avenue, in the city of New York, State of New York.

PAR. 2. Respondent now, and for some time past, has been engaged in the manufacture, sale and distribution of an automobile antifreeze described as Prestone antifreeze, which, when sold is shipped to purchasers located in various States of the United States. Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said automobile antifreeze in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of automobile antifreeze.

PAR. 4. In the course and conduct of its business, and for the pur-

*Reported as amended by hearing examiner's order of May 12, 1970. Respondents name was incorrectly stated in the complaint as "Union Carbide Company."

pose of inducing the sale of its said product, respondent extensively employs advertising in national and regional magazines and other publications and on network and local television and through various other outlets including point of sale displays. Respondent's major advertising theme consists of a so-called "Acid-Test" demonstration.

PAR. 5. The so-called "Acid-Test" demonstration is performed in the following manner: Two metal strips, one dipped in Prestone antifreeze and the other in "ordinary antifreeze," are immersed in a solution of acid. The metal strip dipped in "ordinary antifreeze" is destroyed by the acid but the strip dipped in Prestone is not. The aforesaid advertisements emphasize the extra protection the "Magnetic Film" in Prestone gives against corrosion.

PAR. 6. Through the use of the aforesaid demonstration and the statements used in connection therewith, respondent represents, directly or by implication, that such demonstration is evidence which actually proves how Prestone antifreeze protects against the acid corrosion which actually occurs in an automobile cooling system, and that such demonstration is evidence which actually proves the superiority of Prestone antifreeze over competing brands.

PAR. 7. In truth and in fact: (1) the acid solution used in the demonstration is not of the same kind and concentration as that normally found in an automobile cooling system; (2) the metal strips used are not the same kind or quality of metal from which the automobile cooling system parts involved are usually manufactured; (3) the corrosive effect on the metal strips by the acid which is depicted is not the same effect as that which occurs in an automobile cooling system; (4) the concentration of Prestone antifreeze and the homogeneity of the mixture used in the demonstration is not the same as that which is actually found in an automobile cooling system.

Therefore, the said pictorial demonstration, including the statements and representations used in connection therewith, is not evidence which actually proves the corrosion protection qualities of Prestone antifreeze and is not evidence which actually proves the comparative merits of Prestone antifreeze and competing brands of antifreeze and therefore it is false, misleading and deceptive.

PAR. 8. The use by the respondent of the aforesaid invalid demonstration and the false, misleading and deceptive statements and representations used in connection therewith has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and

Decision and Order

79 F.T.C.

into the purchase of a substantial quantity of respondent's Prestone antifreeze because of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on March 31, 1971, charging respondent with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The Commission having duly determined upon a joint motion of complaint counsel and respondent's counsel that in the circumstances presented the public interest would be served by waiver here of the provisions of Section 2.34(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The respondent, its counsel and complaint counsel having executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order is entered:

1. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with an office and principal place of business located at 270 Park Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Union Carbide Corporation, a corporation, its officers, representatives, agents and employees, directly

or through any corporate or other device, in connection with the offering for sale, sale and distribution of Prestone antifreeze or any other retail consumer product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Advertising any such product by presenting a demonstration, including a test or experiment, that appears or purports to be proof of any fact that is material to inducing the sale of the product, but which does not prove such fact because the conditions under which said demonstration is performed unfairly or deceptively exaggerate or distort normal conditions of use.

Its is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may effect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty days (60) after service of the order upon it, file with the Commission a report in writing setting forth in detail the manner and form of its compliance with the order to cease and desist.

IN THE MATTER OF

DON DAVIS PONTIAC, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-1988. Complaint, July 26, 1971—Decision, July 26, 1971

Consent order requiring a Buffalo, N.Y., dealer in new and used automobiles to cease violating the Truth in Lending Act by failing to make the consumer credit cost disclosures required by Regulation Z and failing to make other disclosures.