

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Complaint

IN THE MATTER OF

AMERICAN HOME PRODUCTS CORPORATION, ET AL.

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

Docket C-2298. Complaint, Oct. 6, 1972—Decision, Oct. 6, 1972.

Consent order requiring a New York City seller and distributor of household products and its New York City advertising agency, among other things to cease advertising any consumer commodity by the use of or referral to a demonstration, test or experiment that appears or purports to prove superiority of such products over competitive products when such demonstration, test or experiment does not constitute proof thereof.

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 American Home Products Corporation, a corporation, and Cunningham & Walsh, Inc., a corporation, hereinafter referred to as respondents, have 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 American Home Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 685 Third Avenue, in the city of New York, State of New York.

Respondent Cunningham & Walsh, Inc., 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 260 Madison Avenue in the city of New York, State of New York.

PAR. 2. Respondent American Home Products Corporation now, and for some time last past, has been engaged in the sale and distribution of a household window cleaning product known as "Easy-Off Window Cleaner," a household spray starch product known as "Easy-On Speed Starch," a household floor wax known as "Aero-wax," and an insecticide product known as "Black Flag Ant and Roach Killer with Baygon," which, when sold are shipped to purchasers located in various States of the United States. Respondent

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maintains and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondent Cunningham & Walsh, Inc., is now and for some time last past has been, an advertising agency of American Home Products Corporation, and now prepares and places, and for some time last past has prepared and placed, advertising material, including but not limited to the advertising referred to herein in Paragraphs Four, Ten, and Thirteen.

PAR. 3. Respondent American Home Products Corporation 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 household window cleaning products, household spray starch, household floor waxes and insecticide products of the same general kind and nature as those sold by this respondent.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of "Easy-Off Window Cleaner" respondents have advertised said product by means of a demonstration and various statements used in connection therewith in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines.

Said demonstration and the statements used in connection therewith depicts the following: In the commercial an application of a "leading brand" of window cleaner and an application of "Easy-Off Window Cleaner" are sprayed onto separate halves of a window. Both applications are spread and allowed to dry. The half of the window sprayed with "Easy-Off" is clear but the half sprayed with the "leading brand" contains spots. The voice-over in the commercial states "See the leading brand left spots * * * but Easy-Off dried spotless and streakless."

PAR. 5. Through the use of the aforesaid demonstration and the statements and representations used in connection therewith, respondents represent and have represented, directly or by implication, that such demonstration is actual proof of the superiority of Easy-Off Window Cleaner over competitive products in preventing streaking and spotting of windows when the products are used in their intended manner.

PAR. 6. In truth and in fact, the aforesaid demonstration, including the statements and representations used in connection therewith, is not actual proof of the superiority of Easy-Off Window Cleaner

over competitive window cleaners in preventing the streaking and spotting of windows, when used in the intended manner and under ordinary conditions of use and said demonstration tends to falsely disparage competing products. In the demonstration the directions for use of the "leading brand" of window cleaner were not followed in that if the application of the "leading brand" spray had been wiped as directed, no spots or streaks would have formed.

Therefore, the said demonstration, including the statements and representations used in connection therewith, is false, misleading and deceptive.

PAR. 7. In the further course and conduct of its business and for the purpose of inducing the sale of its product Aerowax floor wax, respondent American Home Products Corporation has advertised said product by means of a demonstration and various statements used in connection therewith in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across State lines:

Said demonstration and the statements used in connection therewith depict two crystal bowls, one filled with Aerowax and the second with another leading wax. The waxes are allowed to dry and the bowl into which the Aerowax was poured is clear while the second bowl is cloudy. The audio portion of the commercial says, in part, "Crystal Clear Aerowax * * * the wax that doesn't dry cloudy, won't turn yellow. Here's proof. In two crystal bowls * * * pour Aerowax * * * and this other leading wax. Let them dry * * * look. The other wax dried cloudy. Could turn yellow. Aerowax doesn't dry cloudy * * * won't turn yellow."

PAR. 8. Through the use of the demonstration and the statements and representations used in connection therewith, as set out in part in Paragraph Seven above, respondent American Home Products Corporation represents and has represented, directly and by implication, that Aerowax floor wax is superior to other competitive waxes in polishing floor surfaces, and that such demonstration is actual proof of the superiority of Aerowax floor wax over other competitive floor waxes in polishing floor surfaces when the products are used in their intended manner.

PAR. 9. In truth and in fact, Aerowax is not superior to other competitive floor waxes in polishing floor surfaces and that the aforesaid demonstration, including the statements and representations used in connection therewith, is not actual proof of the superiority of Aerowax over competitive floor waxes in polishing floor surfaces when the prod-

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ucts are used in their intended manner and said demonstration tends to falsely disparage competitive products. In the demonstration Aero-wax, a polishing wax, was compared with a cleaning wax and the waxes were not used in their intended manner.

Therefore, the said representation and demonstration, including the statements and representations used in connection therewith is false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business and for the purpose of inducing the sale of "Black Flag Ant and Roach Killer with Baygon" respondents have advertised said products by means of a demonstration and various statements used in connection therewith in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines.

Said demonstration and the statements used in connection therewith show cockroaches being placed into two separate containers. One container had been treated with a leading brand insecticide while the other container had been treated with Black Flag. The roaches placed in the container treated with Black Flag die but the roaches placed in the other container do not. The audio portion of the commercial states that Black Flag with Baygon killed the roaches while the other spray did not.

PAR. 11. Through the use of the aforesaid demonstration and the statements and representations used in connection therewith, as set out in part in Paragraph Ten above, respondents represent and have represented, directly or by implication, that such demonstration is actual proof of the superiority of Black Flag Ant and Roach Killer with Baygon over competitive products in killing all types of roaches.

PAR. 12. In truth and in fact, the aforesaid demonstration, including the statements and representations used in connection therewith, is not actual proof of the superiority of Black Flag Ant and Roach Killer with Baygon over competitive insecticides in killing all types of roaches, and said demonstration tends to falsely disparage competing products. In the demonstration, certain roaches known to be resistant to dieldrin, the active ingredient in the competitive product, were used.

Therefore, the said demonstration, including the statements and representations used in connection therewith, is false, misleading and deceptive.

PAR. 13. In the further course and conduct of their business and for the purpose of inducing the sale of Easy-On Speed Starch, respondents have advertised said product by means of a demonstration and various

statements used in connection therewith in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines.

Said demonstration and the statements used in connection therewith depict a woman spraying Easy-On Speed Starch on one side of a white shirt and another leading starch on the other side. Then hot irons are placed on the areas sprayed and when the irons are lifted, the area of the shirt area sprayed with Easy-On remains white while the area of the shirt sprayed with the other starch is scorched. The audio portion of the commercial says, in part, "We'll prove Easy-On Speed Starch, the no build-up starch is really different. Starches can build-up—cause scorching. But Easy-On has the special GE Silicone formula to prevent build-up—resist scorching. Now, look. What a difference! Easy-On resists scorching * * *."

PAR. 14. Through the use of the demonstration and the statements and representations used in connection therewith, as set out in part in Paragraph Thirteen above, respondents represent and have represented, directly or by implication, that such demonstration is actual proof of the superiority of Easy-On Speed Starch over competitive products in preventing starch build-up and resisting scorching when the products are used in their intended manner.

PAR. 15. In truth and in fact, the aforesaid demonstration, including the statements and representations used in connection therewith, is not actual proof of the superiority of Easy-On Speed Starch over competitive products in preventing starch build-up and resisting scorching because in the demonstration, had the shirts been ironed in the normal and customary manner, no scorching would have taken place.

Therefore, the said demonstration, including the statements and representations used in connection therewith, is false, misleading and deceptive.

PAR. 16. The use by the respondents of the aforesaid demonstrations and the 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 demonstrations including the statements and representations used in connection therewith did and does constitute actual proof of the superiority of Easy-Off Window Cleaner, Easy-On Speed Starch, Aerowax floor wax, and Black Flag Ant and Roach Killer with Baygon, over competitive products, and to induce the purchase of a substantial quantity of American Home Products Corpora-

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tion's Easy-Off Window Cleaner, Easy-On Speed Starch, Aerowax floor wax and Black Flag Ant and Roach Killer with Baygon insecticide, because of such erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and respondents' 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 heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Home Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 685 Third Avenue, in the city of New York, State of New York.

Respondent Cunningham & Walsh, Inc., 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 260 Madison 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 respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent American Home Products Corporation, a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of (i) any ironing aid or fabric conditioner including Easy-On Speed Starch or any other household consumer commodity consumed or expended in the laundering, ironing or treatment of garments or other fabrics usually found in the house; (ii) any insecticide including Black Flag Ant & Roach Killer used in whole or in part within the house or any other household consumer commodity consumed or expended to control insects, pests or weeds or to fertilize earth in and around the house; (iii) any household consumer commodity consumed or expended to freshen or deodorize the air within the house or to light fires in and around the house; (iv) any product used to cool foods or beverages; (v) any household window cleaner including Easy-Off Liquid Window Cleaner or any household floor polish, including Aerowax Floor Wax; or (vi) any other household consumer commodity consumed or expended in cleaning, maintaining, repairing or polishing the house and its usual furnishings, fixtures or objects; or (vii) any aerosol shaving cream product; or (viii) any shoe care product; in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Advertising any such consumer commodity by presenting or referring to a demonstration, test or experiment that appears or purports to be proof of any fact or product feature that is material to inducing the sale of the commodity, such as but not limited to comparative superiority of one commodity over another, when, in fact, such demonstration, test or experiment does not constitute actual proof thereof.

II

It is further ordered, That respondent Cunningham & Walsh, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corpo-

ration, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of (i) any ironing aid or fabric conditioner including Easy-On Speed Starch or any American Home Products Corporation household consumer commodity consumed or expended in the laundering, ironing or treatment of garments or other fabrics usually found in the house; (ii) any insecticide including Black Flag Ant & Roach Killer used in whole or in part within the house or any American Home Products Corporation household consumer commodity consumed or expended to control insects, pests or weeds or to fertilize earth in and around the house; (iii) any American Home Products Corporation household consumer commodity consumed or expended to freshen or deodorize the air within the house or to light fires in and around the house; (iv) any American Home Products Corporation product used to cool foods or beverages; (v) any household window cleaner including Easy-Off Liquid Window Cleaner; or (vi) any American Home Products Corporation household consumer commodity consumed or expended in cleaning, maintaining, repairing or polishing the house and its usual furnishings, fixtures or objects; or (vii) any American Home Products Corporation aerosol shaving cream product; or (viii) any American Home Products Corporation shoe care products; in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Advertising any such consumer commodity by presenting or referring to a demonstration, test or experiment that appears or purports to be proof of any fact or product feature that is material to inducing the sale of the commodity, such as but not limited to comparative superiority of one commodity over another, when, in fact, such demonstration, test or experiment does not constitute actual proof thereof, and respondent knew or should have known that such was the case.

It is further ordered, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (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 affect compliance obligations arising out of the order.

It is further ordered, That respondents herein shall, within sixty (60) days after the order becomes final, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

REGAL WARE, INC., ET AL.

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

Docket C-2299. Complaint, Oct. 6, 1972—Decision, Oct. 6, 1972.

Consent order requiring a Kewaskum, Wisconsin, distributor and seller of cooking utensils, among other things to cease misrepresenting the nature and properties of its products; representing respondents' sales personnel as members of its advertising department; and representing its guarantees as unconditional without revealing, in advertising, any conditions to which they are subject.

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 Regal Ware, Inc., a corporation, and James D. Reigle, individually and as an officer of said corporation, hereinafter referred to as respondents, have 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 Regal Ware, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at Kewaskum, Wisconsin.

Respondent James D. Reigle is an individual and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of stainless steel cookware and teflon coated aluminum cookware to dealers and distributors for resale to the public. The said cooking utensils are represented by respondents as utilizing the "waterless" method of cooking in which no water or a small amount of water is used depending upon the nature of the food to be cooked.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the