

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

Docket C-2339. Complaint, Jan. 9, 1973—Decision, Jan. 9, 1973.

Consent order requiring a Highland Park, Michigan, manufacturer, seller,
lessor and distributor of equipment used in forming, filling and sealing

containers for dairy and other products, among other things to cease misrepresenting what happens when respondent's product is discarded, buried or otherwise disposed of; representing its product as being biodegradable without indicating in immediate conjunction any limitations on the product's biodegradability such as polyethylene plastic components or environmental factors affecting rate of biodegradation; misrepresenting the effect or potential effect on the natural environment resulting from disposal of respondent's product; and misrepresenting the persons, organizations or institutions which have tested the product or the results of such tests.

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 Ex-Cell-O Corporation, a corporation, hereinafter sometimes 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 Ex-Cell-O Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 14310 Hamilton Avenue, Highland Park, Michigan.

PAR. 2. Respondent Ex-Cell-O Corporation, through its Pure-Pak Division, manufactures, sells, leases and distributes to dairies and others machinery and equipment which form, fill and seal cartons, known as Pure-Pak cartons, in which milk, dairy products and other products are sold to consumers and to retailers for resale to the public. Blanks for the aforesaid Pure-Pak cartons are manufactured by independent paperboard converters under patent licenses held by respondent Ex-Cell-O Corporation. Said independent paperboard converters pay royalties to respondent Ex-Cell-O Corporation for the privilege of manufacturing and selling said blanks to the aforesaid dairies and others.

Respondent's volume of business from the lease and sale of the aforesaid machinery and equipment, and its income from the royalties paid by the aforesaid paperboard converters has been and is substantial.

PAR. 3. In the course and conduct of its aforesaid business, respondent now causes, and for sometime last past has caused,

its machinery and equipment to be shipped and distributed from its places of business or from its sources of supply to purchasers and lessees thereof located in various States of the United States other than the state of origination, distribution or storage of said machinery and other equipment and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said machinery, equipment and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase by consumers of milk and other products sold in Pure-Pak cartons, for the purpose of inducing the purchase or lease by dairies and others of the machinery and equipment required to package milk and other products in Pure-Pak cartons, and for the purpose of inducing the purchase of blanks for Pure-Pak cartons, respondent has made numerous statements and representations in advertisements inserted in newspapers, magazines and trade journals, all of interstate distribution, and in promotional materials which are disseminated to the aforesaid dairies, paperboard converters, retailers and others in the various states for further dissemination to the public. Certain of the aforesaid statements and representations describe or purport to describe what happens to the Pure-Pak carton after its contents have been consumed and it is discarded, buried or disposed of.

Typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof, are the following:

A Pure-Pak carton is biodegradable.

* * * * *

Another nice thing. Pure-Pak cartons are completely biodegradable. We made sure of that. If they're incinerated, for instance, they go up as harmless carbon dioxide and water vapor. Or if they're used as land fill, they disintegrate. Even the plastic film breaks down.

* * * * *

Pure-Pak cartons are also bio-degradable. In other words, they will return to the soil when carelessly tossed away, or buried as part of sanitary landfills.

* * * * *

And because a Pure-Pak carton returns to nature. Completely. (Whether it's burned, buried, or even if some Terrible Person throws it away as litter.) That's our story. We think it's a nice story, too. Because it * * * has a happy ending.

* * * * *

Some kinds of trash never decay—never go back to the soil—they stay around to clutter the land for years and years. Other kinds of trash break down into dangerous chemicals that get into the food we grow in the ground. These things kill the land we need to grow food on in order to survive. But, since we're always going to create a certain amount of trash, ecologists say we should use materials that don't hurt the land when they are thrown away. They call these materials "biodegradable" because they turn back into soil in a fairly short time. The milk carton you use every day is one of these things.

* * * * *

Because, frankly, what's happening to our environment scares us as much as it does anybody else.

That's why we made our carton completely biodegradable. If it's burned, it goes up as harmless water vapor and carbon dioxide. If it's used as landfill, it disintegrates. Into its natural elements. Even the plastic film breaks up.

* * * * *

A Pure-Pak carton is biodegradable. Tests performed by the Swedish Government showed that exposed to normal weathering, the carton will return to the soil within 12 to 18 months, as opposed to glass which will virtually last forever.

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PAR. 5. By and through the use of the statements and representations set forth in Paragraph Four hereof, and others of similar import and meaning but not expressly set out herein, separately and in conjunction with oral and written statements of respondent's agents and representatives, respondent has represented and is now representing, directly or by implication that:

1. Purchasers of milk or other products packaged in Pure-Pak cartons are receiving a product in packaging materials which, when discarded as litter, buried as landfill, or otherwise disposed of in the natural environment, will within a short period of time completely disintegrate and become an integral and unidentifiable part of the natural environment in which said cartons are so discarded, buried or disposed of;

2. Purchasers of milk or other products packaged in Pure-Pak cartons are receiving a product in packaging materials which, when discarded as litter, buried as landfill or otherwise disposed of in the natural environment, singly or in substantial numbers, will not, and have no potential to harm or adversely affect the natural environment in any material way because of the special ability of said cartons, when so discarded, buried or disposed of, to disintegrate completely within a short period of time and to become an integral and unidentifiable part of the natural environment in which said cartons are so discarded, buried or disposed of;

3. Purchasers of milk or other products packaged in Pure-Pak cartons are receiving a product in packaging materials which respondent Ex-Cell-O Corporation, out of a concern for what is happening to our natural environment, specially designed so that when said Pure-Pak cartons, singly or in substantial numbers, are discarded as litter, buried as landfill or otherwise disposed of in the natural environment, said cartons will not, and have no potential to harm or adversely affect, in any material way, the natural environment in which said cartons are so discarded, buried or otherwise disposed of; and

4. Purchasers of milk or other products packaged in Pure-Pak cartons are receiving products in packaging materials which have been tested by the Swedish Government which found that said Pure-Pak cartons, when exposed to normal weathering conditions, would, within 12 to 18 months, disintegrate completely and become an integral and unidentifiable part of the soil in the area in which said cartons were so exposed.

PAR. 6. In truth and in fact:

1. Purchasers of milk or other products packaged in Pure-Pak cartons are not receiving a product in packaging materials which, when discarded as litter, buried as landfill, or otherwise disposed of in the natural environment, will within a short period of time completely disintegrate and become an integral and unidentifiable part of the natural environment in which said cartons are so discarded, buried or disposed of. To the contrary, in most instances when so discarded, buried or otherwise disposed of, said cartons will degrade or disintegrate only partially and then only over substantial periods of time depending upon such factors as climate, type of soil and other aspects of the surrounding environment. Furthermore, in arid areas of the United States, Pure-Pak cartons, when discarded as litter, buried as landfill or otherwise disposed of, will remain substantially intact without any substantial disintegration for many years.

2. Purchasers of milk or other products packaged in Pure-Pak cartons are not receiving a product in packaging materials which, when discarded as litter, buried as landfill or otherwise disposed of in the natural environment, singly or in substantial numbers, will not, and have no potential to harm or adversely affect the natural environment in any material way. Pure-Pak cartons do not completely degrade or disintegrate when discarded as litter, buried as landfill or otherwise disposed of in the natural environ-

ment but rather remain intact or substantially intact, in some cases for many years, and as a consequence, said cartons, singly or in substantial numbers have the potential and do in fact harm or adversely affect in various material respects the natural environment in which said cartons are discarded, buried or disposed of, as aforesaid.

3. Purchasers of milk or other products packaged in Pure-Pak cartons are not receiving a product in packaging materials which respondent Ex-Cell-O Corporation, out of a concern for what is happening to our natural environment, specially designed so that when said Pure-Pak cartons, singly or in substantial numbers, are discarded as litter, buried as landfill, or otherwise disposed of in the natural environment, said cartons will not and have no potential to harm or adversely affect in any material respect the natural environment in which said cartons are so discarded, buried or otherwise disposed of. Pure-Pak cartons do not completely disintegrate when so discarded, buried or otherwise disposed of. Furthermore, respondent Ex-Cell-O Corporation designed the Pure-Pak carton with little or no concern for the effects or potential effects such carton would have on the natural environment when discarded, buried or otherwise disposed of, singly or in substantial numbers, as aforesaid.

4. Neither the Swedish Government, nor any person, organization or institution connected with or acting at the direction of the Swedish Government has ever tested the Pure-Pak carton to determine what would happen to said carton when exposed to normal weathering conditions for any period of time. Furthermore, no tests have ever been conducted which establish that the said Pure-Pak carton, when exposed to weathering, will within 12 to 18 months, disintegrate completely and become an integral and unidentifiable part of the soil in the area in which said carton was exposed.

Therefore, respondent's statements as set forth in Paragraph Four and Five hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale and lease of machinery, equipment and services of the same general kind and nature as that sold and leased by respondent.

PAR. 8. By and through the use of the aforesaid acts and practices respondent places in the hands of dairies, paperboard converters, retailers and others, the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of milk and other products packaged in respondent's Pure-Pak cartons by reason of said erroneous and mistaken belief. The purchase of substantial quantities of milk or other products packaged in Pure-Pak cartons, as aforesaid, leads to the purchase or lease from respondent Ex-Cell-O Corporation of the machinery and equipment which form, fill and seal Pure-Pak cartons and to the manufacture and sale of blanks for Pure-Pak cartons.

PAR. 10. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of 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 alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent E-Cell-O Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 14310 Hamilton Avenue, Highland Park, Michigan.

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 Ex-Cell-O Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, offering for lease, lease or distribution of milk or other products sold in Pure-Pak cartons, blanks for Pure-Pak cartons, machinery and equipment which form, fill and seal Pure-Pak cartons and services in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that when discarded as litter, buried as landfill or otherwise disposed of in the natural environment, the Pure-Pak carton will, within a short period of time, completely disintegrate and become an integral and unidentifiable part of the natural environment in which said cartons are so discarded, buried or disposed of; or misrepresenting, in any manner, what happens

to the Pure-Pak carton when it is so discarded, buried or disposed of.

2. Representing, directly or indirectly, that the Pure-Pak carton, or any portion thereof, is biodegradable or will biodegrade, without disclosing, clearly and conspicuously, in immediate conjunction with such representation:

(a) That portion of the Pure-Pak carton which is polyethylene plastic or other material that is not biodegradable.

(b) That the rate of biodegradation, if it occurs, depends upon the various environmental and other factors to which the said carton is exposed.

3. Representing, directly or indirectly, that the Pure-Pak carton, when discarded as litter, buried as landfill or otherwise disposed of in the natural environment, singly or, in substantial numbers, will not and has no potential to harm or adversely affect the natural environment in any material way; or misrepresenting, in any way, the effect or potential effect on the natural environment resulting from discarding the Pure-Pak carton as litter, burying the said carton as landfill, or otherwise disposing of the said carton in the natural environment.

4. Representing, directly or indirectly, that respondent Ex-Cell-O Corporation, out of its concern for the natural environment, specially designed the present form of the Pure-Pak carton so that when the said Pure-Pak carton, singly or in substantial numbers, is discarded as litter, buried as landfill or otherwise disposed of in the natural environment, said carton will not and has no potential to harm or adversely affect, in any material way, the natural environment in which said carton is so discarded, buried or disposed of; or misrepresenting, in any manner, the reason for the present design of the Pure-Pak carton.

5. Representing, directly or indirectly, that the Swedish Government or any person, organization or institution connected with or at the direction of the Swedish Government has ever tested the Pure-Pak carton to determine what would happen to said carton when exposed to weather conditions for any period of time; or misrepresenting, in any manner, the persons, organizations or institutions which have tested the Pure-Pak carton, or the results of such tests.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the preparation, creation or placement of advertisements on behalf of respondent, to all other firms, organizations or agencies engaged in the preparation, creation or placement of advertisements on behalf of respondent, to all dairies and others engaged in packaging milk or other products in Pure-Pak cartons and to all paperboard converters who manufacture or sell blanks for Pure-Pak cartons, and that respondent secure a signed statement from such personnel, firms, organizations, dairies or converters acknowledging receipt of said order to cease and desist.

It is further ordered, That respondent shall 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 respective corporations which may affect compliance obligations arising out of this order.

It is further ordered, That respondent shall, within sixty (60) days 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.