

IN THE MATTER OF
RJR FOODS, INC., ET AL.

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

Docket C-2424. Complaint, July 13, 1973—Decision, July 13, 1973.

Consent order requiring a New York City manufacturer, seller and distributor of beverages designated "Hawaiian Punch," and its New York City advertising agency, among other things to cease misrepresenting the natural fruit juice content of fruit-flavored beverages, and depicting fruit or juice in labeling. In addition, the firm must make certain affirmative disclosures for a period of one (1) year and thereafter until a consumer survey is taken which gauges the need for continuing the disclosures.

Appearances

For the Commission: *C. O. Cook.*

For the Respondents: *David Grossberg, Cohen & Grossberg,*
New York, New York, *Eugene L. Lambert, Covington & Burling,*
Washington, D. C., and *G. A. Avram,* secretary and general counsel, RJR Foods, Inc., Winston Salem, North Carolina.

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 RJR

Foods, Inc., a corporation, and William Esty Company, 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 RJR Foods, Inc., 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 750 Third Avenue, New York, New York.

PAR. 2. Respondent William Esty Company, 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 100 East 42nd Street, New York, New York.

PAR. 3. Respondent RJR Foods, Inc., is now, and for some time last past has been, engaged in the manufacture, sale and distribution of beverages designated "Hawaiian Punch" which come within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent William Esty Company, Inc., is now, and for some time last past has been, an advertising agency of RJR Foods, Inc., and now for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of "Hawaiian Punch" beverages, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent RJR Foods, Inc., causes the said product, when sold, to be transported from its places of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent RJR Foods, Inc., maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said beverages by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including

but not limited to, advertisements inserted in magazines and other advertising media, and by means of 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, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product; and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said beverages in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

A) The featuring of fresh fruits and fruit trees prominently and repeatedly in television commercials, sometimes continually throughout the television commercial, and often in conjunction with the audio message "Those seven natural fruit juices in Hawaiian Punch" and the video message "7 natural fruit juices." Sometimes but not always, the aforesaid messages are given in answer to questions, including but not limited to, the following:

1. What makes this [flavor] punch so great?
2. What makes Hawaiian Punch a natural with peanut butter?
3. What gives Hawaiian Punch its Punch?

B) The following print advertisements:

PAR. 8. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that Hawaiian Punch beverages consist predominantly of natural fruit juices.

PAR. 9. In truth and in fact, the predominant ingredients in Hawaiian Punch beverages are water and sweetening agents which are added to fruit juices and other ingredients to produce the final products.

Therefore, the advertisements referred to in Paragraph Eight were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations set forth in Paragraphs Seven and Eight were, and are, false, misleading and deceptive.

a new taste experience

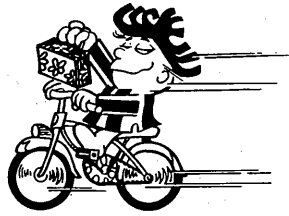
NEW SUNSHINE ORANGE



Made healthy and more delicious by a blend of 7 natural fruit juices.

NEW!
HAWAIIAN
PUNCH
SUNSHINE
ORANGE
WITH 7 REAL FRUIT JUICES

Hawaiian Punch® Sunshine Orange is much more than a combination with Valencia orange juice plus six other natural fruit juices. The result is a uniquely sweet orange that kids love. And it's loaded with Vitamin C. Sunshine Orange has as much Vitamin C as an equivalent glass of orange juice — without the pulp, without any bitter taste. Serve Hawaiian Punch Sunshine Orange to your kids and you'll all be happy.



"Pack their lunch with a fruit juicy surprise"

Now
HAWAIIAN PUNCH
comes in 8 ounce
single serving cans.

Now your kids don't have to be home to enjoy their favorite Hawaiian Punch flavor treats. Hawaiian Punch true fruit punches now come in handy, go-anywhere eight ounce easy-open cans.

Just pop them into the freezer overnight. Next morning put one into their lunch box. By the time noon rolls around, it's thawed and ready to drink; a cold, delicious lunch-time surprise.

Remember, Hawaiian Punch is made with seven natural fruit juices. You'll find your favorite flavor in our new eight ounce cans: Apple-Red, Great Grape, Sunshine Orange, and, of course, Fruit Juicy-Red.



Visit the Hawaiian Punch Pavilions
at Sea World/San Diego and Sea World/Ohio...
see Shamu, the killer whale.

This advertisement prepared by
WILLIAM ESTY COMPANY
INCORPORATED



STORE COUPON

Save 10¢

TO GROCER: Upon compliance with terms of this offer, you will be refunded 10¢ toward the purchase of one pack of six 8-oz. cans of Hawaiian Punch, any flavor, plus 3¢ handling cost if you mail this coupon to address below. Coupon not to be assigned or transferred by you. Any other application constitutes fraud. Limit: proving purchase of stock within 90 days, to cover coupons accepted, must be shown on request. Void when presented by outside agency or where prohibited, taxed or otherwise restricted. Consumer must pay applicable sales tax. Good only in U.S.A. Cash value 1/20 of one cent. RJR Foods, Inc., Box 1003, Clinton, Iowa 52732. Redeem this coupon today.



HP-59

RJR Foods, Inc.

SAVE on Hawaiian Punch® Grape



Hawaiian
Punch Grape
is the great
grape punch—a
blend of seven
natural fruit
juices for
breakfast, lunch-
time, anytime.

7¢

SAVE 7¢ ON A 46 OZ. CAN OF HAWAIIAN PUNCH GRAPE

7¢

STORE COUPON



Mr. Grocer: You will be refunded 7¢ on one 46 oz. can of Hawaiian Punch Grape plus 3¢ for handling if you receive and handle it strictly in accordance with the terms of this offer and if, upon request, you submit evidence thereof satisfactory to K. J. Reynolds Foods. Void when presented by outside agency or where prohibited, taxed or otherwise restricted. Good only in U.S.A. Cash value 1/20 of 1¢. R. J. Reynolds Foods, Inc. Box 1003, Clinton, Iowa 52732.

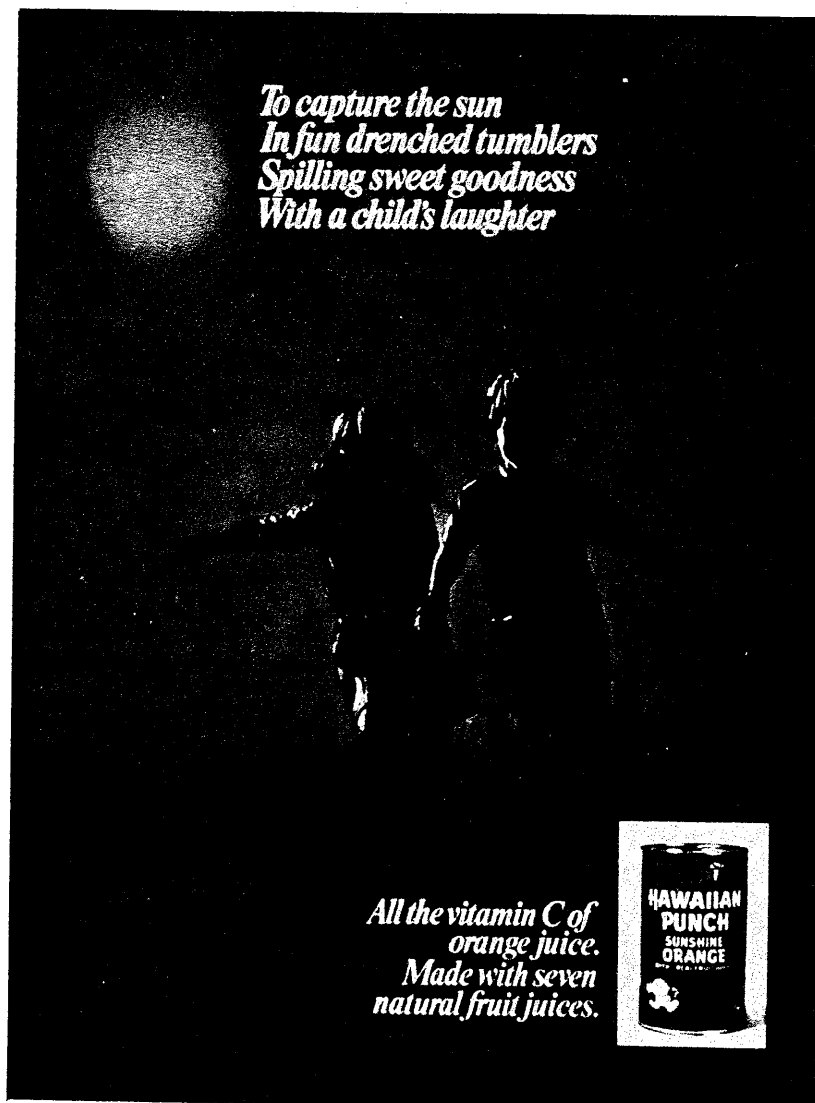
R. J. REYNOLDS FOODS, INC.

HP-3

STORE COUPON

7¢

*To capture the sun
In fun drenched tumblers
Spilling sweet goodness
With a child's laughter*



*All the vitamin C of
orange juice.
Made with seven
natural fruit juices.*



This advertisement prepared by:
WILLIAM ESTY COMPANY, INC.
Ad No. P55-176A
This advertisement appears in:
Family Circle, October, Digest Page Bleed



PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent RJR Foods, Inc., has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of food products of the same general kind and nature as that sold by respondents.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent William Esty Company, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of "Hawaiian Punch" by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Section 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement, placed such agreement on the public record for a period of thirty (30) days, and received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent RJR Foods, Inc., 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 principal place of business located at 750 Third Avenue, New York, New York.

Respondent William Esty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 100 East 42nd Street, New York, 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, RJR Foods, Inc., a corporation, and William Esty Company, Inc., a corporation, their successors and assigns, and their 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 any fruit-flavored, non-carbonated beverage under the "Hawaiian Punch" trademark, as a frozen concentrate, liquid, liquid concentrate, powder, or in any other physical state, whether or not containing natural fruit juice, forthwith cease and desist for a period of one year after service of the order upon RJR Foods, Inc. and William Esty Company, Inc., and thereafter until respondents submit to the Commission the results of a survey conforming in protocol, procedure and results to Appendix A to this order, from:

1. Disseminating or causing the dissemination of, any

advertisement by means of the United States mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which depicts fruit or juice unless (a) the total percentage of single strength fruit juice contained in a concentration at which the product is intended to be served is clearly and conspicuously disclosed; or (b) the said product contains 100 percent single-strength fruit juice in a concentration at which the product is intended to be served.

It is provided, however, That the use of the word "fruit" or the use of the name of a fruit(s) to describe the taste or flavor of said product shall not, solely on the basis of such use, be deemed a violation of this order.

It is further provided, That for purposes of compliance with this order, the disclosure required above will be deemed clear and conspicuous in television advertising if (a) it appears at least once in each television commercial; (b) it is presented simultaneously in both the video and audio portions of the commercial; (c) the video portion (i) is of a sufficient size so that it can be easily read on all commercially available tube sizes, and (ii) it appears on the screen for a sufficient period to permit it to be read by the viewer, but not for less time than the audio portion; and (d) any other video or audio material accompanying the disclosure is not inconsistent with normal artistic and technical standards.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations, acts or practices prohibited in subparagraph 1 above.

For the purposes of compliance with this order, respondent William Esty Company, Inc., may rely in good faith upon information concerning the composition of any such product supplied by the manufacturer or processor of said product, *Provided,* That respondent neither knows nor has reason to know that any claim covered by this part is false or deceptive.

II. *It is further ordered,* That respondent, RJR Foods, Inc., a corporation, and William Esty Company, Inc., a corporation, their successors and assigns, and their officers, agents, representa-

tives and employees, directly, or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any fruit-flavored beverage, as a frozen concentrate, liquid concentrate, powder or in any other physical state, whether or not containing natural fruit juice, forthwith cease and desist from:

1. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, through the manner of the use of words or depictions, photographs, or other representations of fruit, that the natural fruit content of any product is greater than its actual fruit juice content.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains the representations prohibited in subparagraph 1 above.

It is provided, however, That the use of the word "fruit" or the use of the name of a fruit(s) to describe the taste or flavor of said product shall not, solely on the basis of such use, be deemed a violation of this order.

It is further provided, That respondents shall not be deemed in violation of Part II of this order with respect to any such fruit-flavored beverage so long as (a) they are in compliance with Part I above as to such fruit-flavored beverage, or (b) they have available a survey conforming in protocol, procedure (other than the independence of the survey supervisor) and results to Appendix A to this order as to such fruit-flavored beverage.

For the purposes of compliance with this order, respondent William Esty Company, Inc., may rely in good faith upon information concerning the composition of any such product supplied by the manufacturer or processor of said product, *Provided*, That respondent neither knows nor has reason to know that any claim covered by this part is false or deceptive.

III. *It is further ordered,* That respondent, RJR Foods, Inc., its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, distribution or labeling of the products

described in Part I above in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist for a period of one year, and thereafter until respondents submit to the Commission the results of a survey conforming in protocol, procedure and results to Appendix A to this order, from depicting fruit or juice in labeling, as "labeling" is defined in the Federal Food, Drug, and Cosmetic Act, unless (a) the total percentage of single strength fruit juice contained in a concentration at which the product is intended to be served is clearly and conspicuously disclosed in any labeling containing such use; or (b) the said product contain 100 percent single-strength fruit juice in a concentration at which the product is intended to be served.

It is provided, however, That conformity to any affirmative regulation or standard issued under the Federal Food, Drug, and Cosmetic Act providing for the disclosure of fruit juice content on the label or labeling of said product will be deemed compliance with the requirements of this Paragraph III; and that the use of the word "fruit" or the use of the name of a fruit(s) to describe the taste or flavor of said product shall not, solely on the basis of such use, be deemed a violation of this order.

For purposes of compliance with this order, the disclosure required above shall be deemed clear and conspicuous in labeling if (a) it appears on any appropriate information panel as that term is used in 21 C.F.R. 1.10(h); (b) it appears in numbers of a color or shade that readily contrast with the background; (c) it appears in a type face of not less than 6 points on a 46-fluid ounce container, 4 point on a 12-fluid ounce container, and in proportional type sizes for other container sizes; and (d) it appears as part of any tabular, charted or graphic presentation if the label bears a compositional comparison between said product and any other product.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions engaged in the advertising, offering for sale, sale, distribution or labeling of any aforementioned product.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations which may affect compliance obligations arising out of the order, including but not limited to the sale or acquisition of the

business of advertising, offering for sale, sale, distribution, or labeling of fruit flavored beverages by affiliated corporations of respondent, RJR Foods, Inc.

It is further ordered, That respondents shall, within sixty (60) days after service of the order upon them, each file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

It is provided, however, That RJR Foods, Inc., will be deemed in compliance with Part III of this order if the required disclosure appears on labels placed into production within sixty (60) days after service of the order upon RJR Foods, Inc., or September 1, 1972, whichever is later.

APPENDIX A

A. Survey Results:

If a survey conducted in accordance with Section B shows that (a) 67 percent of current purchasers of fruit-flavored beverages (see Para. B.2.a. below); or (b) 80 percent of current or prospective purchasers of Hawaiian Punch products (see Para. B.2.b.); or (c) 95 percent of current purchasers of Hawaiian Punch products (see Para. B.2.c.) think that Hawaiian Punch products contain no more than 20 percent natural fruit juice, then the disclosure described in Sections I and III of the order will no longer be required after one year from the date of serving of this order upon RJR Foods, Inc. and William Esty Company, Inc.

B. Survey Protocol & Procedure:

1. This survey, including the processes of sampling, data, generation analysis, and interpretation of results, shall be conducted by independent experienced interviewers and supervisors.

2. Using telephone directories representing the entire United States, a national probability sample will be drawn; within the limitations of this method of sample selection, the sample will be projectable to the total population. Interviewers will call the numbers to locate 500 individuals who have (a) purchased fruit-flavored noncarbonated beverages in the last month; or (b) purchased Hawaiian Punch brand fruit-flavored beverages in the last month, or express an intent to do so within the succeeding month or so; or (c) purchased Hawaiian Punch brand fruit-flavored beverages in the last month. If there is no answer when a selected telephone number is called, the number will be tried again, up to two additional times, at different times of day and on different days of the week. Approximately 20 percent of each interviewer's work will be validated by telephone.

3. Only the following questions will be asked in these interviews:

A. "Hello, my name is _____, and I am calling for a national research company that is conducting a survey about beverages. Do you ever buy fruit drinks?"

Decision and Order

B. If answer to "A" is "no," or if the respondent is a child, ask, "May I please speak to the main food purchaser in your home?" Then start again at question "A" with the main food purchaser.

C. "In the past month, have you bought any canned fruit drinks?"

D. "What brand or brands do you usually buy?"

E. How likely would you say that you are to buy one or more cans of (name of brands named in "D") in the next month or so? Would you say you are . . . 1. "Sure that you won't,"

2. "Not likely",

3. "Fairly likely",

or 4. "Quite likely"

to buy (name of brand)

In the event that a respondent has not named Hawaiian Punch in response to "D", insert this brand as follows: If one, two, or three other brands are mentioned, insert Hawaiian Punch as the second brand; if four or more brands are mentioned, insert Hawaiian Punch as the *third* from last brand.

Responses 1 and 2 to question "E" will not be counted in population option B.2.b.; responses 3 and 4 will be counted in that option.

F. In the case of population options B.2.b. and B.2.c., ask only respondents who name Hawaiian Punch in "D" or "E", and in the case of population option B.2.a., ask *all* respondents: "Now I would like to ask you to rate the fruit *juice* content of some canned fruit drinks. If you think the brand is composed entirely of fruit juice, rate it 100 percent. If you think it has no fruit juice, rate it as 0 percent. Please pick a figure from 0 to 100 that expresses the brand's fruit juice content. How would you evaluate (brand name)?"

Repeat last sentence for each brand mentioned in response to "D" and "E", in order used by respondent. In the event that a respondent in population option B.2.a. has not mentioned Hawaiian Punch, insert this brand as follows: If one, two, or three other brands are mentioned, insert Hawaiian Punch as the second brand, if four or more brands are mentioned, insert Hawaiian Punch as the *third* from last brand.

G. "Thank you very much for your help."

4. The completed questionnaires will be edited and coded, with the punching verified for approximately 20 percent of the punched columns.

IN THE MATTER OF

BOISE TIRE COMPANY, ET AL.

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

Docket C-2425. Complaint, July 16, 1973—Decision, July 16, 1973.

Consent order requiring a Boise, Idaho, seller and distributor of automotive tires and other automotive accessories, principally Uniroyal products, among other things to cease misrepresenting the quality, design, or