

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

Docket C-2558. Complaint, Oct. 4, 1974—Decision, Oct. 4, 1974

Consent order requiring a Wilmington, Del., formulator and distributor of manufacturing grade insecticides, among other things to cease claiming that its agricultural insecticides are absolutely safe to use or absolutely safe to man or the environment. Further, respondent must place in all promotional material expressing or implying safety claims about agricultural insecticides, a statement reminding users that all pesticides are harmful if misused, and that they should only be used as directed.

Appearances

For the Commission: *Miriam A. Bender, Eric M. Rubin and Paul L. Chassy.*

For the respondent: *Charles S. Maddock, Wilmington, Del., and Burton Caine of Wolf, Block, Schorr & Solis-Cohen, Phila, Pa.*

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 Hercules Incorporated, a corporation, hereinafter referred to as respondent, has violated provi-

sions 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. For the purposes of this complaint and the order attached hereto, the following definitions of terms shall apply:

(1) "Pesticide" refers to (a) any substance or mixture of substances, including insecticides, intended for preventing, destroying, repelling or mitigating any pest, and (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(2) "Insecticide" refers to any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

(3) "Non-persistent" refers to the property of certain toxic chemicals to dissipate or breakdown to non-toxic components rapidly in the environment.

(4) "Non-mobile" refers to the property of certain toxic chemicals to remain at their site of application.

(5) "Magnify" refers to the property of certain toxic chemicals to accumulate in exposed organisms at appreciably higher levels of concentration than in either their surrounding environment or in organisms beneath them in the food chain.

PAR. 2. Respondent, Hercules Incorporated, 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 Hercules Tower, 910 Market Street, in the city of Wilmington, State of Delaware.

PAR. 3. Respondent is now, and for some time last past has been, engaged in the production, formulation, advertising, offering for sale, sale and distribution of manufacturing grade insecticides designated as "Toxaphene" and "Delnav" to national, regional and local insecticide formulators for resale to retailers and the public. Respondent is now, and for some time last past has been, also engaged in cooperative advertising with customers for products containing Toxaphene and Delnav in formulation with carriers and other pesticides for resale to retailers and the public.

PAR. 4. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused the said products, when sold, to be transported from its place of business in one State of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has main-

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tained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its said business, and for the purpose of inducing the purchase of its Toxaphene insecticide, respondent has made, and is now making numerous statements and representations in advertisements inserted in broadcast and print media and in other promotional materials concerning the physical and chemical characteristics of Toxaphene and its effects on human life and the environment.

PAR. 6. Typical and illustrative of the statements and representations in said advertising and promotional materials, disseminated as aforesaid, but not all inclusive thereof, are the following:

(a) Promotional Literature:

(1) Low dosages of Toxaphene effectively control a broad spectrum of insects with safety to humans and other warmblooded animals.

(b) Television Advertisements:

(1) If you're a cotton grower, you've just got to be confused about insect control this season. First, you hear that farm prices in general are too high—then you're told that cotton insecticides pollute the environment * * * Hercules toxaphene is not one of the problem insecticides.

(c) Magazine Advertisements: [See pp. 608-612 herein.]

PAR. 7. Through the use of said advertisements and promotional materials and others similar thereto not specifically set out herein, disseminated as aforesaid, respondent has represented and is now representing, directly or by implication, that:

(1) Toxaphene is a safe, non-toxic, hazard-free product with respect to humans and other warm-blooded animals, and will not harm one's children or neighbors.

(2) Use of Toxaphene will not pollute the environment because it is a "soft" pesticide, is non-persistent, is non-mobile, and will not magnify biologically.

(3) Past use of Toxaphene has caused no problems of environmental pollution.

PAR. 8. In truth and in fact:

(1) Toxaphene is not a safe, non-toxic, hazard-free product with respect to humans and other warm-blooded animals, and can harm children or neighbors. Labeling affixed to respondent's Toxaphene products specifically warns users to keep it out of reach of children, that it may be fatal if taken internally, that it can be absorbed through the skin in dry or liquid form, that its vapors should not be breathed, and that it should be kept out of eyes and off clothing.

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**Anyone who likes children
and dogs
and uses Hercules® toxaphene
can't be all bad.**

Certain stories making the rounds color the American farmer as a man who cares little about his environment. You know first hand that isn't true. A man who works closely with his land, who watches the sky for weather signals and who is a businessman in every meaning of the word, takes his stewardship very seriously. His livelihood depends on his skillful use of land, seed, equipment and modern agricultural chemicals – together with good conservation and farming practices. For over twenty years farmers have

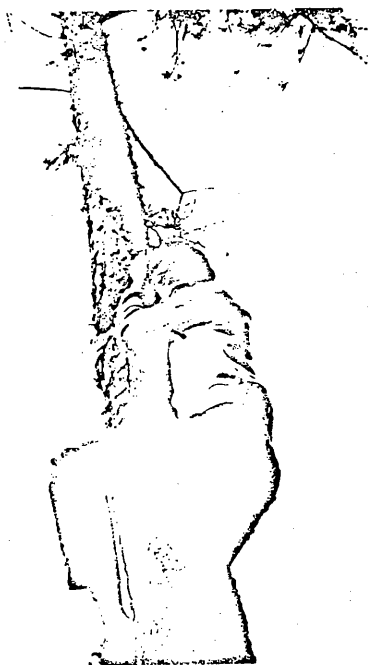
used Hercules® toxaphene, a derivative of the southern pine tree, in insect pest control. Such control increases yield and protects quality. Toxaphene is not a "hard" pesticide. It is not biologically persistent, although it continues insect control 5 to 7 days after application. Toxaphene is non-mobile in the environment.

It does not have a high rate of biological magnification. It is a "good neighbor."

Farmers who use formulations based on Hercules® toxaphene are good neighbors also. They furnish food and fiber for America. They are concerned about the environment.



3a



**A pine tree, a boy,
and Hercules® toxaphene...
what do they have in common?**

A great deal. From the southern pine tree comes Hercules® toxaphene, the insecticide that has been used over twenty years without causing problems of environmental pollution. And that means future generations will not find their natural resources lessened.

Toxaphene has played a major role in the control of insect pests

that reduce cotton yield and quality. Toxaphene is not a "hard" pesticide. It is non-mobile. It does not have a high rate of biological magnification. Toxaphene is not biologically persistent. Farmers and livestock growers both rely on formulations based on Hercules® toxaphene. They have found it to be a "good neighbor".



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He who plans wisely today, plans wisely for tomorrow.

Today's modern agriculturalist is concerned about his stewardship of the environment. He carefully selects his agricultural chemicals. For over twenty years, farmers have used formulations based on Hercules® toxaphene to control insect pests. Toxaphene is not a "hard" pesticide. It is not biologically persistent, does not have a high rate of biological magnification, and is non-mobile in the environment.

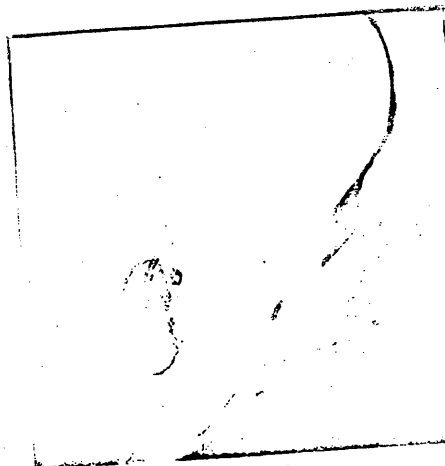
Ask Hercules

for agricultural chemicals that are good neighbors as well as top performers. Delnav® miticide-insecticide, Herban® selective herbicide, and Nitroform® fertilizer are only a few that indicate Hercules' capabilities.



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The 'soft' insecticide that's hard on cotton insects...

Have no doubt about it, Hercules® toxaphene is plenty tough on cotton insect pests... boll weevils, bollworms, plant bugs, and other hard-to-kill insects.

But toxaphene stays active just long enough to do its work. Toxaphene-based formulations stay on the job between applications... 5 to 7 days. Hercules toxaphene is not biologically persistent like the "hard" pesticides you've been hearing so much about. Monitoring studies in areas where toxaphene applications have been made year after year show no residues in amounts of biological importance.

Hercules toxaphene has a clean bill of health on other points that make "hard" pesticides a controversial subject. Toxaphene has been used for over 20 years in the Cotton Belt, saving millions of dollars worth of cotton without creating problems of environmental pollution. So, if you want to call Hercules toxaphene a "soft" insecticide, go ahead. But it is hard on cotton insect pests... and that's really all you want from an insecticide, isn't it?



How the southern pine protects your cotton crop

The southern pine tree is the source for many products manufactured by Hercules. Rosins, turpentine, and pine oil are a few. One of these products, Hercules[®] toxaphene, has protected cotton from insect pests for more than 20 years. An insecticide has to do its job well to remain a best seller that long.

But the cotton grower has a lot more than dependable cotton insect control going for him when he uses toxaphene. With attention now focused on the "hard" pesticides that are suspected of environmental contamination, it is reassuring that toxaphene has such a good record.

Toxaphene is not biologically "persistent"

Hercules toxaphene is different from other insecticides in a lot of ways. For example, it is not biologically "persistent," although it continues to control cotton insect pests five to seven days after application.

And toxaphene does not have a high rate of biological magnification, the trait that causes some insecticides to accumulate in excessive concentrations in the food chain.

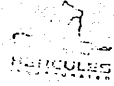
Toxaphene is non-mobile

Hercules toxaphene shows little inclination to have "mobility in the environment," or move away from the area of application. Toxaphene stays home, and is thus relatively non-mobile.

Some people might say the lack of such properties is a handicap. For instance, you will never find Hercules toxaphene recommended as a soil insecticide to kill such pests as termites or wireworms. Persistent insecticides are needed for such a task.

Toxaphene is effective

But toxaphene's ability to work hard for the five to seven day period makes it ideal for other jobs . . . such as cotton insect control. Or to combat insects that attack vegetables in fields that may be rotated to other crops. Or for use in areas where honeybees abound. Properly used, toxaphene offers very little hazard for beekeepers. Hercules toxaphene is also kind to many other beneficial insects that, in turn, help to keep destructive insects under control.

 Like Hercules, toxaphene
strives to be a good neighbor.

(2) Toxaphene is not a "soft" pesticide, is not non-persistent, is not non-mobile, and can magnify biologically.

(3) Use of Toxaphene can and has caused problems of environmental pollution. Labeling affixed to Toxaphene products specifically warns users to protect fish and wildlife by not contaminating streams, lakes, or ponds with the material, and to avoid contamination of food and feed products.

Therefore, the statements and representations as set forth in Paragraph Six hereof were, and are deceptive.

PAR. 9. By advertising Toxaphene insecticide in a manner which substantially varies from and disregards instructions for use and warnings in labeling, respondent negates the import and purposes and detracts from the effectiveness of such instructions and warnings.

Therefore, the advertisements, other promotional materials, acts or practices referred to in Paragraph Nine above are unfair or deceptive.

PAR. 10. In the further course and conduct of its business as aforesaid, respondent has advertised Toxaphene and Delnav insecticides, alone and in formulation with other pesticides such as ethyl and methyl parathion, without disclosing in said advertising that such chemical products are hazardous to human health. Knowledge of the hazards associated with the use of such products would enable and encourage consumers to exercise the proper degree of care in using them. Thus, respondents have failed to disclose a material fact which, if known to consumers, would be likely to affect their consideration of whether or not to purchase, and how to properly use such products.

Therefore, the aforesaid advertisements, other promotional materials, acts or practices and the aforesaid failure to disclose material facts are deceptive or unfair.

PAR. 11. Respondent's advertising of safety claims regarding pesticides with precautionary labeling is in itself deceptive and has the capacity and tendency to mislead a substantial portion of pesticide users into the erroneous and mistaken belief that they are handling safe products.

Therefore, the aforesaid advertisements, other promotional materials, acts or practices are deceptive or unfair.

PAR. 12. In the course and conduct of its business as aforesaid and at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of insecticide products of the same general kind and nature.

PAR. 13. The use by respondent of the said deceptive or unfair advertisements, acts or practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing

public into the erroneous and mistaken belief that the said statements and representations were and are true and induce them into the purchase of substantial quantities of Toxaphene and Delnav insecticides by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts or 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 or deceptive acts or 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 respondent named in the caption hereto 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 respondent 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 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) 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 Hercules Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Hercules Tower, 910 Market Street, in the city of Wilmington, State of Delaware.

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, Hercules Incorporated, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of any insecticide product with precautionary labeling which contains any active insecticidal ingredient(s) presently marketed by respondent or currently being field tested by respondent and which is intended for use by custom applicators and commercial growers to protect animals or food, forage, field or fiber crops by virtue of the capacity of its active ingredient(s) to kill insects (sometimes referred to hereinafter as "such products"), do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely or unqualifiedly safe, non-toxic or free of hazard for any use registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (hereinafter FIFRA) or any other approved use based upon evidence filed in connection with registration under FIFRA.

B. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are qualifiedly safe, non-toxic or free of hazard for any use registered under FIFRA or any other approved use based upon evidence filed in connection with registration under FIFRA; *Provided However*, That factual statements about such products regarding any use registered under FIFRA, any other approved use based upon evidence filed under FIFRA, the level of hazard or toxicity to products or species treated in accordance with such use(s) or residues resulting from such use(s) shall not be prohibited if:

(1) respondent prominently and in close conjunction thereto, includes a statement (except in broadcast advertisements not more than 30 seconds in length) denoting the existence of any specific caution or category thereof, other than directions for use (e.g., "Do not apply within 7 days of harvest"), which (a) appears on respondent's label or labeling for such products; or, (b) in the absence of relevant cautions on respondent's product labels or labeling, regarding such factual statements, are identified by the Environmental Protection Agency in its "EPA Compendium of Registered Pesticides" or any published supplement thereto; including but not limited to limitations on

application due to regional or climatic variations; restrictions on subsequent use of treated crops, animals, or lands; and limitations due to consequent injury of specific species, *e.g.*, crop(s), animal(s), fish, bird(s), or beneficial insect(s); where such specific caution is relevant and material and without notice of which said factual statements would be untrue or misleading; and

(2) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this order; and

(3) such factual statements do not use the word "safe," or any form thereof.

C. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are relatively or comparatively safe, less toxic or freer of hazard, for any use registered under FIFRA, or any other approved use based upon evidence filed in connection with registration under FIFRA; *Provided however*, That comparative factual statements about such products regarding any use registered under FIFRA, any other approved use based upon evidence filed under FIFRA, the level of hazard or toxicity to products or species treated in accordance with such use(s), or residues resulting from such use(s) shall not be prohibited if:

(1) such factual statements compare the promoted insecticide with a specifically identifiable insecticide product, product form, or product group; and

(2) respondent prominently and in close conjunction thereto, includes a statement (except in broadcast advertisements not more than 30 seconds in length) denoting the existence of any specific caution or category thereof, other than directions for use (*e.g.*, "Do not apply within 7 days of harvest"), which (a) appears on respondent's label or labeling for such products; or, (b) in the absence of relevant cautions on respondent's product labels or labeling, regarding such factual statements, are identified by the Environmental Protection Agency in its "EPA

Compendium of Registered Pesticides" or any published supplement thereto; including but not limited to limitations on application due to regional or climatic variations; restrictions on subsequent use of treated crops, animals, or lands; and limitations due to consequent injury of specific species, *e.g.*, crop(s), animal(s), fish, bird(s), or beneficial insect(s), where such specific caution is relevant and material and without notice of which said factual statements would be untrue or misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this order; and

(4) such factual statements do not use the word "safe," or any form thereof.

II. With respect to representations not covered by the provisions of Section I of this order, it is ordered that Hercules Incorporated, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products, do forthwith cease and desist from:

A. Representing, directly or by implication, by print or broadcast advertising, by other promotional material, or by sales representatives' oral statements, that such products are absolutely safe, non-toxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment.

B. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are qualifiedly safe, non-toxic or free of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment; *Provided however*, That factual statements which (i) describe physical, chemical, biological or toxicological characteristics of the promoted insecticide, or (ii) discuss the aforesaid characteristics and their effects on the environment, human beings, warm-blooded animals, fish, birds, or beneficial insects shall not be prohibited if:

(1) the label or labeling for such product(s) contains no relevant and required general or specific warning or caution regarding such characteristics or any effect caused by such characteristics; *Provided*, nothing in this subsection shall prohibit:

(a) the dissemination of instructions for the proper use of such product(s), or

(b) factual statements which reproduce or discuss the substance of or reason(s) for any statement, warning or caution or direction for use found on the label or labeling of the promoted product(s) and are consistent with such statements, warnings, cautions, or directions for use, and

(2) such factual statements are true and not misleading under normal circumstances and conditions under which the product could be expected to be used, *Provided further*, if circumstances and conditions of normal use exist in which said factual statements are untrue or misleading, respondent must describe, prominently and in close conjunction with said factual statements, specific circumstances and conditions for use in which said factual statements are true and not misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this order; and

(4) respondent discloses, prominently and in close conjunction with any such factual statements concerning human safety (except in broadcast advertisements not more than 30 seconds in length), any toxicological characteristics relating to human safety which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(5) respondent discloses, prominently and in close conjunction with any other such factual statements (except in broadcast advertisements not more than 30 seconds in length), any hazardous collateral effects which are relevant and material

and without the disclosure of which said factual statements would be untrue or misleading; and

(6) such factual statements do not use the word "safe," or any form thereof.

C. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that such products are relatively or comparatively more safe, less toxic or freer of hazard to human beings, warm-blooded animals, birds, fish, beneficial insects, or the environment than any other insecticide product(s); *Provided, however,* That comparative factual statements which (i) describe physical, chemical, biological or toxicological characteristics of the promoted insecticide or (ii) discuss the aforesaid characteristics and their effect on the environment, human beings, warm-blooded animals, fish, birds, or beneficial insects shall not be prohibited if:

(1) such factual statements compare the promoted insecticide with a specifically identifiable insecticide product, product form, or product group; and

(2) such factual statements are true and not misleading under normal circumstances and conditions under which the product could be expected to be used; *Provided further,* if circumstances and conditions of normal use exist in which said factual statements are untrue or misleading, respondent must describe, prominently and in close conjunction with said factual statements, specific circumstances and conditions of use in which said factual statements are true and not misleading; and

(3) at the time of such representations, 1) such statements do not differ in substance from claims accepted in connection with registration under FIFRA, or 2) in the case of other statements not currently rejected as unsubstantiated in connection with registration under FIFRA, such other statements are substantiated by competent scientific tests or other objective materials which provide a reasonable basis for the representation(s) made, and the substantiation materials are either (i) available for public inspection or (ii) otherwise available to the FTC to determine compliance with this Order; and

(4) respondent discloses, prominently and in close conjunction with any such factual statements concerning human safety (except in broadcast advertisements not more than 30 seconds in length), any toxicological characteristics relating to human safety in regard to which the promoted product is the more toxic and which are relevant and material and without the

disclosure of which said factual statements would be untrue or misleading; and

(5) respondent discloses, prominently and in close conjunction with any other such factual statement (except in broadcast advertisements not more than 30 seconds in length), any hazardous collateral effects in regard to which the promoted product is the more hazardous and which are relevant and material and without the disclosure of which said factual statements would be untrue or misleading; and

(6) such factual statements do not use the word "safe," or any form thereof.

D. Representing, directly or by implication, by print or broadcast advertising or by other promotional material, that Toxaphene insecticide, or any product containing Toxaphene insecticide:

(1) is "soft;" or

(2) is "non-persistent," "non-mobile" and/or will "not magnify biologically;" *Provided, however,* That the use of such terms shall not be prohibited if:

(a) accompanied by statements, which clearly and conspicuously and in close conjunction with such terms, fully and accurately explain such terms and the specific context within which such terms are used, and that context reflects a normal circumstance or condition in which the product could be expected to be used; and

(b) accompanied by statements which set forth all relevant and material adverse effects on the environment known to result from the uses of such product which are suggested by the claims for the product; and

(c) statements concerning such terms are substantiated by competent scientific tests or other objective material which provide a reasonable basis for the representations made, and the substantiation materials are either (i) available for public inspection, or (ii) otherwise available to the Federal Trade Commission to determine compliance with this order; and

(d) statements concerning such terms include no conclusory representations, either directly or indirectly or by implication, suggesting that the product is unqualifiedly safe, non-toxic or free of hazard.

III. *It is further ordered,* That respondent, Hercules Incorporated, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation,

subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from making any representations, any representations, directly or by implication, orally or in writing, or omitting any representations, concerning any such product, which contradict, are inconsistent with, or detract from the effectiveness of any warning, caution or direction for use required to be set forth on the label or labeling of such product. If the representations, directly or by implication, made by respondent, or the omission of representations by respondent, are in accord with the provisions of Sections I, II, and IV of this order, they shall be considered as being in compliance with this Section of the order.

IV. *It is further ordered*, That respondent, Hercules Incorporated, a corporation, its successors and assigns and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale or distribution of such products do forthwith cease and desist from disseminating or causing the dissemination of:

A. Any print advertising or print promotional material which contains claims covered by Sections I or II for any such product unless it clearly and conspicuously includes in such print advertisement or print promotional material the following statement:

STOP! ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

B. Any broadcast advertisement more than 30 seconds in length for any such product which contains claims covered by Sections I or II unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL TO HEALTH AND THE ENVIRONMENT IF MISUSED. READ THE LABEL CAREFULLY AND USE ONLY AS DIRECTED.

C. Any broadcast advertisement not more than 30 seconds in length for any such product which contains claims covered by Sections I or II unless it clearly and conspicuously includes the following statement:

ALL PESTICIDES CAN BE HARMFUL. READ THE LABEL. USE AS DIRECTED.

Provided, That in television advertisements not more than 10 seconds in length which contain no direction representations concerning product safety, the requirements of the term "clearly and conspicuously" shall in all cases be met by including the above statement in the video portion of the advertisement.

V. *It is further ordered*, That the provisions of this order shall apply to all advertising (or advertising claims) prepared by respondent, whether or not such advertising is placed or paid for by respondent alone, or by respondent in conjunction with another under a cooperative advertising plan, or otherwise; *Provided, however*, That Sections I, II, III and IV of this order shall not apply to any advertising prepared by the customers of respondent, whether or not respondent makes payment in whole or in part for such advertising under any cooperative advertising plan, or otherwise. Nothing in this Section V shall be construed to extend any provision of this order beyond the specific terms thereof.

Respondent shall, *Nevertheless*, condition all future payments to customers of insecticide products covered by this order, made in connection with any cooperative advertising plan in which respondent participates, upon said customers' certification to respondent that they have complied with the standards set forth in Section IV of this order.

VI. Nothing in this order shall be construed to apply to scientific articles published in recognized scientific or agricultural journals or government publications, or reprints thereof, or representations (other than print advertising or other promotional material) before public or governmental forums such as public hearings, scientific meetings, or to governmental agencies, agents, or employees responsible for the regulation or dissemination of information concerning insecticide products covered by this order.

VII. *It is further ordered*, That nothing in this order shall prohibit the dissemination of product labels (as defined by Section 2(p)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended), or productions thereof.

VIII. *It is further ordered*, That this order shall become effective as to broadcast and print advertisements and other promotional material upon service and as to oral representations by sales representatives two months thereafter, except that Sections I.B., I.C., II.B., II.C. and III of this order shall become effective at such time as and to the extent that a Trade Regulation Rule covering the advertising and promotion of products subject to this order, and containing terms at least as onerous as this order, becomes final and effective. *Provided*, That at all times subsequent to the date this order is served, claims which would be governed by Sections I.B., I.C., II.B., or II.C., if said sections were in effect, shall be deemed to be "claims covered by Sections I or II" for purposes of Section IV of this order.

IX. *It is further ordered*, That should the Federal Trade Commission promulgate a Trade Regulation Rule or Industry Guide governing the

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advertising or promotion of products subject to this order, then any pertinent less comprehensive or less restrictive provisions of such rule or guide shall automatically replace any comparable provisions set forth herein which are effective on the date that such rule or guide becomes effective.

X. *It is further ordered*, That the respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, advertising, promotion or distribution of products subject to this order, and to all present and future employees of respondent responsible for the advertising, promotion, distribution or sale of such products, and to all parties participating in respondent's cooperative advertising programs for such products.

XI. *It is further ordered*, That the respondent 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 changes in the corporation which may affect compliance obligations arising out of this order.

XII. *It is further ordered*, That respondent corporation shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order, except that such report shall in the case of Sections I.B., I.C., II.B., II.C. and III be filed within sixty (60) days after their becoming effective against respondent corporation.

IN THE MATTER OF

BABBITT BROTHERS TRADING COMPANY, ET AL.

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

Docket C-2559. Complaint, Oct. 7, 1974—Decision, Oct. 7, 1974

Consent order requiring seven Arizona, pawnbrokers and general merchandise retailers, among other things to cease offering their customers unfair or deceptive inducements to purchase or deal; failing to make material disclosures on such items as pawn receipts; and failing to make disclosures required by Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: