
IN THE MATTER OF
UNION CARBIDE CORPORATION
MODIFIED ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2557. Decision, Oct. 4, 1974—Modifying Order, Dec. 2, 1975

Order modifying an earlier order dated Oct. 4, 1974, 84 F.T.C. 591, 40 F.R. 6477, by

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eliminating order Paragraphs I.B., II.B., II.C., VII, VIII, IX, and XIII, and including a proviso that primarily institutional advertising will not require the "STOP" clause. This is to provide for a uniformity of treatment among competitors against whom the F.T.C. proceeded simultaneously issuing complaints involving the same practices. The modified order affords respondent the benefits of the terms of the consent order afforded to FMC Corporation in Docket 8961, 86 F.T.C. 897, 40 F.R. 53552, but which leaves intact those provisions which are peculiar to the facts of the Union Carbide complaint.

Appearances

For the Commission: *Joan Z. Bernstein.*

For the respondent: *Kirkland, Ellis & Rowe, Wash., D.C. and Richard H. Gregory, Jr., New York City.*

ORDER REOPENING AND MODIFYING CEASE AND DESIST
ORDER

Upon consideration of respondent's petition to reopen and modify the cease and desist order entered by consent against respondent in this matter on Oct. 4, 1974 [84 F.T.C. 591], to afford respondent the benefits of the terms of the consent order afforded to FMC Corporation in Dkt. 8961 [86 F.T.C. 897], and the Acting Director of the Bureau of Consumer Protection having recommended that the requested modifications be granted, and the Commission having concluded on the basis of the foregoing that the petition should be granted.

It is ordered, That this matter be reopened and the following modified final order be substituted and issued in lieu of the order entered herein on Oct. 4, 1974:

MODIFIED FINAL ORDER

I

It is ordered, That respondent, Union Carbide Corporation, 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:

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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, nontoxic 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.

II

With respect to representations not covered by the provisions of Section I of this order; *It is ordered*, That Union Carbide Corporation, 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, nontoxic or free of hazard to human beings, warmblooded animals, birds, fish, beneficial insects, or the environment.

III

It is further ordered, That respondent, Union Carbide Corporation, 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, directly or by implication, or omitting any representations, by print or broadcast advertising or by other promotional material, 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 of such product. *Provided*, That if any 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, Union Carbide Corporation, 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 any use or efficacy claim or any environmental or safety claim for any such products unless it clearly and conspicuously includes in such print advertising 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 which contains any use or efficacy claim or any environmental or safety claim for any such products 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 of 30 seconds or less in length which contains any use or efficacy claim or any environmental or safety claim for any such products 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 direct 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

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.

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VI

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 reproductions thereof.

VII

It is further ordered, That should the Federal Trade Commission promulgate a trade regulation rule or industry guide governing the 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.

VIII

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.

IX

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.

X

It is further ordered, That the compliance report heretofore filed by respondent shall be considered by the Commission as if it had been filed under this order.

XI

It is further ordered, That this order shall become effective upon service.

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IN THE MATTER OF

HERCULES INCORPORATED

MODIFIED ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2558. Decision, Oct. 4, 1974—Modifying Order, Dec. 2, 1975*

Order modifying an earlier order dated Oct. 4, 1974, 40 F.R. 3974, 84 F.T.C. 605, by eliminating order Paragraphs I.B., I.C., II.B., II.C. and III and including two provisos: (1) that simple efficacy claims will not be considered absolute safety claims under Paragraph I.A., and (2) that primarily institutional advertising will not require the "STOP" clause. This is to provide for a uniformity of treatment among competitors against whom the F.T.C. proceeded simultaneously issuing complaints involving the same practices. The modified order affords respondent the benefits of the terms of the consent order afforded to FMC Corporation in Docket No. 8961, 40 F.R. 53552, 86 F.T.C. 897, but leaves intact those provisions which are peculiar to the facts of the Hercules complaint.

*Appearances*For the Commission: *Joan Z. Bernstein.*For the respondent: *Charles S. Maddock*, Wilmington, Del., *Burton Caine, Wolff, Block, Schorr & Solis-Cohen*, Philadelphia, Pa.ORDER REOPENING AND MODIFYING CEASE AND DESIST
ORDER

Upon consideration of respondent's petition to reopen and modify the cease and desist order entered by consent against respondent in this matter on Oct. 4, 1974 [84 F.T.C. 605], to afford respondent the benefits of the terms of the consent order afforded to FMC Corporation in Dkt. 8961 [86 F.T.C. 897], but leaving intact those provisions which are peculiar to the facts of the Hercules complaint, and the Acting Director of the Bureau of Consumer Protection having recommended that the requested modifications be granted, and the Commission having concluded on the basis of the foregoing that the petition should be granted,

It is ordered, That this matter be reopened and the following modified final order be substituted and issued in lieu of the order entered herein on Oct. 4, 1974:

MODIFIED FINAL ORDER

I

It is ordered, That respondent, Hercules Incorporated, a corporation,