

Complaint

IN THE MATTER OF
BREKKE ENTERPRISES.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2862. Complaint, Jan. 12, 1977 — Decision, Jan. 12, 1977*

Consent order requiring a Tacoma, Washington, building insulation manufacturer, among other things, to cease misrepresenting that its products are non-combustible, non-flammable, or non-toxic; that urea-formaldehyde foam has been certified "non-combustible," that it is not included in the F.T.C.'s cellular plastics activities; and failing to make required disclosures with respect to numerical flame spread rating representations. Further, respondents are required to send certain building officials and previous purchasers of their products a prescribed statement noting that their products cannot be considered "non-combustible" in actual fire conditions and should be installed accordingly.

Appearances

For the Commission: *Lawrence S. Blumberg.*

For the respondent: *Pro se.*

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 Brekke Enterprises, hereinafter more particularly described and designated 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 Brekke Enterprises is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1320 Tidehaven Road East, Tacoma, Washington.

PAR. 2. Respondent is engaged in the manufacture, marketing and sales of cellular plastics products, including urea-formaldehyde foam, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its business, respondent has represented that certain of its urea-formaldehyde foam products are either "non-flammable," "non-combustible," "non-combustible per ASTM E-136-65," or "nontoxic."

PAR. 4. In truth and in fact, respondent's urea-formaldehyde foam

is not non-combustible, non-flammable, or non-toxic. Furthermore, ASTM E-136-65 is an obsolete test; respondent's products would not be rated "non-combustible" under the currently accepted standard, ASTM E-136-73.

Therefore, these representations were false, deceptive and had a tendency and capacity to mislead consumers, builders, building officials and the public.

PAR. 5. In the course and conduct of its business as aforesaid, respondent has been in substantial competition in or affecting commerce with other corporations, firms, and individuals, in the sale and distribution of cellular plastics products.

PAR. 6. The aforesaid acts and practices of respondents, as alleged herein, 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 and unfair and deceptive acts and practices in or affecting 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 sixty (60) 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 Brekke Enterprises is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1320 Tidehaven Road East, Tacoma, Washington.

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 Brekke Enterprises, (hereinafter referred to as "respondent"), and respondent's successors, assigns, officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the advertising, offering for sale, selling or distributing in commerce within the United States of urea-formaldehyde foam and other cellular plastics products (hereinafter referred to as "Products") do forthwith:

A. Cease and desist from:

1. Using, publishing or disseminating, or encouraging others to use, publish or disseminate, directly or indirectly, orally or in writing, whether or not in conjunction with or with reference to any test or standard, such descriptive terminology or expressions as "non-burning," "self-extinguishing," "non-combustible," "non-toxic," or any other term, expression, product designation or trade name of substantially the same meaning, except that such terminology or expression may be used with respect to any product hereafter developed which is, in fact, non-combustible, non-burning, self-extinguishing, or non-toxic, as the case may be, under actual fire conditions, and except that reference may be made to numerical flame spread ratings where (in the case of written reference) the following statement is included as prominently as, and in close conjunction to, such reference:

This numerical flame spread rating is not intended to reflect hazards presented by this or any other material under actual fire conditions.

or where (in the case of oral reference) a disclosure that the numerical flame spread rating is not intended to reflect hazards under actual fire conditions is made in conjunction with such oral reference;

2. Representing that urea-formaldehyde foam is tested, passes, is

certified or is rated as "non-combustible" under the test method known as ASTM E-136-65.

B. Establish and implement a program to identify previous purchasers from respondent of Products since January 1, 1972, and to supply each purchaser so identified with a notice in the form of Appendix A hereof within 120 days from the date this order becomes final.

C. Take all necessary and appropriate actions to inform present and future employees having managerial, sales, marketing, or research responsibility regarding products and all distributors or franchisees of Products of the provisions of Paragraph A and Appendix A of this order and to enforce compliance therewith by such persons by:

1. Furnishing each present employee, distributor or franchisee within thirty days from the effective date of the order, and each such future employee, distributor or franchisee within thirty days of his assignment to managerial, sales, marketing, or research responsibility regarding Products, with a copy of Paragraph A and Appendix A together with a written notice, over the signature of the respondent's chief executive officer, which promulgates the policy required in Paragraph A, and (a) which notifies each employee, distributor or franchisee that respondent will take appropriate disciplinary action which shall, in the event of willful or repeated violations, consist of fine, suspension or dismissal, against any employee who engages in acts or practices prohibited by Paragraph A, and (b) which notifies each distributor or franchisee that respondent will cancel all contracts for the sale or distribution of products in the event of violation of the terms of Paragraph A; and

2. Requiring appropriate periodic written assurance from each such person that his business practices conform with the requirements of Paragraph A of this order.

D. Cease and desist from paying, directly or indirectly, any agent, distributor, or franchisee, or any other person for the preparation, dissemination or publication of any advertising or promotional material which does not comply with the provisions of Paragraph A of this order.

E. Within thirty days of the effective date of this order, supply a copy of the Notice contained in Appendix A to the International Conference of Building Officials, Building Officials and Code Administrators, Southern Building Code Congress, National Building Code, the National Fire Protection Association, and each federal, state or local building department or other agency or other organization from

which respondent has sought acceptance or approval of its Products for use in building construction.

F. Submit to the Commission within sixty (60) days and one hundred twenty (120) days after service upon them of this order, a report, in writing, setting forth in detail the manner and form in which respondent has complied with the order and thereafter to submit such other reports relating to the subject matter of this order as the Commission may thereafter direct.

G. Notify the Commission at least thirty 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 engaged in the manufacture or distribution of products in the United States, or any other change in the corporation which may affect compliance obligations arising out of the order.

Commissioner Dole did not participate.

APPENDIX A

IMPORTANT NOTICE REGARDING THE FLAMMABILITY OF UREA-FORMALDEHYDE FOAM

The flammability characteristics of urea-formaldehyde foam and certain cellular plastics used as building insulation are tested pursuant to numerous test methods and standards. Included among these are ASTM E-84, E-136, E-162, D-635, and D-1692; UL 94 and 723; and NFPA 255. The Federal Trade Commission considers that these standards are not accurate indicators of the performance of the tested materials under actual fire conditions and that they are only valid as a measurement of the performance of materials under specific, controlled test conditions. The terminology associated with the above tests or standards, such as "non-burning," "self-extinguishing," "non-combustible," or "25 (or any other) flame spread" is not intended to and may not reflect the hazards presented by such products under actual fire conditions.

No urea-formaldehyde foam product that is currently marketed can be considered "non-combustible." Moreover, some hazards associated with numerical flame spread ratings for such products derived from test methods and standards may vary significantly from those which would be expected of other products with the same numerical rating.

In order to protect against fire hazard, urea-formaldehyde foam should not be installed in an exposed or unprotected condition. This notice is not intended to address the hazards presented by any proprietary product. The manufacturer of each particular product should be consulted for complete instructions to minimize the risks that may be involved in the use of the product.

The Federal Trade Commission, Washington, D.C. 20580, requests that any representation that is inconsistent with the terms of this notice be brought to its attention.

This notice is distributed by Brekke Enterprises pursuant to agreement with the Federal Trade Commission.

IN THE MATTER OF
HUDSON PHARMACEUTICAL CORPORATION

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

Docket C-2860. Complaint, Jan. 13, 1977 — Decision, Jan. 13, 1977

Consent order requiring a Borough of West Caldwell, N.J., manufacturer and distributor of children's vitamin supplements, among other things, to cease inducing the dissemination of or disseminating any advertisements relating to vitamin supplements or preparations designed primarily for use by children where such advertisements are directed to children.

Appearances

For the Commission: *Jonathan A. Sheldon.*

For the respondent: *Jerry S. Cohen, Kohn, Savett, Marion & Graf,*
P.C., Philadelphia, 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 Hudson Pharmaceutical Corporation, a corporation, hereinafter 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 Hudson Pharmaceutical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal offices and place of business located at 21 Henderson Drive, Borough of West Caldwell, State of New Jersey.

PAR. 2. Respondent Hudson Pharmaceutical Corporation is now and has been engaged in the packaging, advertising, offering for sale, sale and distribution of vitamin supplements designed for use by children, including vitamin supplements designated "Spider-Man Vitamins" and "Spider-Man Vitamins with Iron." These vitamin supplements are purchased for the use of children.

PAR. 3. In the course and conduct of its business, respondent Hudson Pharmaceutical Corporation now transports and has transported and has caused said vitamin supplements to be transported from its plant and facilities to purchasers in various states other than the state of origin. Respondent Hudson Pharmaceutical Corporation