

IN THE MATTER OF
CORNING GLASS WORKS, ET AL.

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

Docket C-2937. Complaint, Nov. 27, 1978 — Decision, Nov. 27, 1978

This consent order, among other things, requires a Corning, N.Y. manufacturer and distributor of disposable glass culture tubes to make a bona fide effort to identify and provide proper restitution to eligible end-user customers who had failed to receive the amount of disposable glass tubes specified on packaging.

Appearances

For the Commission: *David C. Cameron.*

For the respondent: *Stephen C. Taylor*, Los Angeles, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Corning Glass Works, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Corning Glass Works 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 Houghton Park, Corning, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, and sale of disposable glass culture tubes.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now maintains, and at all times mentioned herein has maintained, a substantial course of trade in its aforesaid products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its aforesaid products, respondent has made, and is now making, various statements and representations on boxes, cartons, or packages containing such products and on invoices relating to the delivery or sale of such products to purchasers or prospective purchasers with respect to the

number of units of such products contained in the said boxes or other containers.

PAR. 5. By and through the use of such statements and representations, respondent has represented, directly or by implication, that each of the aforesaid boxes, cartons, or packages contain not less than one thousand (1000) useable units of the said products.

PAR. 6. In truth and in fact, certain of the aforesaid boxes, cartons, or packages contain less than one thousand (1000) useable units of the said products.

Therefore, the statements referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and is now in substantial competition, in or affecting commerce, with corporations, firms, and individuals in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices, has had the capacity and tendency to mislead purchasers and consumers (1) into the erroneous and mistaken belief that said statements and representations were and are true and (2) into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Los Angeles Regional Office 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Corning Glass Works 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 Houghton Park, Corning, New York.

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

I

It is ordered, That respondent Corning Glass Works, a corporation, its successors and assigns, and its officers, agents, representatives and employees, in connection with the manufacture, distribution or sale of disposable glass culture tubes in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to:

1. Make a *bona fide* effort, with the voluntary cooperation of each of its dealers, to identify all purchases of disposable glass culture tubes manufactured by respondent in sizes 10 x 75, 12 x 75 and 13 x 100 mm, by each such dealer's end-user customers between January 1, 1974, and December 31, 1975.

2. Make a refund to each person, partnership or corporation so identified as an end-user purchaser of the said products by (a) delivering or causing to be delivered a quantity of disposable culture tubes equal to 2.5% of the total of such tubes purchased by such end-user purchaser, (b) paying an amount of money equal to 2.5% of the total price paid for such tubes by such end-user purchaser, or (c) a combination of said methods, at respondent's option.

3. At or prior to the time of making the refund under 2., above, send to each such recipient of a refund, an announcement worded

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substantially as set forth in Appendix A hereto, or in such other form as may be approved by the Regional Director of the Commission's Los Angeles Regional Office.

II

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

III

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in respondent which may affect compliance obligations arising out of the order.

IV

It is further ordered, That the respondent herein shall within ninety (90) 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.

APPENDIX A

Dear Customer:

(Date)

Following investigation by the Federal Trade Commission, Corning Glass Works had reason to believe that certain packages of Disposable Culture Tubes sold by us between September 1973 and the Fall of 1975 contained fewer tubes than the quantity specified. Several factors may have contributed to this situation including human error on our packing lines, slight variations in the tube diameter and our high speed manufacturing process. Fortunately, a careful audit of our Disposable Culture Tube packages, conducted by our Quality Assurance people, indicated that the potential shortages were relatively small and that such shortages were limited to only 3 sizes - 10 x 75, 12 x 75 and 13 x 100 mm. After learning of this problem and studying its causes, we took corrective action by changing to a slightly larger package in September 1975 and turning to an entirely different packaging concept early in 1976.

The above is Corning's version of the facts in this matter and has not been approved or adopted by the Commission or its staff.

We sincerely regret that this problem arose and wish to assure you that Corning Glass Works will strive to provide products of the highest quality and dependability at all times. Because of the impossibility of determining which customers may have purchased merchandise affected by this problem, we have voluntarily agreed with the Federal Trade Commission to make an across-the-board refund of 2.5% of your purchases of these tubes during the years 1974 and 1975. [Enclosed is a check for _____ representing your purchases of such products from (dealer's

name) during 1974 and 1975. If you purchased these sizes of tubes from more than one dealer, you may be receiving more than one separate check in the mail.]¹

If you have any questions you may write directly to Edmund M. Olivier, Vice-President and General Manager, Science Products Division, Corning Glass Works; Corning, New York 14830 or call (607) 974-4126. We hope you feel we have compensated you for any shortage you may have experienced.

Very truly yours,
R. Michael Worley
Marketing Manager
Disposable Glassware

¹ [alternative language to that in brackets above:]

You will be receiving a shipment of tubes within the near future which represents 2.5% of your purchases from *(dealer's name)* during the years 1974 and 1975. If you purchased these sizes of tubes from more than one dealer you may receive more than one glass shipment.

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IN THE MATTER OF

OWENS-ILLINOIS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2938. Complaint, Nov. 27, 1978 — Decision, Nov. 27, 1978*

This consent order, among other things, requires a Toledo, Ohio manufacturer and distributor of disposable glass culture tubes to make a bona fide effort to identify and provide proper restitution to eligible end-user customers who had failed to receive the amount of disposable glass tubes specified on packaging.

Appearances

For the Commission: *David C. Cameron.*

For the respondent: *Alan C. Boyd, Toledo, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Owens-Illinois, Inc., a corporation trading and doing business under its own name and as Kimble Division of Owens-Illinois, Inc., hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Owens-Illinois, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, trading and doing business under its own name and as Kimble Division of Owens-Illinois, Inc., with its principal office and place of business located at the Owens-Illinois Building, Madison Ave., Toledo, Ohio.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, distribution, and sale of disposable glass culture tubes.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now maintains, and at all times mentioned herein has maintained, a substantial course of trade in its aforesaid products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its aforesaid products, respondent has made, and is now making, various statements and