

Complaint

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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

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 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.

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 Owens-Illinois, Inc., a corporation trading and doing business under its own name, as Kimble Division of Owens-Illinois, Inc., or under any other name or names, 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, by soliciting the voluntary cooperation of each of its dealers, to identify all purchases of disposable glass culture tubes, except the 6 x 50 mm size, manufactured by respondent, by each such dealer's end-user customers between April 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 products referred to in 1.,

above, by (a) delivering or causing to be delivered a quantity of disposable culture tubes equal to 0.75% of the total of such tubes purchased by such end-user purchaser during such period; (b) paying an amount of money equal to 0.75% of the total price paid for such tubes by such end-user purchaser, if such price information is obtainable from the dealer (otherwise, such refund shall be based upon respondent's suggested consumer prices during such period; for this purpose a customer's purchase of tubes of a particular size for each time period shown on the records furnished by the dealer shall be deemed to be a single shipment); 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 substantially as set forth in Appendix A hereto.

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 to the extent that any such change 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)

Our Kimble disposable glass culture tubes are packaged in trays designed to hold 250 or 125 tubes each (depending on tube size), then boxed four trays to a carton. Following investigation by the Federal Trade Commission, it has been discovered that during the period from April 1, 1974, to December 31, 1975, because of our high-speed packing methods, a misalignment of the tubes could result in a count of fewer than 250, or 125, tubes, depending on size, in one or more of the four inner trays in a

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particular carton. Since such discovery was made we have taken appropriate corrective action.

The above is O-I'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 Owens-Illinois, Inc. 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 0.75% of your purchases of these tubes during the period from April 1, 1974, through December 31, 1975.

[Enclosed is a check for _____ representing 0.75% of your purchases of such products from *(dealer's name)* during such period. 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

¹ [alternative language to that in brackets above:]

You will be receiving a shipment of tubes within the near future which represents 0.75% of your purchases from *(dealer's name)* during such period. If you purchased these sizes of tubes from more than one dealer you may receive more than one glass shipment.

If you have any questions you may write directly to Mr. E. W. Metz, Owens-Illinois, Inc., P. O. Box 1035, Toledo, Ohio 43666 or call (419) 242-6543. We hope you feel we have compensated you for any shortage you may have experienced.

Very truly yours,

Interlocutory and Modifying Orders

IN THE MATTER OF

CAPAX, INC. - DOCKET D. 9058
 TRANS-AMERICAN COLLECTIONS, INC. - DOCKET D. 8901
 UNITED COMPUURED COLLECTIONS INC. - DOCKET C-2906
 TRANS NATIONAL CREDIT CORPORATION - DOCKET C-2806
 CONTINENTAL COLLECTION BUREAU OF AMERICA, INC. -
 DOCKET C-2808
 NORTH AMERICAN COLLECTIONS, INC. - DOCKET C-2809
 POWER'S SERVICE, INC. - DOCKET C-2810
 CONTINENTAL COLLECTION SERVICE - DOCKET C-2811

Interlocutory and Modifying Orders, Nov. 28, 1978

This order denies a petition of Capax, Inc. requesting reconsideration of its order issued on May 25, 1978, 91 F.T.C. 1048, 43 FR 27782. Additionally, the order reopens and modifies, by deleting the disclosure requirement, the order issued on September 26, 1973 in Dkt. D. 8901, 83 F.T.C. 525, 38 FR 28933; and the orders issued on March 11, 1976 in Dkt. C-2806, 87 F.T.C. 542, 40 FR 19206; C-2807, 87 F.T.C. 549, 40 FR 19205; C-2808, 87 F.T.C. 557, 40 FR 19202; C-2809, 87 F.T.C. 566, 40 FR 19203; C-2810, 87 F.T.C. 574, 40 FR 19204; and C-2811, 87 F.T.C. 582, 40 FR 19201.

ORDER DENYING PETITION FOR RECONSIDERATION OF FINAL
 ORDER OR REOPENING OF PROCEEDING IN DOCKET NO. 9058
 AND REOPENING AND MODIFYING FINAL ORDERS IN DOCKET
 NOS. 8901 AND C-2806 - C-2811

On May 25, 1978, the Commission issued its final order and opinion in *Capax, Inc.* The Commission held that respondents had engaged in certain misrepresentations in the course of their service to assist creditors in the collection of alleged delinquent debts, and prohibited these misrepresentations in its final order. The Commission rejected complaint counsel's request that respondents be required to provide an affirmative disclosure¹ in each communication sent to alleged debtors, stating:

[W]e do not consider the affirmative disclosure sought here by complaint counsel to be necessary, under the circumstances of this case, in light of the order's ample prohibitions on misrepresentations. Moreover, we believe that the proposed disclaimer could lull recipients into a false sense of security by giving them the impression that failure to pay the claimed debt will not result in legal action or harm to their credit standing. Because creditors might pursue an alleged delinquent debt by bringing suit or could report the matter to a consumer reporting agency, debtors who

¹ "We are an independent company employed by your creditor solely for the purpose of reminding you of your outstanding obligation. We are not authorized to engage in typical debt collection activity, to institute suit or to take any action which may affect your credit rating."