

Modifying Order

IN THE MATTER OF

UNION CARBIDE CORPORATION — DOCKET C-2557
 HERCULES INCORPORATED — DOCKET C-2558
 FMC CORPORATION — DOCKET 8961

MODIFYING ORDERS IN REGARD TO ALLEGED VIOLATION OF THE
 FEDERAL TRADE COMMISSION ACT

Modifying Orders, Aug. 13, 1979

This order reopens proceedings and modifies the 1975 consent orders entered against Union Carbide Corporation, (86 F.T.C. 1231, Dec. 2, 1975); Hercules Incorporated, (86 F.T.C. 1236, Dec. 2, 1975); and FMC Corporation, (86 F.T.C. 897, Oct. 8, 1975), by deleting provisions requiring companies to include in their advertising a general warning statement apprising users that pesticides can be harmful unless used as directed.

ORDER REOPENING AND MODIFYING CEASE AND DESIST ORDERS

In petitions filed during March, April, and May 1978, and supplementary papers filed in June 1978, the Union Carbide Corporation (Union Carbide), Hercules Incorporated (Hercules), and FMC Corporation (FMC) requested the Commission, pursuant to Section 3.72(b)(2) of its Rules of Practice, to reopen the proceedings and modify orders entered in Dkt. Nos. C-2557, C-2558, and 8961. Respondents seek relief from provisions in those orders which require specified warning statements to be included in subject advertising. The provisions at issue read as follows:¹

It is further ordered, That respondent. . ., 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

¹ The contested provisions appear as Section IV of the modified Union Carbide order (86 F.T.C. 1231, 1233-34 (1975)), Section III of the modified Hercules order (86 F.T.C. 1236, 1238-39 (1975)), and Section III of the FMC order (86 F.T.C. 897, 903-04 (1975)). Hercules also seeks deletion of the last full paragraph of Section IV of its order and Union Carbide urges the excision of the reference to Section IV which appears in Section III of its order.

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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.

Provided, however, That for purposes of enforcing Paragraph III of this order any advertisement, statement, claim or representation that such products may be employed for a crop or plant use registered under FIFRA, or any other approved use based upon evidence filed in connection with registration under FIFRA shall not be deemed sufficient to require the disclosure of any statement otherwise required under the provisions of Paragraph III: *Provided further*, That this exception shall be limited to advertisements which promote the respondent's corporate image, which only incidentally promote the sale or distribution of such products and which are published or disseminated for publication by respondent's corporate headquarters' officers in conjunction with respondent's other nonpesticide products.²

Respondents' petitions would not disturb the prohibitory provisions of the orders.

Section 3.72(b)(2) of the Commission's Rules of Practice, 16 C.F.R. 3.72(b)(2), permits the filing of petitions to reopen proceedings whenever a party subject to a final rule or order "is of the opinion that changed conditions of fact or law require that said rule or order be altered, modified, or set aside, or that the public interest so requires. . . ." Petitioners have advanced a number of considerations intended to illustrate such "changed conditions" and to demonstrate the public interest in modification. They allege changed conditions of fact or law in the Commission's failure to promulgate a trade regulation rule concerning pesticide advertising, in the amendment of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and more comprehensive regulations issued pursuant thereto by the Environmental Protection Agency (EPA), and in recent Commission staff findings about pesticide consumers. As public interest factors for modification, respondents cite the competitive disadvantage (and presumably consequent consumer harm) which they claim compliance

² The *Provided, however* paragraph is not included in the Union Carbide order and the last part of the *Provided further* sentence, beginning with the words "and which are published. . . ." does not appear in the Hercules order.

forces upon them, the lack of necessity for the warning statement, and the possibility if not likelihood of confusion to the public from inclusion on some pesticide products of dual warnings, one mandated by the FTC and the other by the EPA.

Having considered the petitions and supporting papers and the staff's answer thereto, the Commission has concluded that the petitions should be granted and that the unmodified provisions of the orders will be sufficient to safeguard the public interest, particularly in light of the Commission's 1977 announcement that it would continue to monitor pesticide advertising closely and to deal with law violations on a case-by-case basis. In reaching its conclusion, the Commission has taken into account the 1972 FIFRA amendments and subsequent EPA regulatory activity, the dramatic decline in absolute safety advertising which had provided the impetus for the warning statement requirement, the findings of greatly increased consumer sophistication with regard to the hazards of pesticide products, the decrease in pesticide-related fatalities, and the possibility of the warning's creating a burden upon competition. The Commission's determination does not, however, signify acceptance of petitioners' contentions that the Commission decision not to promulgate a pesticide advertising TRR either constitutes a change in fact or law or represents the failure of any sort of implied condition precedent to these orders. Therefore,

It is ordered, That these matters be reopened for the limited purpose requested and that the following modifications be made:

In Dkt. No. C-2557, change the words "I, II, and IV" in Section III of the cease and desist order to "I and II," and delete Section IV of the order.

In Dkt. No. C-2558, delete Section III of the cease and desist order, change the words "I, II, and III" to "I and II" in the first paragraph of Section IV of the order, and delete the second paragraph of Section IV.

In Dkt. No. 8961, delete Section III of the cease and desist order.

It is further ordered, That the foregoing modifications shall become effective upon service of this order.

Commissioner Pitofsky did not participate.

Complaint

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IN THE MATTER OF

KORVETTE'S, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND MAGNUSON-MOSS WARRANTY
ACTS*Docket C-2987. Complaint, Aug. 16, 1979 — Decision, Aug. 16, 1979*

This consent order would require a New York City department store chain, among other things, to cease failing to provide its stores with statutorily required warranty material; and to make the terms of written warranties on consumer products available to prospective purchasers prior to sale. The firm is further required to develop and implement a program to instruct its sales personnel about the availability and location of warranty information; and maintain adequate business records for a period of two years.

*Appearances*For the Commission: *Stewart McCloud.*For the respondent: *Charles Meyers, New York City.*

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act and Rule 702 (16 C.F.R. 702) promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Korvette's, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty 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. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, Pub. Law 93-637, 15 U.S.C. 2301 (Supp. 1975) and in Rule 702 (16 C.F.R. 702) promulgated thereunder, shall apply to the terms used in this complaint.

PAR. 2. Respondent Korvette's, Inc. 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 450 West 33rd St., New York, New York.

PAR. 3. Respondent is now and has been engaged in the operation of a chain of department stores throughout the United States. Its volume of business has been and is substantial. In the operation of its