

Complaint

95 F.T.C.

IN THE MATTER OF

KETTLE MORaine ELECTRIC, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3016. Complaint, April 16, 1980 — Decision, April 16, 1980*

This consent order requires, among other things, a Kewaskum, Wis. manufacturer, distributor and installer of cellulose insulation to cease disseminating advertising or promotional material containing false or unsubstantiated representations concerning the performance characteristics of its products. The order further requires that scientific tests be conducted on insulation previously manufactured by the company and already installed to identify buildings that might contain inadequate fire resistant insulation. Owners of those buildings must be notified of the potential fire hazards, and substandard material timely replaced by insulation that meets government specifications. Should such replacement be declined, the firm must install a smoke detector system acceptable to the consumer.

*Appearances*For the Commission: *Jerome S. Lamet.*For the respondents: *Gerald Kiefer, McKenna & Kiefer*, Kewaskum, Wis.

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 Kettle Moraine Electric, Inc., a corporation, and Alois J. Beisbier, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have 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 Kettle Moraine Electric, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at 1261 Fond du Lac Ave., Kewaskum, Wisconsin.

Respondent Alois J. Beisbier is an officer of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices

hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business of manufacturing, distributing, selling, advertising and installing cellulose insulation used in the walls, ceilings and attics of commercial and residential buildings. Cellulose insulation consists primarily of shredded paper and wood, which, unless properly treated chemically, is highly flammable.

PAR. 3. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have, in the ordinary course and conduct of their business, represented directly or by implication in advertising and labeling that the insulation material manufactured, distributed, sold and installed by respondents is safe, non-flammable and in conformance with applicable state and federal standards.

PAR. 5. In truth and in fact:

A. Respondents' insulation product is not adequately treated with fire-retardant chemicals, and is flammable and highly dangerous when installed as insulation. At least one residential fire has occurred involving respondents' insulation product;

B. Respondents did not have and do not have, any reasonable basis for representing that the insulation product they manufacture, distribute, sell and install is non-flammable or meets applicable state and federal standards prior to making those claims; and

C. Respondents have failed to disclose to purchasers of their insulation product that the product is flammable and presents a substantial fire risk if installed as insulation.

PAR. 6. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, acts and practices, directly or by implication, has the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 8. The acts and practices of respondents, as herein alleged, were

and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 Kettle Moraine Electric, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1261 Fond du Lac Ave., in the City of Kewaskum, State of Wisconsin.

Respondent Alois J. Beisbier is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondents Kettle Moraine Electric, Inc., its subsidiaries, successors, assigns, officers and directors, and Alois J. Beisbier, individually and as an officer and director of Kettle Moraine Electric, Inc., and respondents' agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, offering for sale, sale or installation of cellulose insulation in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertising or promotional material which misrepresents the performance characteristics of respondents' cellulose insulation.
2. Disseminating or causing to be disseminated any advertisement or promotional material which makes any representation concerning respondents' cellulose insulation unless, at the time such representation is made, respondents have in their possession, and rely on, competent, reliable and well-controlled scientific tests which provide a reasonable basis to believe that the representations are truthful.

II

It is further ordered, That respondents shall conduct competent and reliable scientific tests, utilizing an independent testing laboratory on samples of cellulose insulation manufactured by respondents and installed in residences or other buildings, for which respondents do not have in their possession the results of competent and reliable scientific tests which establish that such insulation met or exceeded the applicable Federal flammability specifications at the time of manufacture. *Provided, however,* that, after being notified of the purpose of such tests, an owner of a residence or other building declines to have such tests conducted, respondents shall have no further obligation to conduct such tests. Such tests shall be to identify residences or other buildings containing cellulose insulation manufactured by respondents that may be inadequately fire resistant.

- a. With respect to cellulose insulation manufactured during the

period December 15, 1977 to April 1, 1978 tests shall be conducted on samples of cellulose insulation installed in all residences or other buildings. All tests must be completed within 120 days of the effective date of this order.

b. With respect to cellulose insulation manufactured during the period September 15, 1977 to December 14, 1977 tests shall be conducted on samples of cellulose insulation installed in residences or other buildings. Identification of those residences or other buildings from which samples of cellulose insulation will be taken for testing shall be by competent and reliable sampling procedures in accordance with acceptable statistical methods; *provided, however*, that identification of any cellulose insulation not meeting applicable Federal flammability standards at the time of manufacture will require respondents to conduct tests on samples of cellulose insulation from all remaining residences or other buildings. All tests must be conducted within 120 days of the effective date of this order.

III

It is further ordered, That respondents shall notify within 10 days of the completion of the tests conducted pursuant to order II, by certified or registered mail (return receipt requested), all consumers whose residences or other buildings are identified pursuant to such tests, as reasonably likely to contain insulation manufactured by respondents that does not meet the applicable Federal flammability specifications at the time of manufacture, that such insulation may be inadequately fire resistant.

IV

It is further ordered, That following the identification of residences or other buildings likely to contain cellulose insulation manufactured by respondents that does not meet the applicable Federal specifications at the time of manufacture:

a. With respect to cellulose insulation in ceilings and attics, respondents shall remove such cellulose insulation and replace it, without cost to the consumer, with insulation which meets the most current specifications established by the Consumer Product Safety Commission under the Emergency Interim Consumer Product Safety Standard Act of 1978 (Pub. Law 95-319) or any subsequent specifications or requirements of that agency, unless the consumer declines to permit removal or replacement. Such removal and replacement shall be performed within 120 days of consumer authorization.

b. With respect to cellulose insulation in walls:

(1) Where the cellulose insulation is installed behind a fire barrier such as 1/2 inch gypsum board or a fully enclosed dry wall, respondents shall deliver by certified or registered mail (return receipt requested) to each such consumer, within ten (10) days, the following notice:

The insulation we put in the walls of your house may pose a fire hazard. If possible, you should have it taken out. If you don't, we'll install a smoke detector alarm near those walls. We'll call you in a few days to find out whether you want the smoke detector. If you do, we'll install it within 30 days. There'll be no charge.

Make sure you don't overload any electrical wiring that runs through those walls. If you blow a fuse or trip a circuit breaker, have an electrician check the wiring right away. Don't change the fuse or push in the circuit breaker until this is done.

(2) Where the cellulose insulation is installed behind wood paneling but not behind a dry wall, respondents shall, without cost to the consumer, remove the paneling, and the cellulose insulation; replace the insulation with insulation which meets the current federal government specification cited above, and replace the wood paneling to its previous condition, unless the consumer declines to permit removal or replacement. Such removal and replacement shall be performed within 120 days of consumer authorization.

c. In any home in which cellulose insulation manufactured by respondents fails to pass the test conducted pursuant to order II (a) and (b), and respondent is either not required to remove the insulation pursuant to order IV b(1) or is required to remove the insulation pursuant to order IV b(2), but does not do so at the consumer's request, respondents shall install in a strategic location within thirty (30) days of the date of testing, a smoke detector alarm system acceptable to the home owner, unless the home owner declines to accept such installation.

V

It is further ordered, That respondents shall notify the Commission at least thirty days prior to any proposed change in the organization of 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 change in the corporation which may affect compliance obligations arising out of this order.

VI

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present

business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, distribution, sale or installation of cellulose insulation or of his affiliation with a new business or employment in which his own duties and responsibilities involve the manufacture, distribution, sale or installation of cellulose insulation. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall within sixty days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

GENERAL FOODS CORPORATION

*Docket 9085. Interlocutory Order, April 17, 1980*ORDER DIRECTING GENERAL COUNSEL TO SEEK COURT ENFORCEMENT
OF SUBPOENA DUCES TECUM

In our order of March 28, 1980, we remanded to the administrative law judge a motion for court enforcement of a subpoena directed jointly to Copersucar, Ltd., and Mr. Jorge Atalla, Chairman of Hills Bros. We noted, however, that it appeared the subpoena had been properly served on Hills Bros., and that we would be willing to order the initiation of enforcement proceedings if a motion were made clearly to that effect.

General Foods has now filed such a motion, which has been certified to us by the administrative law judge. The motion requests enforcement of the subpoena "as limited," referring, we assume, to the ALJ's previous certification for enforcement, which limited the subpoena to Specifications 4 and 5. Accordingly,

It is ordered, That the General Counsel be, and hereby is, directed to seek court enforcement of Specifications 4 and 5 of the subpoena duces tecum issued on August 10, 1979.

IN THE MATTER OF
SEARS, ROEBUCK AND CO., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9104. Complaint, Nov. 4, 1977 — Final Order, April 28, 1980*

This order requires, among other things, a Chicago, Ill. department store chain to cease, in connection with the advertising and sale of dishwashers, representing that its dishwashers will completely clean dishes, pots and pans without prior rinsing and scraping; and claiming without substantiation that items placed in the top rack of the dishwashers will get as clean as those on the bottom rack. The company is prohibited from making claims regarding the performance of any major home appliance unless those claims are supported by reliable and competent tests. Respondent is further barred from misrepresenting the purpose, content or conclusions of tests, studies, reports or surveys, and required to maintain specified records for a period of three years.

Appearances

For the Commission: *Robert Barton, Mitchell Paul, Ronald Bogard, Laurence Kahn and Louise Kotoshirodo.*

For the respondents: *Arthur Medow, Chicago, Ill., Mark Schattner, Wald, Harkrader & Ross, Washington, D.C., Burton Y. Weitzenseld and Frank C. McAleer, Arnstein, Gluck, Weitzenseld & Minow, Chicago, Ill. for respondent Sears, Roebuck and Co.; Howard Abrahms, New York City for respondent J. Walter Thompson Co.*

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE LAW
JUDGE

SEPTEMBER 28, 1979

PRELIMINARY STATEMENT

On November 20, 1977, the Commission served its complaint in this proceeding on Sears, Roebuck and Co. ("Sears") and J. Walter Thompson Company charging them with disseminating deceptive and unfair advertisements in the course of an advertising campaign for Sears' dishwashing machines, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. More specifically, the complaint charged that respondents represented in national magazines

* Complaint previously published at 94 F.T.C. 331.