

Modified Order

96 F.T.C.

IN THE MATTER OF
SKF INDUSTRIES, INC., ET AL.

MODIFIED ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9046. Decision, July 5, 1979—Modified Order, October 21, 1980

In accordance with the settlement agreement reached by respondents and Commission counsel without adjudication, and filed with the Court of Appeals for the Second Circuit on July 23, 1980, this modified order revises the "final order" issued by the Commission on July 5, 1979 (44 FR 47926, 94 F.T.C. 6), by changing, among other things, the amount of TRB that SKF may sell to Federal Mogul and the requirements for publishing the provisions of the order.

MODIFIED ORDER TO CEASE AND DESIST

Respondents SKF Industries, Inc. ("SKF"), and Federal-Mogul Corporation ("FM") having filed in the United States Court of Appeals for the Second Circuit petitions for review of the Commission's "Final Order" herein dated July 5, 1979; and a stipulation dated July 23, 1980, by and among SKF, FM and counsel for the Commission having been entered into and filed with the Court of Appeals, pursuant to which the parties agreed and consented to entry by the Court of Appeals, without adjudication of any issue of law or fact, of an order modifying said "Final Order" in accordance with said stipulation and directing that said "Final Order," as so modified, be enforced; and the Court of Appeals having thereupon entered an Order, dated August 25, 1980, remanding the proceeding to the Commission with directions to modify said "Final Order" in accordance with said stipulation:

Now, therefore, it is hereby ordered, That the aforesaid "Final Order" be, and hereby is, modified in accordance with the order of the Court of Appeals to read as follows:

FINAL ORDER

I

This Order shall be deemed to be final as of December 31, 1979, and be binding on Federal-Mogul Corporation ("FM"), SKF Industries, Inc. ("SKF"), their subsidiaries or any person under the control of FM or SKF, their successors and assigns, and their officers, agents, representatives and employees.

II

It is ordered. That the agreement signed by SKF and FM on December 17, 1974, and any similar arrangements between or among respondents, including the understandings reflected in the exchange of documents on January 27, 1972, shall be cancelled as of the date as of which this Order becomes final.

III

It is ordered. That, for purposes of this Order, the following definitions shall be applicable:

(i) *0"-4" TRB*—tapered roller bearings having an outside diameter of zero to four inches.

(ii) *Automotive Aftermarket*—the domestic replacement market, including all intermediate suppliers to such market (but excluding FM and the manufacturers of original equipment who purchase 0"-4" TRB for distribution to service customers through their dealers and franchisees), for 0"-4" TRB for use in passenger cars, light and heavy trucks, buses, trailers, tractors, self-propelled agricultural equipment and vehicles, such as trailers, and agricultural equipment pulled by self-propelled vehicles.

(iii) *FM TRB Requirements*—the total dollar value of purchases of 0"-4" TRB by FM from all sources (including sources owned or controlled by FM) for distribution in the United States. The value of purchases of 0"-4" TRB by FM from sources which it owns or controls shall be either cost to FM or the fair market value, whichever is less.

(iv) *FM TRB Purchases from SKF*—the total dollar value of direct or indirect purchases by FM of 0"-4" TRB from SKF, Aktiebolaget SKF ("AB SKF"), or any person under the control of SKF or AB SKF for distribution in the United States, which shall include (A) purchases by FM or 0"-4" TRB manufactured by SKF, AB SKF, or any person under the control of SKF or AB SKF, and (B) purchases by FM under the arrangement to which SKF, AB SKF, or any person under the control of SKF or AB SKF is a party or from a supplier in which SKF, AB SKF, or any person under the control of SKF or AB SKF has an interest.

(v) *TRB Units*—0"-4" TRB as purchased by Automotive Aftermarket customers of SKF. Purchases may be (i) an assembled TRB, (ii) a TRB outer ring (cup), or (iii) a TRB inner ring (cone), each being a single TRB unit.

(vi) *SKF Net Aggregate Sales to the Automotive Aftermarket*—that

number of TRB Units which is the difference between (i) the aggregate number of TRB Units sold by SKF to the Automotive Aftermarket and (ii) the number of TRB Units, if any, which must be subtracted therefrom so that of the resulting number of TRB Units sold by SKF to the Automotive Aftermarket no more than 15% represents TRB Units sold by SKF to or through any national organization of independent warehouse distributors by or through which, as of the effective date of this Order, all the members of such organization secure all of their needs of 0"-4" TRB from the same single source, other than SKF.

IV

With respect to FM TRB Purchases from SKF, *it is ordered*, That the following limitations shall apply during the periods described below:

(i) The time period covered by any given purchase order or related agreement concerning FM TRB Purchases from SKF shall not exceed twelve (12) months.

(ii) The aggregate dollar value of any FM TRB Purchases from SKF during the first thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1980, 1981 and 1982) shall not exceed 60% of the FM TRB Requirements during that period. The allowable percentage under this subparagraph shall include any 0"-4" TRB purchased, but not sold, by FM from SKF, AB SKF, or any person under the control of SKF or AB SKF prior to the date as of which this Order becomes final.

(iii) The aggregate dollar value of any FM TRB Purchases from SKF during the second thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1983, 1984 and 1985) shall not exceed 50% of the aggregate FM TRB Requirements during that period.

(iv) The aggregate dollar value of any FM TRB Purchases from SKF during the third thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1986, 1987 and 1988) shall not exceed 40% of the aggregate FM TRB Requirements during that period; *provided, however*, that if the SKF Net Aggregate Sales to the Automotive Aftermarket shall have been 1,250,000 or more TRB units during the second thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1983, 1984 and 1985), the aggregate value of any FM TRB Purchases from SKF shall not exceed 50% of the aggregate FM TRB

Requirements during the third thirty-six (36) month period (calendar years 1986, 1987 and 1988).

(v) The aggregate dollar value of any FM TRB Purchases from SKF during the fourth thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1989, 1990 and 1991) shall not exceed 40% of the aggregate FM TRB Requirements during that period; *provided, however*, that if the SKF Net Aggregate Sales to the Automotive Aftermarket shall have been 1,250,000 or more TRB Units during the third thirty-six (36) month period following the date as of which this Order becomes final (calendar years 1986, 1987 and 1988), the aggregate value of any FM TRB Purchases from SKF shall not exceed 50% of the aggregate FM TRB Requirements during the fourth thirty-six (36) month period (calendar years 1989, 1990 and 1991).

(vi) This Order shall automatically terminate as of December 31, 1991.

V

It is further ordered, That each respondent shall notify all persons having sales and policy responsibilities in its organization of the terms of this Order, and respondents together shall publish same in a major trade journal or periodical within six months following the conclusion of the first twelve (12) month period (calendar year 1980) and again within six months following the conclusion of the second twelve (12) month period (calendar year 1981) following the date as of which this Order becomes final; *provided, however*, that if during either such twelve (12) month period (calendar year 1980 or 1981) the aggregate dollar value of any FM TRB Purchases from SKF shall not have exceeded 50% of the aggregate FM TRB Requirements during that period, then such publication following the conclusion of that period may be omitted.

VI

It is further ordered, That each respondent shall notify the Commission at least thirty (30) days prior to any proposed change in said respondent which may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or joint ventures.

VII

It is further ordered, That within sixty (60) days after the date of issuance of this Order, and within sixty (60) days after the end of each calendar year during which this Order is effective, each respondent shall file with the Federal Trade Commission a written report setting forth in detail the manner and form of its compliance with this Order.

VIII

It is further ordered, That after the end of calendar year 1984, after the end of each quarter during calendar year 1985, and after the end of calendar year 1985, respondent SKF shall report to the Commission the SKF Net Aggregate Sales to the Automotive Aftermarket during the period beginning January 1, 1983, to and including the effective date of the report. These reports shall be filed within forty-five (45) days after the end of the respective reporting periods and shall be made available to respondent FM at the time they are filed with the Commission. This reporting obligation shall automatically terminate upon the filing by SKF of such a report indicating that the SKF Net Aggregate Sales to the Automotive Aftermarket have equalled or exceeded 1,250,000 TRB Units during such period.

IX

It is further ordered, That after the end of calendar year 1987, after the end of each quarter during calendar year 1988, and after the end of calendar year 1988, respondent SKF shall report to the Commission the SKF Net Aggregate Sales to the Automotive Aftermarket during the period beginning January 1, 1986, to and including the effective date of the report. These reports shall be filed within forty-five (45) days after the end of the respective reporting periods and shall be made available to respondent FM at the time they are filed with the Commission. This reporting obligation shall automatically terminate upon the filing by SKF of such a report indicating that the SKF Net Aggregate Sales to the Automotive Aftermarket have equalled or exceeded 1,250,000 TRB Units during such period.

Complaint

IN THE MATTER OF
THE MENTHOLATUM COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3047. Complaint, Oct. 22, 1980—Decision, Oct. 22, 1980

This consent order requires, among other things, a Buffalo, N.Y. producer of denture cushions to use advertisements which are consistent with labeling information included with the product concerning health, safety or efficacy; to disclose, in those instances where the firm makes claims of duration of use, such labeling warnings in a clear and conspicuous manner; and, further, to affirmatively state that its product is intended for short-term use only.

Appearances

For the Commission: *Leslie Fax.*

For the respondent: *Samuel Magavern, Magavern, Magavern, Lowe, Beilewech, Dompkins & Fadale, Buffalo, N.Y.*

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 The Mentholum Company ("Mentholum"), a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and that a proceeding with respect to such violations would be in the public interest, hereby issues its complaint, setting forth its charges as follows:

PARAGRAPH 1. Mentholum is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1360 Niagara St. in the city of Buffalo, New York.

PAR. 2. Respondent Mentholum is now, and for some time last past has been engaged in the production, advertising, offering for sale, sale and distribution of denture cushions designated by the trade name "Snug Denture Cushions." This product, as advertised, is a "device" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. In the course and conduct of its business, responder Mentholum causes and has caused the said products, when sold, be transported from its place of business in one State of the Unit