

IN THE MATTER OF

STIHL, INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9165. Complaint, March 7, 1983—Decision, June 6, 1983*

This consent order requires a manufacturer and seller of power tools and its advertising agency, amonth other things, to cease representing that the Stihl 015 AV chain saw has been top-rated by a leading consumer publication; that power was one of the factors considered in the rating; and that Stihl chain saws start faster and run smoother than other chain saws. The order prohibits respondents from making false or unsubstantiated representations concerning the performance or durability of any power tool, and requires them to possess and rely upon a reasonable basis when making such claims. Further, the companies are barred from misrepresenting the purpose or conclusion of any test or evaluation, and are required to retain documentation for performance-related claims for a period of three years.

Appearances

For the Commission: *Andrew Sacks* and *T. Bringier McConnell*.

For the respondents: *William I. Bandas*, Richmond, Va. and *Stephen Wainger, Seawell, Dalton, Hughes & Timms*, Norfolk, Va.

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 Stihl, Inc., a corporation, and Stuart Ford, Inc., a corporation, hereinafter 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 Stihl, Inc. ("Stihl"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business is located at 536 Viking Drive, Virginia Beach, Virginia. Respondent Stuart Ford, Inc. ("Stuart Ford"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 1108 E. Main Street in Richmond, Virginia.

PAR. 2. Stihl is now and at all times relevant to this complaint has

been engaged in the marketing and sale of chain saws and other power tools, and power tool accessories. Stuart Ford is an advertising agency and has prepared, created and placed advertisements for Stihl chain saws and other Stihl power tools.

PAR. 3. Respondents have caused to be prepared and placed for publication and have caused the dissemination of advertising and promotional material, including but not limited to, the advertising referred to herein, to promote the sale of Stihl chain saws and other Stihl power tools.

PAR. 4. Respondents maintain and have maintained a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of promoting the sale and distribution of Stihl chain saws, respondents have disseminated and caused the dissemination of advertising in national magazines distributed by mail and across state lines, and in television stations located in various states, having sufficient power to carry such broadcasts across state lines.

PAR. 6. Typical statements and representations in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C, D, and E.

PAR. 7. Through the use of the statements referred to in Paragraph Six and other statements contained in advertisements not specifically set forth herein, respondents have represented, and now represent directly or by implication, the following claims:

a) In 1980 and 1981, the current Stihl model 015 AV chain saw was rated best of all home saws tested by a leading consumer publication; and that "power" was one of the factors considered in this rating.

b) Stihl chain saws start faster than all other chain saws on the market.

c) Stihl chain saws are the smoothest running chain saws on the market.

d) All Stihl power tools last at least twice as long as any other power tool on the market.

PAR. 8. Through the use of the advertisements referred to in Paragraph Six, and other advertisements not specifically set forth herein, respondents have represented, directly or by implication, that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Eight at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondents did not possess and rely upon a reasonable basis for making such representations, for the following reasons:

a) (1) The test by a "leading consumer publication" was three years old at the time the claim was first made and the results were not properly applicable to the advertised models, because, inter alia, significant changes affecting performance were made in the tested competing saws.

(2) Power was not one of the factors considered in the test.

b) The data which Stihl relied upon do not show that Stihl saws start faster than all other saws on the market.

c) The data which Stihl relied upon do not show that Stihl saws run smoother than all other saws on the market.

d) The data which Stihl relied upon do not show that all Stihl power tools last twice as long as any other power tools on the market.

Therefore, respondents' making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 9. At the time respondents made the representations alleged, respondents did not possess and rely upon a reasonable basis for making such representations. Therefore, respondents' making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 10. The representations recited in Paragraph Eight (a), (b) and (c) are false, for the following reasons:

(a) (1) The rating by a consumer publication, published in 1977, did not involve current model chain saws in 1980 and 1981.

(2) The rating by a consumer publication, published in 1977, was not properly applicable to current model chain saws in 1980 and 1981.

(3) Power was not one of the factors considered in the test.

(b) Stihl chain saws do not start faster than all other chain saws on the market.

(c) Stihl chain saws are not the smoothest running chain saws on the market.

As the representations referred to above are false, the advertisements referred to above were therefore unfair and deceptive.

PAR. 11. Respondent Stuart Ford knew or should have known that the aforesaid advertisements were false, and therefore unfair and deceptive.

PAR. 12. The use by respondents of the aforesaid unfair and deceptive advertisements and the placement of them in the hands of others who have used them, have had the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said representations are true and complete, and have had the capacity and tenden-

cy to induce such persons to purchase Stihl chain saws by reason of said erroneous and mistaken belief.

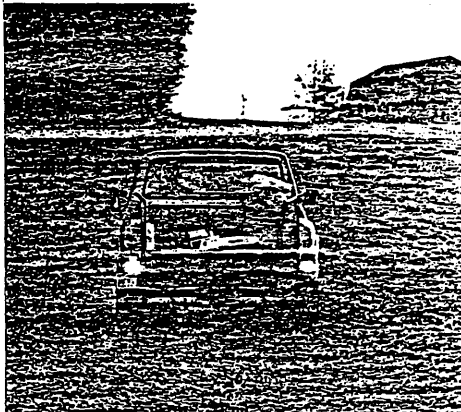
PAR. 13. The aforesaid acts or practices of respondents, herein alleged as aforesaid, were and are all to the prejudice and injury of the public, and constituted and now constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

Complaint

101 F.T.C.

EXHIBIT A

FARMERS START BEFORE EVERYONE ELSE. SO DO STIHL FARM SAWS.



Stihl® farm saws are designed to start every time, in sweltering heat or freezing cold. And they last. Not just a season but year after year.

Take the Stihl Farm Boss™, our biggest, most popular farm saw. With high-voltage ignition, a super-efficient combustion chamber and a cooling system that virtually eliminates vapor lock, it has starting power that'll get you going under any cutting conditions.

Or the new 032. Like all our farm saws, it's made to be trouble free. It has longer wearing parts that seldom break down, and automatic oiling so you never have to manually lubricate a chain.

And the Stihl Wood Boss™. It always gets the job done. Because every Stihl is built to last at least twice as long as any other saw you can buy. So for a farm saw you can depend on, get a Stihl. It's the one saw that'll help you get an earlier start.

And an earlier finish.

For your local dealer's name call toll-free 1-800-528-0050 Ext. 1430. In Arizona call 1-800-352-0458 Ext. 1430.



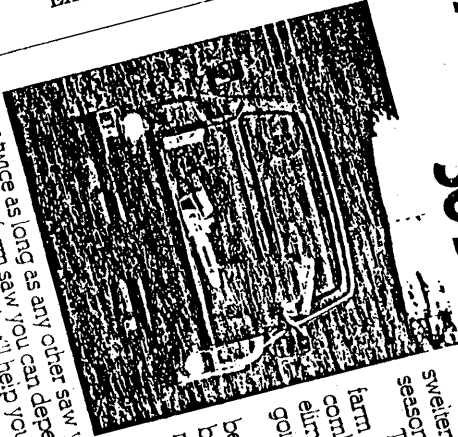
STIHL is a registered trademark of Stihl AG, Germany. All other trademarks are the property of their respective owners.

STIHL
The World's Largest Selling Chainsaw.

Complaint

EXHIBIT B

FARMERS START BEFORE EVERYONE ELSE. SO DO STIHL FARM SAWS.



Stihl farm saws are designed to start every time, in sweating heat or freezing cold. And they last. Not just a season but year after year.

Take the Stihl Farm Boss™, our biggest, most popular farm saw. With high-voltage ignition, a super-efficient combustion chamber, and a cooling system that gets you going under any cutting conditions.

Like all our farm saws, it's made to eliminate vapor lock. Like all our farm saws, it's made to eliminate any cutting conditions.

Or the new 032. Like all our farm saws, it's made to eliminate any cutting conditions.

Because every Stihl is built to last at least twice as long as any other saw you can depend on, get a

So for a farm saw that'll help you get an

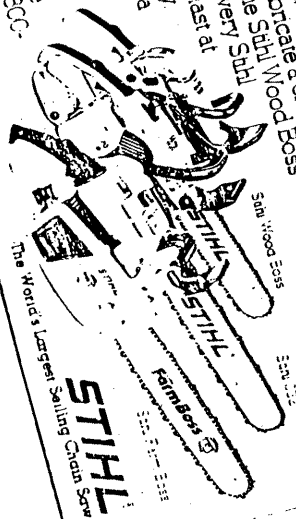
Stihl. It's the one saw that'll help you get an earlier start.

And an earlier finish.

For your local dealer's name call toll-free

1-800-328-6050 Ext. 130

362-0458 Ext. 130



STIHL
The World's Largest Selling Chain Saw

Complaint

101 F.T.C.

EXHIBIT C

**IF YOUR TOOLS ARE LESS
THAN PAMPERED THEY'D
BETTER NOT BE LESS
THAN STIHL®**



Good rains, muddy fields, freezing cold or blistering heat, or rough handling can stop a tool before it starts, and keep a job from getting done unless your tools are Stihl®. All four tools are built to last at least twice as long as any other tools you can buy. And start under any conditions. So, no matter how long a job lasts, your Stihl tools will last longer. That means less worry, less maintenance, and less down time for you. So if your tools have it tough, they'd better not be less than Stihl.

Stihl Inc., 1981. For sales and service, see the Yellow Pages under "saws." For your local dealers name call toll-free 1-800-528-6050. Ext. 1430. In Arizona 1-800-352-0458. Ext. 1430.

STIHL®
The World's Largest Selling Chain Saw.

EXHIBIT D

CAN THE WOMAN WHO PICKS OUT YOUR TIES BE TRUSTED TO PICK OUT YOUR CHAIN SAW?

Of course. But unless your lady is a woodcutter, how can she be expected to know that a bargain saw is not necessarily a long lasting one? You can put your mind at ease, if you simply ask her for a Stihl® chain saw.

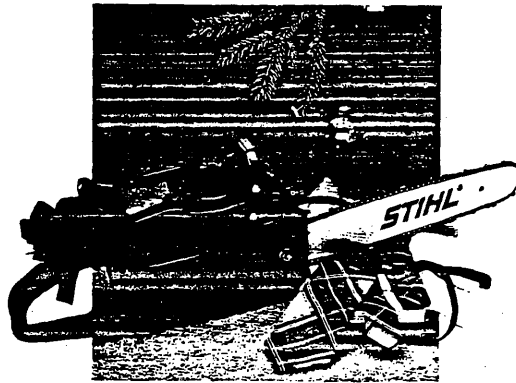
Stihl is the world's largest selling chain saw because Stihl saws start faster, run quieter and smoother, and hold up longer than other saws.

Each of the over eight thousand Stihl

dealers throughout the country services the saws he sells. You won't find that kind of support when your bargain saw quits.

And considering that you get over \$45 worth of accessories with the purchase of any 010 or 015 "Bonus Special," Stihl is also capable of cutting a good deal. So, if you want a chain saw for Christmas, you've basically got two choices. Either ask your wife for a Stihl.

Or brace yourself for a bargain.



STIHL

The World's Largest Selling Chain Saw

BIG DEAL FROM STIHL: With the purchase of any 010 or 015 "Bonus Special," you receive over \$45 worth of accessories in compensating dollars. They include: tracking, carrying case, chain, chain oil, bar, groove, cleaning tool, tie and handle, wedge, 1/2 in. x 1/2 in. cu. wrench, "chisel" manual, and many more! About \$1000 value. "Bonus Special" equipment with all Stihl saws.

For your local dealer's name call toll-free 1-800-528-6050 Ext. 430. In Arizona call 1-800-528-6050 Ext. 431. For sales and service see the Yellow Pages under "Saws."

EXHIBIT E

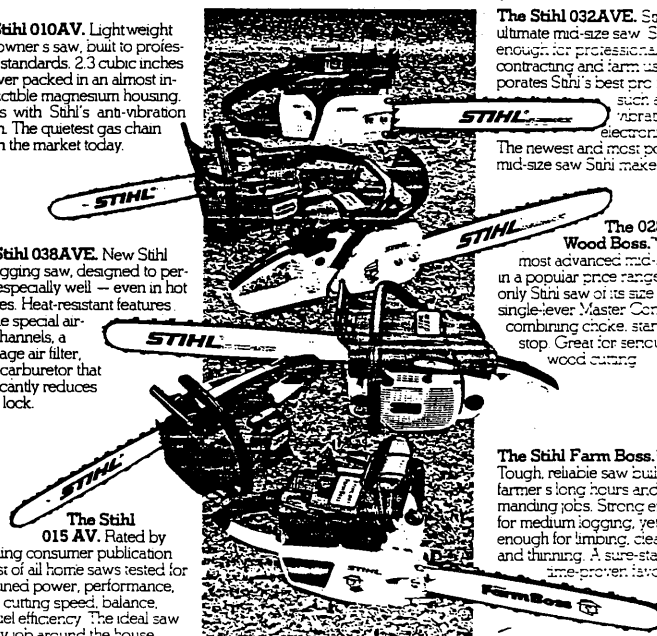
COMPARE THESE TO ANY OTHER SAWS AND LET THE CHIPS FALL WHERE THEY MAY.

Once you know one chain saw from another,
you'll know why Stihl® is the largest selling chain saw in the world.

The Stihl 010AV. Lightweight homeowner's saw, built to professional standards. 2.3 cubic inches of power packed in an almost indestructible magnesium housing. Comes with Stihl's anti-vibration system. The quietest gas chain saw on the market today.

The Stihl 038AVE. New Stihl pro logging saw, designed to perform especially well — even in hot climates. Heat-resistant features include special air-flow channels, a two stage air filter, and a carburetor that significantly reduces vapor lock.

The Stihl 015 AV. Rated by a leading consumer publication as best of all home saws tested for combined power, performance, noise, cutting speed, balance, and fuel efficiency. The ideal saw for any job around the house.



The Stihl 032AVE. Stihl's ultimate mid-size saw. Strong enough for professional forestry, contracting and farm use. Incorporates Stihl's best pro features, such as anti-vibration and electronic ignition. The newest and most powerful mid-size saw Stihl makes.

The 028 Stihl Wood Boss.™ Stihl's most advanced mid-size saw in a popular price range. The only Stihl saw of its size with single-lever Master Control.™ combining choke, start, and stop. Great for serious firewood cutting.

The Stihl Farm Boss.™ Tough, reliable saw built for a farmer's long hours and demanding jobs. Strong enough for medium logging, yet light enough for limbing, clearing, and thinning. A sure-starting, time-proven favorite.

STIHL®

The World's Largest Selling Chain Saw

For the name of the Stihl dealer nearest you, call toll-free 800-528-9750. Ext. 4430 in Arizona call 800-352-0458. Ext. 4430. Or look in the Yellow Pages under "Saws."

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 3.25(f) of its Rules;

Now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Stihl, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 536 Viking Drive, in the City of Virginia Beach, State of Virginia. Respondent Stuart Ford, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 1108 East Main Street, in the City of Richmond, State of Virginia.

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 Stihl, Inc., ("Stihl"), and Stuart Ford, Inc., ("Stuart Ford"), corporations, and their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any chain saw for consumer or commercial use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that:

A. (1) The current Stihl model 015 AV chain saw is rated best of all home saws tested by a leading consumer publication;

(2) Power was one of the factors considered in the test by a leading consumer publication.

B. Stihl's chain saws start faster than all other chain saws on the market.

C. Stihl's chain saws are the smoothest running chain saws on the market.

II

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any power tool, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, results, current validity, reliability, or conclusions of any test or evaluation.

III

It is further ordered, That respondents, their successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any power tool, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representations, directly or by implication,

regarding the performance or durability of any such product unless, at the time the representation is made, respondents possess and rely upon a reasonable basis. For purposes of this Order a reasonable basis shall consist of one or more competent tests or other competent and reliable evidence that substantiates the representation.

Provided, however, That in circumstances where Stuart Ford relied upon scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, which was not directly or indirectly prepared, controlled, or conducted by respondent Stuart Ford, Inc., it shall be an affirmative defense to an alleged violation of Part III of this Order for Stuart Ford to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it had a reasonable basis in accordance with Part III of this Order. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such evidence upon which the opinion is based.

IV

It is further ordered, That respondents, for the period of three years after they last disseminated the advertisements of the products covered by this Order, shall retain all test results, data and other documents or information on which they relied for such advertisements and all documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in respondents' possession during either creation or dissemination of such advertisements. Such records shall be available for inspection by the staff of the Commission upon reasonable notice.

V

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in respondents 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 the Order.

VI

It is further ordered, That the respondents shall forthwith distribute a copy of this Order to each of its operating divisions, and to each

of its officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements.

VII

It is further ordered, That respondents shall, within sixty (60) days after service of this Order and annually thereafter for three (3) years, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

IN THE MATTER OF

HERMAN MILLER, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC.2(a) OF THE CLAYTON ACT

Docket C-1248. Consent Order, June 30, 1967—Modifying Order, June 9, 1983

This order reopens the proceeding and modifies the Commission's order issued on June 30, 1967 (71 F.T.C. 1579), so as to allow the company to specify the customers to which its dealers can serve.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JUNE 30, 1967

By a petition dated January 11, 1983, and a supplement thereto dated February 18, 1983, respondent Herman Miller, Inc. ("Herman Miller") requests that the Commission reopen the proceeding in Docket No. C-1248 and delete subparagraphs 1., 2. and 3.(a) of the second unnumbered paragraph of the order issued by the Commission on June 30, 1967 [71 F.T.C. 1579]. Pursuant to Section 2.51 of the Commission's Rules of Practice, the petition was placed on the public record for comments. No comments were received.

Upon consideration of Herman Miller's request and supporting materials, and other relevant information, the Commission now finds that changed conditions of fact and law, and the public interest, warrant reopening and modification of the order.

Accordingly,

It is ordered, That this matter be, and it hereby is, reopened and that subparagraphs 1., 2. and 3.(a) of the second unnumbered paragraph of the Commission's order be, and they are hereby, deleted.