

IN THE MATTER OF
PLAS-TIX USA, INC.

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

Docket C-3213. Complaint, June 5, 1987—Decision, June 5, 1987

This consent order prohibits, among other things, a Miamisburg, Ohio manufacturer of lighter-to-lighter automobile battery chargers from claiming that the chargers are jumper cables or that they can restart a disabled vehicle as quickly as jumper cables. Also, respondent is required to make specified disclosures on its packaging and in advertisements for a period of five years.

Appearances

For the Commission: *Allen Hile.*

For the respondents: *Joseph A. Koenig, Turner, Granzow, & Hollenkamp, Dayton, OH.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Plas-Tix USA, Inc., hereinafter 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 as follows:

PARAGRAPH 1. Plas-Tix USA, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Ohio, with its office and principal place of business located at 510 South Riverview, Miamisburg, Ohio.

PAR. 2. Respondent is now and for sometime in the past has been engaged in the manufacturing, marketing, distributing, advertising, offering for sale, and selling to the public of "Safe-T-Start" and other lighter-to-lighter chargers, which are devices to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles.

PAR. 3. In the course and conduct of its business, respondent causes, and in the past has caused Safe-T-Start and other lighter-to-lighter chargers to be offered and sold from its place of business to purchasers

located in various States of the United States and the District of Columbia. Respondent maintains and, at all times mentioned herein, has maintained a substantial course of trade in said products in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended.

PAR. 4. In the further course and conduct of its aforesaid business, respondent has at all times mentioned herein made numerous statements in writing, in various product packaging and promotional materials and instruction sheets prepared and/or disseminated by respondent for use in selling respondent's products. Illustrative and typical, but not inclusive, of the statements employed as aforesaid is the following:

"safe - sensible - JUMPER CABLES"

PAR. 5. Through the use of the statement referred to in Paragraph Four, and others contained in product packaging and promotional materials, instruction sheets, and advertisements, not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

- a. Lighter-to-lighter chargers are jumper cables; and
- b. Lighter-to-lighter chargers can restart a disabled vehicle as quickly as jumper cables.

PAR. 6. In truth and in fact:

- a. Lighter-to-lighter chargers are not jumper cables;
- b. Lighter-to-lighter chargers cannot restart a disabled vehicle as quickly as jumper cables. Lighter-to-lighter chargers take significantly longer than jumper cables to restart a vehicle, even under the most favorable circumstances.

Therefore, the representations set forth in Paragraph Five were, and are, false and misleading.

PAR. 7. In the further course and conduct of its aforesaid business, respondent has at all times mentioned herein made numerous statements in writing, in various product packaging and promotional materials and instruction sheets prepared and/or disseminated by respondent for use in selling respondent's products. Illustrative and typical, but not inclusive, of the statements employed as aforesaid is the following:

"Start engine of vehicle with good battery and just let it idle for the amount of time indicated below:

- (1) 5 minutes (if engine in vehicle with dead battery turned slowly, but wouldn't start)
- (2) 10 minutes (if clicking sound was heard when trying to start vehicle with dead battery)
- (3) 15 minutes (if no sound was heard when trying to start vehicle with dead battery)

(4) 20-25 minutes (if headlights did NOT burn on vehicle with dead battery)"

PAR. 8. Through the use of the statements referred to in Paragraph Seven, and others contained in product packaging and promotional materials, instruction sheets, and advertisements not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that the times stated as required to recharge a battery in the four listed stages of discharge are typical times.

PAR. 9. Through the use of the statements referred to in Paragraph Seven, and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made the representation set forth in Paragraph Eight it possessed and relied upon a reasonable basis for that representation.

PAR. 10. In truth and in fact, at the time respondent made such representation it did not possess and rely upon a reasonable basis for that representation. Therefore, the representation set forth in Paragraph Nine was, and is, false and misleading.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, 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(a) 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 Bureau of Consumer Protection 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, its attorneys, 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;

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 Plas-Tix USA, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 510 South Riverview, Miamisburg, 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

For the purpose of this order,

a. "*lighter-to-lighter charger*" means any device to be used to recharge the battery in a disabled vehicle by connection to an operating vehicle through the cigarette lighter receptacles of both vehicles;

b. "*distributor*" means any person who purchases or receives on consignment from Plas-Tix lighter-to-lighter chargers for resale;

c. "*dealer*" means any person who purchases, or receives on consignment from a distributor, lighter-to-lighter chargers for resale to the public; and

d. "*person*" means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

I.

It is ordered, That respondent Plas-Tix USA, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of Safe-T-Start or any other lighter-to-lighter charger 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:

a. that any such lighter-to-lighter charger is a jumper cable;

b. that any such lighter-to-lighter charger can restart a disabled vehicle as quickly as jumper cables;

c. that any such lighter-to-lighter charger can recharge a battery in any specified length of time, unless

1. the representation is accompanied by a clear and prominent statement disclosing whether the specified time is a maximum, minimum, typical, or other such time, and that older batteries or colder temperatures may increase charging times; and

2. at the time the representation is made, respondent possesses and relies upon a reasonable basis for the representation which shall consist of competent and reliable evidence which substantiates such representation; provided, however, that to the extent such evidence of a reasonable basis consists of any scientific or professional test, experiment, analysis, research, study or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" for purposes of this paragraph only if the test, experiment, analysis, research, study, or other evidence is conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

d. any performance characteristic of any lighter-to-lighter charger unless, at the time the representation is made, respondent possesses and relies upon a reasonable basis for the representation which shall consist of competent and reliable evidence which substantiates such representation; provided, however, that to the extent such evidence of a reasonable basis consists of any scientific or professional test, experiment, analysis, research, study or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" for purposes of this paragraph only if the test, experiment, analysis, research, study, or other evidence is conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

II.

It is further ordered, That respondent Plas-Tix USA, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of the Safe-T-Start or any other lighter-to-lighter charger in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith and for a period of five (5) years from the date of this order cease and desist from failing to disclose clearly and conspicuously on the packaging of each such lighter-to-lighter charger and clearly and prominently in each solicitation for the sale of such lighter-to-lighter charger either:

(a) the following information expressed in the exact language set forth below in ten point or larger bold face type:

"This product is not a jumper cable and will not instantly start your car. It must first recharge your battery. Older batteries or colder temperatures may increase charging times. Consult the operating instructions for charging times." or

(b) the specific length of time required to recharge a battery, accompanied by a statement disclosing whether the specified time is a maximum, minimum, typical, or other such time, and that older batteries or colder temperatures may increase charging times.

III.

It is further ordered, That Plas-Tix USA, Inc., its successors and assigns, shall within thirty (30) days after the date of service of this order:

a. provide each distributor with labels which contain the disclosure required by Part II of this order in ten point or larger bold face type in sufficient quantity to cover the existing inventory of Safe-T-Start and other lighter-to-lighter chargers manufactured by Plas-Tix of:

(1) the distributor; and

(2) each dealer who purchased or received on consignment Safe-T-Start or other lighter-to-lighter chargers from such distributor; and

b. instruct each distributor to affix, and use its best efforts to ensure that each distributor affixes, the label described in Part III a of this order to the packaging of each Safe-T-Start or other lighter-to-lighter charger manufactured by Plas-Tix that is in the inventory of that distributor, and to each such lighter-to-lighter charger in the inventory of each dealer who purchased or received on consignment Safe-T-Start or other lighter-to-lighter chargers manufactured by Plas-Tix from such distributor.

IV.

It is further ordered, That Plas-Tix USA, Inc., its successors and assigns, shall distribute a copy of this order to each present and future officer, employee, agent and representative having sales, advertising, or policy making responsibilities for any lighter-to-lighter charger and secure from each such person a signed statement acknowledging receipt of said order.

V.

It is further ordered, That Plas-Tix USA, Inc., its successors and assigns, shall maintain for at least three years and upon request make available to the Federal Trade Commission for inspection and copying the originals of signed statements required by Part IV of this order and copies of all test results, data, and other documents or information relied upon for any representation for any lighter-to-lighter charger and any information in the possession of Plas-Tix which contradicts, qualifies or calls into serious question that representation.

VI.

It is further ordered, That respondent Plas-Tix USA, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in 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 the order.

VII.

It is further ordered, That respondent shall, within sixty (60) 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.

Complaint

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IN THE MATTER OF

WALGREEN CO.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3214. Complaint, June 10, 1987—Decision, June 10, 1987*

This consent order prohibits, among other things, a Deerfield, Ill.-based retail drugstore chain from making unsubstantiated advertising claims for "Advil" pain reliever or any other over-the-counter analgesic drug product.

Appearances

For the Commission: *Donna S. Moffa.*

For the respondents: *Robert L. Wald and Robert A. Skitol, Wald, Harkrader, & Ross, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Walgreen Co., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Walgreen is an Illinois corporation with its principal office or place of business located at 200 Wilmot Road, Deerfield, Illinois.

PAR. 2. Walgreen offers for sale and sells over-the-counter drug products.

PAR. 3. Walgreen has disseminated or caused to be disseminated, advertisements for over-the-counter drug products, which products are "drugs" within the meaning of that term in Section 12 of the Federal Trade Commission Act. These advertisements have been disseminated by various means in or affecting commerce, including newspapers distributed across state lines and radio broadcasts transmitted across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase in or having an effect upon commerce of drugs.

PAR. 4. The acts and practices of Walgreen alleged in this complaint have been in or affecting commerce.

PAR. 5. Typical of Walgreen's advertisements, but not necessarily inclusive thereof, are the Walgreen advertisements attached hereto