

IN THE MATTER OF

UJENA, INC.

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

Docket C-3254. Complaint, June 14, 1989—Decision, June 14, 1989

This consent order prohibits, among other things, the Mountain View, Ca. corporation from misrepresenting the terms and conditions of a money-back guarantee, from failing to provide a full refund of the amount stated in the money-back guarantee within the time specified in the offer, and from failing to transmit a credit statement to the consumer's credit card issuer within seven business days of accepting the return of merchandise.

Appearances

For the Commission: *Janet M. Grady* and *Jerome M. Steiner, Jr.*

For the respondent: *John Anderson, President*, Mountain View, Ca. and *Peter B. Gelblum, Mitchell, Silberberg & Knupp*, Los Angeles, Ca.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ujena, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and the Truth in Lending Act, and the implementing Regulation Z promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Ujena, Inc. is a Delaware corporation, with its principal office or place of business at 1400 Shoreline Boulevard, Mountain View, California.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed swimwear and related products.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of respondent's products, respondent

has disseminated various advertisements and promotional materials. Typical statements in respondent's advertisements and promotional materials include the following:

"OUR GUARANTEE—If you are not completely satisfied with any item you purchase from us, return it within ten days (30 days for exchange and merchandise credits) and we will refund your purchase price."

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"OUR GUARANTEE—If you are not completely satisfied with any item you buy from us, return it and we will refund your purchase price."

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"OUR GUARANTEE—If you are not completely satisfied with any item you buy from us, return it within 30 days (7 days for Ujena Leathers) and we will refund your purchase price."

PAR. 5. By and through the use of its statements set forth in paragraph four, respondent has represented, directly or by implication, that in all instances respondent honors valid refund requests in a timely manner.

PAR. 6. In truth and in fact, in many instances, respondent does not honor valid refund requests in a timely manner. Therefore, the representations set forth in paragraph four are false and misleading and constitute deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.

PAR. 7. Respondent is a creditor as "creditor" is defined in Section 103(f) of the Truth in Lending Act, and in Section 226.2(a)(17) of Regulation Z, and is therefore, required to comply with the applicable provisions of that Act and Regulation.

PAR. 8. Section 226.12(e)(1) of Regulation Z, which implements Section 166 of the Truth in Lending Act, provides that:

"When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements."

PAR. 9. In many instances, respondent has failed to transmit credit statements to the card issuer through the card issuer's normal channels for credit statements within seven business days from accepting the return of property or forgiving the debt as required by Section 226.2(e)(1) of Regulation Z.

PAR. 10. The acts and practices of respondent as alleged in this

complaint constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act and of the Truth in Lending Act and of the implementing Regulation Z.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ujena, Inc. ("respondent"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office 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 Truth in Lending Act, and the implementing Regulation Z promulgated under the Truth in Lending Act; and

The respondent, its attorney, 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 had 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 respondent has violated the said Acts, 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. Ujena, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal business address located at 1400 Shoreline Boulevard, Mountain View, California.

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 purposes of this order the following definitions shall apply:

A. "*Valid refund request*" shall mean a refund request responsive to a money-back guarantee offer which meets all requirements disclosed clearly in the offer;

B. "*Credit Statement*" means any type of notice transmitted by the respondent or its agents to a credit card issuer that causes a consumer's account to be credited for the amount indicated on the notice;

C. "*Credit Sale*" shall be defined as provided by Section 226.2(a)(16) of Regulation Z, 12 CFR 226.2(a)(16); and

D. "*Card Issuer*" shall be defined as provided by Section 226.2(a)(7) of Regulation Z, 12 CFR 226.2(a)(7).

I.

It is ordered, That respondent Ujena, 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 advertising, offering for sale, sale, and distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any matter, directly or by implication, any term or condition of a money-back guarantee offer;

B. Failing to provide, to any person who has made a valid refund request and who has paid by cash, check or money order, a full refund of whatever amount was stated in the guarantee offer specified, within ten (10) business days of receipt of the refund request; and

C. Failing to transmit, where there was a credit sale, a credit statement to the consumer's card issuer within seven (7) business days of accepting the return of property or forgiving the consumer's debt.

II.

It is further ordered, That respondent shall:

A. Notify the Commission at least thirty (30) days prior to any

proposed change in respondent, such as dissolution, reorganization, assignment, or sale resulting in the emergence of a successor corporation, or any other change in the corporation which may affect compliance obligations arising out of this order; and

B. Within sixty (60) days after this order becomes final, submit to the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

111 F.T.C.

IN THE MATTER OF

PEPSICO, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SEC. 7 OF THE CLAYTON ACT

Docket C-3262. Complaint, June 29, 1989—Decision, June 29, 1989

This consent order requires, among other things, Pepsico to allow General Cinema Corp. (GCC) to continue distributing non-Pepsi brands in Broward County, Fla. and the Staunton, Va. area, and requires Pepsico to obtain prior Commission approval, for five years, for any carbonated soft drink asset acquisition in those two areas and to notify the Commission of any acquisition that would create substantial overlaps.

Appearances

For the Commission: *Ronald B. Rowe, Constance M. Salemi and Jeffery I. Zuckerman.*

For the respondents: *Edward V. Lahey, Jr., in-house counsel, Purchase, N.Y., Samuel Frankeheim, in-house counsel, Chestnut Hill, Ma., Richard T. Colman and Raymond A. Jacobsen, Howrey & Simon, Washington D.C., and Stephen M. Axinn, C. Benjamin Crisman, Jr., Peter E. Greene, Skadden, Arps, Slate, Meagher & Flom, New York City.*

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 ("Commission"), having reason to believe that the respondent, PepsiCo, Inc., a corporation subject to the jurisdiction of the Commission, has entered into an agreement to purchase the shares of three General Cinema Corporation bottling subsidiaries that, if completed, would violate the provision of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; that said agreement constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section