

IN THE MATTER OF

SILO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
ENERGY POLICY AND CONSERVATION ACT & THE FEDERAL TRADE
COMMISSION'S APPLIANCE LABELING RULE*Docket C-3263. Complaint, July 20, 1989—Decision, July 20, 1989*

This consent order requires, among other things, the Philadelphia, Pa. based corporation, that operates stores that sell major appliances, to pay \$45,000 in civil penalties.

Appearances

For the Commission: *Kathryn Nielsen.*

For the respondent: *Erin Scher, Weil, Gotshal & Manges, New York City.*

COMPLAINT

Pursuant to the provisions of the Energy Policy and Conservation Act ("EPCA"), as amended, and by virtue of the authority vested in it by the aforementioned Act, the Federal Trade Commission, having reason to believe that SILO, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated and is violating said Act, and the Commission's Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act ("Appliance Labeling Rule"), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. SILO, Inc. ("SILO") is a Pennsylvania corporation, with its office and principal place of business located at 6900 Lindbergh Boulevard, Philadelphia, Pennsylvania.

PAR. 2. Respondent advertises, offers for sale, and sells household appliances and electronic equipment in its retail stores located throughout the United States.

PAR. 3. The Energy Policy and Conservation Act, 42 U.S.C. 6291 et

seq., authorizes the Federal Trade Commission to prescribe rules requiring manufacturers to disclose certain energy usage information on labels placed on the exterior surface of covered products, including clothes washers, dishwashers, freezers, refrigerators, and refrigerator-freezers. EPCA also prohibits retailers from removing the labels from the appliances or rendering the labels illegible. 42 U.S.C. 6302(a)(2).

PAR. 4. Pursuant to 42 U.S.C. 6294, the Commission promulgated the Appliance Labeling Rule, 16 CFR 305, which requires manufacturers to affix an EnergyGuide label to the exterior surface of certain covered products, including clothes washers, dishwashers, freezers, refrigerators, and refrigerator-freezers. Section 305.11(a)(5) of the Appliance Labeling Rule, 16 CFR 305.11(a)(5), specifies the contents of the EnergyGuide label, including a requirement that the following statement appear at the bottom of the label: "IMPORTANT. REMOVAL OF THIS LABEL BEFORE CONSUMER PURCHASE IS A VIOLATION OF FEDERAL LAW (42 U.S.C. 6302)." The Appliance Labeling Rule prohibits retailers from removing the EnergyGuide labels from the exterior surface of the appliances or rendering the labels illegible. 16 CFR 305.4(a)(2).

PAR. 5. Silo is a "retailer" or "covered products" as those terms are defined in 16 CFR 305.2(d) and (o) and 42 U.S.C. 6291(a)(13) and (a)(2).

PAR. 6. In numerous instances, SILO has removed the EnergyGuide labels from covered products, including refrigerators, refrigerator-freezers, freezers, dishwashers, and clothes washers or has rendered them illegible, thereby violating 16 CFR 305.4(a)(2) and 42 U.S.C. 6302(a)(2).

PAR. 7. At the times respondent engaged in the acts or practices described in paragraph six above, it did so "knowingly" as that term is used in 16 CFR 305.4(f) and 42 U.S.C. 6303(b). Respondent therefore is liable for civil penalties pursuant to 16 CFR 305.4(a)(2) and 42 U.S.C. 6303(a).

PAR. 8. 42 U.S.C. 6303(a) authorizes the Commission to assess a civil penalty of not more than \$100.00 for each violation. For purposes of assessing the civil penalty, each violation of 42 U.S.C. 6303(a) constitutes a separate violation with respect to each covered product.

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 Seattle 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 Energy Policy and Conservation Act and the Federal Trade Commission's Appliance Labeling Rule; 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; and

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 Rule, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent SILO, Inc. is a Pennsylvania corporation, with its offices and principal place of business located at 6900 Lindbergh Boulevard, Philadelphia, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent shall, within 30 days from the date of issuance of this order, pay, pursuant to 42 U.S.C. 6303, a civil penalty in the amount of \$45,000.00. Respondent shall make this payment by cashier's or certified check payable to the Treasurer of the United States and deliver it to Regional Director, Federal Trade Commission, 915 Second Avenue, Room 2806, Seattle, Washington 98174 for appropriate disposition. In the event of default, respondent shall be liable for interest calculated in accordance with 28 U.S.C. 1961, as amended.

Commissioner Strenio dissenting.

DISSENTING STATEMENT OF COMMISSIONER ANDREW J. STRENIO, JR.

I have voted against this consent agreement because it lacks an injunction barring SILO from violating the Energy Policy and Conservation Act. Such an injunction would increase deterrence against future violations by SILO or others and thereby assist the Commission in achieving compliance with this law.

IN THE MATTER OF
NUTRITONE, INC., ET AL.

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

Docket C-3264. Complaint, July 24, 1989—Decision, July 24, 1989

This consent order prohibits, among other things, a Massachusetts corporation from making any representations concerning the efficacy of electric muscle stimulation ("EMS") treatment programs and products, unless respondents possess reliable scientific evidence to substantiate the representations. Respondents are required to retain, for at least five years, records supporting any future advertising and also required to post a copy of the order on the premises.

Appearances

For the Commission: *Sara V. Greenberg, William P. McDonough*
and *Phoebe Morse*.

For the respondents: *Alan J. Cushner*, Boston, Ma.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nutritone, Inc., a corporation, also trading and doing business as Body By Design, and Dinah H. Simonini and Donald L. Simonini, individually and as officers of said corporation ("respondents"), have violated Sections 5(a) and 12 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 that:

PARAGRAPH 1. (a) Respondent Nutritone, Inc., is a Massachusetts corporation. Its principal office or place of business is at 1172 Beacon Street, Newton, Massachusetts.

(b) Dinah H. Simonini and Donald L. Simonini are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including all the acts and practices alleged in this complaint below. Their principal office or place of business is the same as that of the corporation.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed to the public an electric muscle stimulation program.