

IN THE MATTER OF

ZIPATONE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3336. Complaint, July 9, 1991—Decision, July 9, 1991*

This consent order prohibits, among other things, a Hillside, Ill., based manufacturer of artists' materials from representing that any product containing a Class I ozone-depleting substance will not damage the environment, and from making any unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Benjamin E. Beale, Jr., officer of Zipatone, Inc., Hillside, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Zipatone, Inc., a corporation, and Benjamin E. Beale Jr., individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have 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. Respondent Zipatone, Inc. is an Illinois corporation, with its office and principal place of business located at 150 Fencel Lane, Hillside, Illinois.

Respondent Benjamin E. Beale Jr. is an officer of the corporate respondent named herein. He formulates, directs, and controls the acts and practices of the corporate respondent. His address is the same as that of the corporation.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed certain spray products to the public, including Zipatone Spray Cement, a product which contains the chemical 1,1,1 - Trichloroethane.

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

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements for Zipatone Spray Cement. Typical examples of respondents' advertisements and product labeling, but not necessarily all inclusive thereof, are attached hereto as Exhibits A and B.

The aforesaid advertising (Exhibit A) includes the following statement:

"Zipatone's time saving spray products use only ecologically safe propellants. You get the job done quickly without damaging the environment."

The aforesaid product labeling (Exhibit B) includes the following statement:

ECOLOGICALLY-SAFE PROPELLANT

PAR. 5. Through the use of statements referred to in paragraph four in its advertising and product labeling, respondents have represented directly or by implication that:

1. Zipatone Spray Cement contains no ingredients that are damaging to the environment.
2. Use of Zipatone Spray Cement will not have a detrimental effect on the earth's ecology.

PAR. 6. In truth and in fact, Zipatone Spray Cement contains a harmful ozone depleting chemical, 1,1,1 - Trichloroethane, which will cause damage to the environment and the earth's ecology by contributing to the depletion of the earth's ozone layer. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the statements and representations referred to in paragraphs four and five, respondents have represented, directly or by implication, that at the time they made such representations, respondents possessed and relied upon a reasonable basis for such representations.

PAR. 8. In truth and in fact, at the time respondents made such representations, respondents did not possess and rely upon a reasonable basis for such representations. Therefore, the representations set forth in paragraph seven were, and are, false and misleading.

PAR. 9. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

Zipatone Spray Products

Save time using spray products use only specially safe propellants. You get the job done quickly without damaging the environment.

Zipatone Plastic Spray (code number 3100)
This is a transparent coating specially formulated for plastic. It protects plastic from abrasion, dirt and scratches. Zipatone Plastic Spray is available in aerosol cans and can be used to protect plastic media such as overhead, pencil and paper.

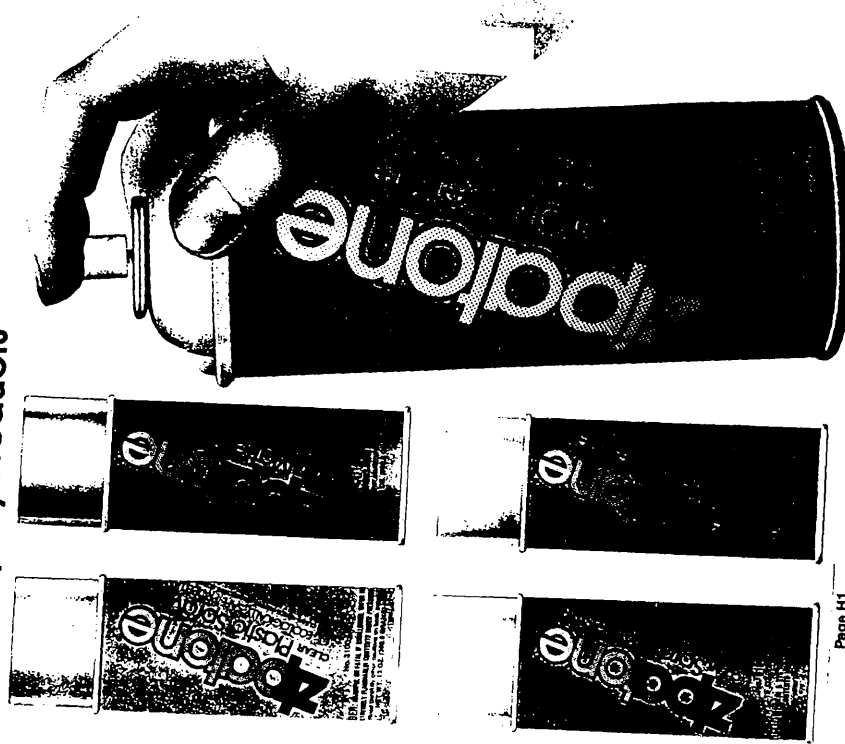
Zipatone Matte Fixative (code number 3110)
This is a matte fixative, a transparent, colorless, non-toxic coating that is used after the finest of all finishes. It is used to seal and protect the finish and to give it a matte finish. It is used on all types of finishes, including oil, water, and enamel.

Zipatone Spray Adhesive (code number 3120)
This is a spray adhesive that is used to bond plastic to plastic, plastic to metal, and plastic to wood. It is used on all types of plastics, including acrylic, polycarbonate, and plexiglass.

Zipatone Glass Cleaner (Optical) (code number 3130)
This is a glass cleaner that is used to clean glass, plastic, and metal. It is used on all types of glass, including window glass, mirror glass, and optical glass.

Zipatone Spray Cement (code number 3140)
This is a spray cement that is used to bond plastic to plastic, plastic to metal, and plastic to wood. It is used on all types of plastics, including acrylic, polycarbonate, and plexiglass.

Note: The above description of Zipatone products may be subject to change without notice.



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114 F.T.C.

EXHIBIT B

Zipatone® Spray Cement

THE DENSE SPRAY ADHESIVE WITH A QUICK, STRONG
TACK. IDEAL FOR MOUNTING, STAINLESS STEEL,
CORK, FABRIC, CARDBOARD, STYROFOAM,
PLASTIC SHEETING, WALLPAPER, FOIL, RIGHT FOR
GRAPHIC ARTS PASTEL.

CAUTION:

1. Do not spray directly at face and keep from hot, dust, grease,
oil, etc. 2. Do not spray directly at open flame or fire. 3. Do not spray
directly at eyes and do not spray into or near the spraying
equipment.

4. Do not spray directly at children. 5. Do not spray directly at
open flame or fire. 6. Do not spray directly at open flame or fire.
7. Do not spray directly at open flame or fire. 8. Do not spray
directly at open flame or fire. 9. Do not spray directly at open flame
or fire. 10. Do not spray directly at open flame or fire.

11. Do not spray directly at open flame or fire.

12. Do not spray directly at open flame or fire. 13. Do not spray
directly at open flame or fire. 14. Do not spray directly at open flame
or fire. 15. Do not spray directly at open flame or fire. 16. Do not
spray directly at open flame or fire. 17. Do not spray directly at open
flame or fire. 18. Do not spray directly at open flame or fire.

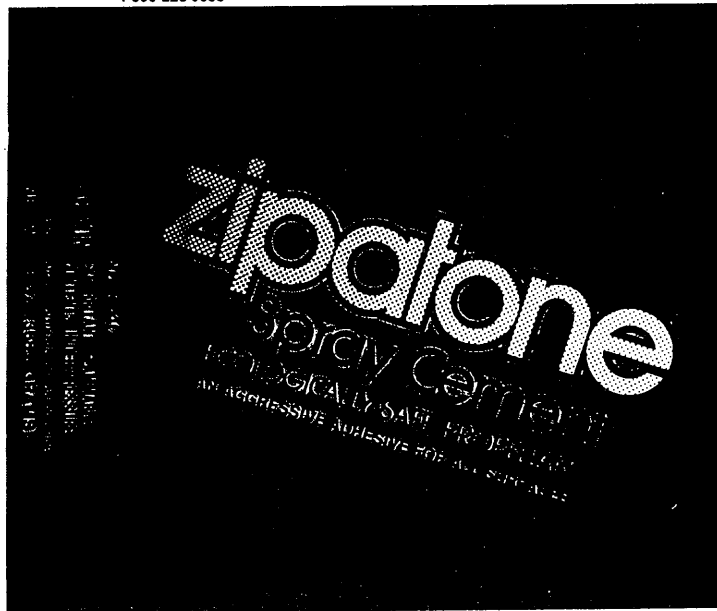
19. Do not spray directly at open flame or fire. 20. Do not spray
directly at open flame or fire. 21. Do not spray directly at open flame
or fire. 22. Do not spray directly at open flame or fire. 23. Do not
spray directly at open flame or fire. 24. Do not spray directly at open
flame or fire. 25. Do not spray directly at open flame or fire.

Zipatone Inc.®
ISO Fertilizer Phosphate Nitros 60/62

Made in U.S.A.

24-HOUR MEDICAL EMERGENCY
1-800-228-5635

Contains: 1,1,1-Trichloroethane (CAS #71-55-6)
Liquefied Petroleum Gas (CAS #68476-85-7)



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents Zipatone, Inc., a corporation, and Benjamin E. Beale, Jr., individually and as an officer of said corporation, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents 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 aforesaid draft 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have 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 makes the following jurisdictional findings and enters the following order:

1. Respondent Zipatone, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Zipatone, Inc. has its offices and principal place of business at 150 Fencel Lane, Hillside, Illinois.

2. Respondent Benjamin E. Beale, Jr. is an officer of said corporation. He formulates directs, and controls the acts and practices of said corporation, and his address is the same as that of Zipatone, Inc.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of the order, the following definitions shall apply:

"Competent and reliable scientific evidence" means such tests, analyses, research, studies, or other scientific evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

"Class I ozone depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1 - Trichloroethane.

"Class II ozone depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I.

It is ordered, That respondents Zipatone, Inc. (hereinafter "Zipatone"), a corporation, its successors and assigns, and its officers, and Benjamin E. Beale, Jr., individually as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, 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, by words, depictions, or symbols that any product containing any Class I ozone depleting substance, will not damage the environment, or is ecologically safe, or through the use of any substantially similar term or expression, including but not limited to "ozone friendly" or "ozone safe," that any such product will not damage the environment, or that

any such product is ecologically safe, or that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered, That respondents Zipatone, a corporation, its successors and assigns, and its officers, and Benjamin E. Beale, Jr., individually as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, 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, by words, depictions or symbols, that any product containing any Class I ozone depleting substance or any Class II ozone depleting substance, or any other ozone depleting substance, offers any environmental benefits, including but not limited to any environmental benefit claims concerning the ecology, atmosphere, upper atmosphere, stratosphere or the ozone layer, unless at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation.

III.

It is further ordered, That for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that respondents relied upon in disseminating any representation covered by this order.
2. All tests, reports, studies or surveys in respondents' possession or control or of which they have knowledge that contradict any representation of respondents covered by this order.

IV.

It is further ordered, That respondents shall distribute a copy of this order to each of its operating divisions and to each of its officers,

agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

VI.

It is further ordered, That the individual respondent named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution and/or manufacturing of any cleaning or adhesive products or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution and/or manufacturing of any cleaning or adhesive products. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
ALLEGHANY CORPORATION

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

Docket C-3335. Complaint, July 11, 1991—Decision, July 11, 1991

This consent order requires, among other things, Alleghany Corporation to divest, within twelve months of this order, all rights and interest in either its own title plants and back plants or those of Westwood Equities Corporation, to a Commission-approved acquirer.

Appearances

For the Commission: *Ann B. Malester.*

For the respondent: *John C. Christie, Jr., Bell, Boyd & Lloyd,*
Washington, D.C.

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 respondent Alleghany Corporation ("Alleghany"), a corporation subject to the jurisdiction of the Commission, through one of its subsidiaries, has entered into an agreement that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45); and that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18); 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 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions apply: