

Complaint

115 F.T.C.

IN THE MATTER OF

THE PINKERTON TOBACCO COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF
1986 AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket, C-3364. Complaint, Jan. 9, 1992--Decision, Jan. 9, 1992

This consent order prohibits, among other things, the Virginia-based company from advertising any smokeless tobacco product on any broadcast medium, including television, in connection with the broadcast of any Pinkerton-sponsored event, and requires the respondent to distribute a copy of the order to each operating division, manager, officer, agent, or employee engaged in advertising or sponsorship activities, the production of sponsored events, or other sales materials.

Appearances

For the Commission: *Anne Maher and Judy Wilkenfeld.*

For the respondent: *William C. McClure, III, Richmond, VA.
James R. Loftis, III and T. Michael Jankowski, Collier, Shannon &
Scott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the Pinkerton Tobacco Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent the Pinkerton Tobacco Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Pinkerton's office and principal place of business is located at 6630 W. Broad Street, P. O. Box 1158, Richmond, VA.

PAR. 2. Respondent, at all times mentioned herein, has maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent the Pinkerton Tobacco Company advertises, offers for sale, and sells tobacco products, including but not limited to Red Man brand smokeless tobacco to consumers throughout the United States.

PAR. 4. In the course and conduct of its business the Pinkerton Tobacco Company has sponsored various sporting events, including, but not limited to, the Redman Pulling Series, a series of truck and tractor events, which are attended and patronized by consumers throughout the United States.

PAR. 5. TNT Productions, Inc. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky. TNT Productions organized, promoted and produced various sporting events. From 1986 until 1990, TNT promoted and produced the Redman Pulling Series. In 1990, TNT Productions was disbanded.

PAR. 6. Through its control of TNT Productions, Inc., as well as through other activities in connection with its sponsorship of events, the Pinkerton Tobacco Company has allowed the various, sponsored events as described in paragraph four to be filmed for broadcast on a medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

PAR. 7. In the course and conduct of its business in order to induce sales of its tobacco products, the Pinkerton Tobacco Company directly or indirectly paid for display of its product's brand name, logo, or selling message during the broadcast of various sponsored events as described in paragraphs five and six. Typical and illustrative, but not necessarily all-inclusive thereof, of the manner of display of the smokeless tobacco brand name, logo, or selling message are the following:

During a pulling event, the sled which is pulled by each of the competing vehicles, and is therefore prominent throughout the broadcast of the event, contains flags and signage bearing smokeless tobacco brand names, logos, or selling messages, including but not limited to the name "Red Man," the Red Man Indian

head logo, and such selling messages as "CHEWING TOBACCO" and "AMERICA'S BEST CHEW;"

During an event, banners, line markers, and other signage bearing the Red Man name and logo are arranged in and around the track;

During an event, workers, competitors, and other participants who are out on the track, some of whom are interviewed on the broadcast, wear hats and uniforms bearing the Red Man brand name, logo, or selling message;

Televised commercials for Pinkerton-sponsored events include on-screen display of the Red Man Indian head logo;

Televised program identifiers, occurring at the beginning or end of an event or before or after a commercial break include on-screen display of the Red Man Indian head logo;

PAR. 8. Through the activities described in paragraphs four through seven and others not specifically set forth herein, respondent advertises or has advertised smokeless tobacco products on a medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

PAR. 9. The acts and practices of respondent, as herein alleged, have constituted, and now constitute, a violation of the Comprehensive Smokeless Tobacco Health Education Act of 1986, and by virtue of Section 5 thereof, Section 5 of the Federal Trade Commission Act.

Commissioner Yao not participating.

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 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 Comprehensive Smokeless Tobacco Health Education Act of 1986, and by virtue of Section 5 thereof, a violation of Section 5 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, and admission by 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 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. Respondent the Pinkerton Tobacco Company 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 6630 W. Broad Street, P.O. Box 1158, Richmond, VA.
2. 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

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

1. The term "*event*" means any type of gathering for public entertainment with or without an audience, including, but not limited to, any athletic or sporting activity (such as tractor pulls and monster truck events, racing, rodeo, wrestling, or fishing) or musical, artistic, or nightclub activity.
2. The term "*broadcast*" refers to appearances on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.
3. The term "*smokeless tobacco product*" means smokeless tobacco as defined in Section 9(1) of the Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. 4408(1).

PART I.

It is ordered, That respondent the Pinkerton Tobacco Company, a corporation, and its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with a broadcast of any event which it sponsors, do forthwith cease and desist from advertising any smokeless tobacco product on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission;

Provided however, that in connection with a broadcast of a sponsored event, nothing in this order shall prohibit:

A. The use of a brand name of a smokeless tobacco product as the name of the sponsored event provided that the logo, selling message, color, or design feature of the product or its packaging is not used, however:

1. The brand name as qualified above may be used as part of a program identifier at the beginning or end of a program or before or after a commercial break;

2. The brand name as qualified above may be used within advertising by the broadcaster for the program so long as the advertising is not directly or indirectly placed or made by respondent;

B. Any incidental or de minimis broadcast of a brand name, logo, selling message, or event name so long as the brand name, logo, selling message or event name does not appear:

1. On signage in an area on which cameras routinely focus during an event (*e.g.*, the starting and finishing line in a truck or tractor pull);

2. On signage on competing vehicles or other event equipment upon which cameras routinely focus (*e.g.*, the weighted sled pulled during a truck or tractor event); or

3. On clothing of event officials, commentators, competitors, or participants, if provided to them directly or indirectly by respondent.

Provided further, that this order shall not cover :

C. The first broadcast of an event which had never before been broadcast, if respondent could not have reasonably foreseen the broadcast of this type of event; or

D. Any films or video tapes of any event in existence at the time the parties enter this agreement over which respondent has no control, *provided however*, that respondent shall send a copy of this order to each and every entity that it knows possesses such a film or tape.

PART II.

It is further ordered, That within thirty (30) days after service of this order, respondent, its successors and assigns, shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising, sponsorship activities, production of sponsored events, or other sales material covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

PART III.

It is further ordered, That respondent, its successors and assigns, for three (3) years after the date of entry of this order, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records, including, but not limited to, sponsorship agreements, trademark license agreements, and films or video tapes of sponsored events covered by Part I of this order.

PART IV.

It is further ordered, That respondent, its successors and assigns, 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 successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

PART V.

It is further ordered, That respondent, its successors and assigns, shall, within sixty (60) days after service upon it of this order 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 it has complied with the requirements of this order.

Commissioner Yao not participating.

IN THE MATTER OF

NESTLE FOOD COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3365. Complaint, Jan. 21, 1992--Decision, Jan. 21, 1992*

This consent order prohibits, among other things, the California-based marketer of Carnation Coffee-mate Liquid from misrepresenting the amount of total fat, saturated fat, or cholesterol in Coffee-mate Liquid or any other milk product or non-dairy substitute, relative to the serving size depicted in its advertisements or promotional materials.

Appearances

For the Commission: *Anne V. Maher* and *C. Lee Peeler*.

For the respondent: *Sara Holtz* and *Randall Boyce*, San Francisco, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nestle Food Company, formerly known as Carnation Company ("respondent"), has violated 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 is a Delaware corporation with offices and principal place of business located at 800 North Brand Boulevard, Glendale, California.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed food products, including Coffee-mate Liquid, a non-dairy liquid creamer. Coffee-mate Liquid is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Responsibility for advertising, sale and distribution of Coffee-mate