

IN THE MATTER OF
AMERICAN ENVIRO PRODUCTS, INC., ET AL.

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

Docket C-3376. Complaint, Mar. 18, 1992--Decision, Mar. 18, 1992

This consent order prohibits, among other things, a California-based disposable diapers company and its corporate officers from making unsubstantiated degradability or environmental benefit claims for any plastic product or plastic packaging in the future.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Phil Rudolph* and *Paul Blankenstein,*
Gibson, Dunn & Crutcher, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Enviro Products, Inc., a corporation, and Robert D. Chickering and Michael V. Zullo, individually and as officers 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 American Enviro Products, Inc. ("American Enviro") is a California corporation with its office and principal place of business located at 950 Fee Anna Street, Placentia, California.

Respondents Robert D. Chickering and Michael V. Zullo are officers of the corporate respondent named herein. They formulate, direct, and control the acts and practices of the corporate respondent. Their business address is the same as that of the corporation.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents have, or have caused to be, advertised, offered for sale, sold, and distributed disposable diapers to the public under the trade name Bunnies.

PAR. 3. The acts or 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 and package labels for Bunnies diapers, including, but not necessarily limited to, the attached Exhibits A, B, C, and D. The aforesaid advertising and package labeling contains the following claims, among others:

BIODEGRADABLE BUNNIES

These diapers can play a vital role in the disposal of plastic waste.

Disposable diapers are one of the most serious environmental problems we have today. Every day in the U.S.A. over 50 million disposable diapers are thrown away. Their polymer plastic outer backing will last from 200 to 400 years in our landfills before they biodegrade.

Bunnies are constructed with a revolutionary outer backing. This backing contains biodegrading agents which, when combined with the polymer matrix, dramatically accelerate the biodegrading process so they biodegrade within 3-5 years.

Bunnies and the plastic bag they are sold in are both made of this new biodegradable material and both will biodegrade before your child grows up.

"I felt sort of guilty when I threw away (my baby's) disposable diapers. Bunnies uses biodegradable plastic for the back sheet Even their bags are biodegradable."

PAR. 5. Through the statements referred to in paragraph four and others in advertisements and package labeling not specifically set forth herein, respondents have represented, directly or by implication that:

1. Compared to other disposable diapers, Bunnies disposable diapers offer a significant environmental benefit when consumers dispose of them as trash that is buried in a landfill.

2. Bunnies disposable diapers and their plastic package bags will completely break down, decompose, and return to nature within 3 to 5 years.

3. Bunnies disposable diapers will break down, decompose, and return to nature significantly faster than other disposable diapers after consumers dispose of them as trash that is buried in landfills.

PAR. 6. Through the statements and representations referred to in paragraphs four and five, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time they made such representations, respondents possessed and relief upon a reasonable basis for such representations.

PAR. 7. 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 representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. 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.

Complaint

115 F.T.C.

EXHIBIT A

When your babies grow up...
will they still be living in diapers?



Your choice today could make the difference.

A good choice for your baby today.

Bunnies have all of the features you look for in a disposable diaper (and cost no more than ordinary national brands).

- **Super absorbent centers** combine a specialized fabric with a non-toxic anti-wetness ingredient, locking moisture among the inner most layers - away from baby's skin.
- **Stay dry liners** provide a protective screen that repels wetness while caressing baby's skin with softness.
- **Elastic legs** with gentle gathering strands work to prevent leakage and give a trim and comfortable fit.
- **Reusable, no-tear closure tabs** hold diapers securely and let you check for wetness as often as you like.
- **Blue moisture barrier** at waist helps prevent leakage when your baby is lying down.



A better choice for your baby's tomorrow.

Disposable diapers are one of the most serious environmental problems we have today. Every day in the U.S.A. over 50 million disposable diapers are thrown away. Their polymer plastic outer backing will last from 200 to 400 years in our landfills before they biodegrade.

Bunnies™ are constructed with a revolutionary outer backing. This backing contains biodegrading agents which, when combined with the polymer matrix, dramatically accelerate the biodegrading process so they biodegrade within 3-5 years.

Bunnies and the plastic bag they are sold in are both made of this new biodegradable material and both will biodegrade before your child grows up.

© 1989 AMERICAN ENVIRO PRODUCTS, INC.

Available at fine stores everywhere.

950 Fee Ada Street, Placentia, California 92670

EXHIBIT A

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Complaint

EXHIBIT B

PRODUCT	BUNNIES DIAPERS		
PROGRAM	CBS THIS MORNING	3/26/90	30 SEC.
	CBS-TV (NEW YORK)		8:49AM



1. WOMAN: I have a confession to make about my baby.



2. I felt sort of guilty when I threw away her disposable diapers.



3. They're convenient but I just didn't want them to still be around when she grows up.



4. So we changed to Bunnies. Bunnies uses biodegradable plastic for the back sheet,



5. and they're ultra absorbent; have elastic legs, stay-dry liners and reusable tape tabs.



6. Even their bags are biodegradable.



7. Biodegradable Bunnies, it's definitely the right thing



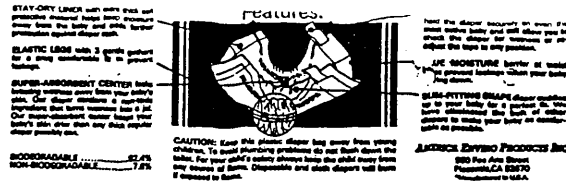
8. for my baby,



9. and her babies.

EXHIBIT B

EXHIBIT C



60 SMALL
For babies 6 to 14 pounds

WITH

- Blue moisture barrier
- Refastenable closure tabs
- Stay dry liner
- Biodegradable outer shell

**BIODEGRADABLE
ULTRA THIN AND ABSORBENT DISPOSABLE DIAPERS**

How to use and dispose of these diapers

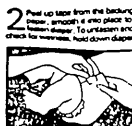
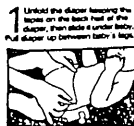


EXHIBIT C

EXHIBIT D

BIODEGRADABLE BUNNIES™

With *Real*, the result is a biodegradation through the soil.

BIODEGRADABILITY

BIODEGRADABILITY

These resins can play a vital role in the disposal of plastic waste. The plastic cooler bottles that we and our plastic bags both contain biodegradable agents, which is protected by the polymers. When these biodegradable agents are combined in the proper proportions with initiators, the lengthy process of natural biodegradation of polymers is accelerated by one or two orders of magnitude, provided there is contact

RATE OF BIODEGRADATION

Since the early 1970's much has been written about biodegradation in plastics. It is now known that all polymers are subject to some degradation. By using the Corbary-Adams test, a connection of polymer molecules into carbonaceous waste on plastic buried in composted soil, each product, as well as other ingredients, when included within the polymer matrix, accelerates the process. Under certain conditions they are capable of controlling the rate of degradation within a narrow time limit. The most practical way to measure the extent to which a product degrades is to measure its loss of strength, or

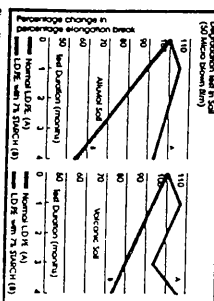
Biodegradability is the breakdown of a substance as a result of the action of living organisms, such as bacteria, fungi, actinomyces, and insects. Biodegradation is most likely to occur in a medium such as soil or water where these living organisms are normally present.

An oxidant is also added in the presence of oxygen and metal ions, such as those found in soil, the microorganisms produce which can attack the polymer chain.

occurred to loss of weight in some cases, a loss in tensile strength of fibers is sufficient depopulation, even though it will take additional time for full losses of the product to be lost or disappear.

Predictions as to the exact rate of depopulation are impossible since soil composition, moisture and temperature are all factors which have a direct effect. However, assuming a temperate climate, normal available soil and proper soil drainage, the following observations can be made:

• Based on extrapolation of Carb-r-14 tests, the



Simultaneously, the starch granules are consumed by the micro-organic flora in the soil which open the polymer matrix to attack, further accelerating the breakdown. The polymer chain is broken down to the point where it can be consumed harmlessly by micro organisms. As this process of degradation continues, all of the plastic is consumed and broken down into carbon dioxide and water.

In addition, both starch and the oil/solvent are reduced to organic materials containing no harmful or toxic chemicals.

* A Polyurethane Eco Copolymer Mulchfilm prepared with a 7% STADCH addition shows a sufficient loss of nitrogen in one growing season to avoid interference with cultivation for the next crop. (CHM)

Based on this data, we estimate that Bunnies will biodegrade in 3.5 years depending on soil conditions and time for Polyurethane film the addition of biodegradable agents to reach full degradation is 20% to 400 years.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 American Enviro Products, Inc. is a California corporation, with its office and principal place of business at 950 Fee Anna Street, Placentia, California. The respondents Robert D. Chickering and Michael V. Zullo are officers of said corporation. In their respective capacities as officers, they formulate, direct and control the acts and practices of the corporate respondent. Their business address is the same as that of said corporation.

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

DEFINITION

For purposes of this order, the following definition shall apply:

"American Enviro plastic product" means any product or product packaging composed of plastic, in whole or in part, that is offered for sale, sold, or distributed to the public by respondents, its successors and assigns, under the "Bunnies" brand name or any other brand name; and also means any plastic product or product packaging that is sold or distributed to the public by third parties under private labeling agreements with respondents, its successors and assigns.

I.

A. *It is ordered*, That respondents American Enviro Products, Inc., a corporation, its successors and assigns, and its officers, and Robert D. Chickering and Michael V. Zullo, individually and as officers 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 American Enviro plastic product, including, but not limited to, disposable diapers and their plastic packaging, 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:

(1) That any such plastic product is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any other similar term or expression, that any such plastic product offers any environmental benefits com-

pared to other products when consumers dispose of them as trash that is ordinarily buried in a sanitary landfill or incinerated,

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. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however*, respondents will not be in violation of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of American Enviro plastic products, if they truthfully represent that their plastic products will compost, degrade into usable compost, or otherwise be converted into usable compost, when disposed of in facilities that collect municipal solid waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such products and any advertising referring to the degradability of such products discloses clearly, prominently, and in close proximity to such representation:

(1) That such products are not designed to degrade in landfills; and either

(2)(a) That facilities to compost such products are generally unavailable in the U.S., or

(2)(b) The approximate percentage of the U.S. population having access to composting programs for such products. If the advertising and labeling of respondents' plastic products otherwise complies with Subpart A of Part I of this order, respondents will not be in violation of this order if they do not make the disclosures in this proviso (Subpart B).

II.

It is further ordered, That respondents American Enviro Products, Inc., a corporation, its successors and assigns, and its officers, and Robert D. Chickering and Michael V. Zullo, individually and as officers 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 American Enviro plastic product, including, but not limited to, disposable diapers and their plastic packaging, 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 such product offers any environmental benefit, unless the specific nature of that benefit is clear from the context or is disclosed clearly, prominently, and in close proximity thereto; and, 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. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

It is further ordered, That for three (3) 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:

A. All materials relied upon to substantiate any representation covered by this order; and

B. All tests, reports, studies, surveys, or other materials in their possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

IV.

It is further ordered, That respondent American Enviro Products, Inc. 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 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 corporate respondent, 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 each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the service date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale, or distribution of plastic products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale, or distribution of plastic products. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such 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

MANNESMANN, A. G.

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-3378. Complaint, Mar. 24, 1992--Decision, Mar. 24, 1992*

This consent order requires, among other things, a German company to divest the Buschman Co. within 12 months to a Commission approved buyer, and to hold separate the assets in the interim. If the divestiture is not completed within 12 months, the Commission will appoint a trustee to complete the divestiture. In addition, respondent is required for 10 years to obtain Commission approval prior to acquiring any business that manufactures and sells in the United States certain conveyor systems.

Appearances

For the Commission: *Robert W. Doyle, Jr., Ann Malester and Michael R. Moiseyev.*

For the respondent: *Tom Smith, Jones, Day, Reavis & Pogue, Washington, D.C. Ira Sachs, Sried Frank, Larry Sands and Eric Queen, Sried, Frank, Harris, Schrivert & Jacobson, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Mannesmann, A.G. ("Mannesmann"), which for purposes of this proceeding, is a corporation subject to the jurisdiction of the Commission through the activities of its wholly-owned subsidiary Mannesmann Capital Corporation ("MCC"), proposes to acquire substantially all of the assets of Rapistan Corp. ("Rapistan") from Rapistan, a wholly-owned subsidiary of Lear Siegler Holdings Corp. ("LSH"), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that proceeding in respect thereof