

IN THE MATTER OF
TECH SPRAY, INC., ET AL.

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

Docket C-3377. Complaint, Mar. 25, 1992--Decision, Mar. 25, 1992

This consent order prohibits, among other things, a Texas corporation and its owner from making false and unsubstantiated environmental claims in the marketing of any product. In addition, the order requires respondents to maintain, for three years, all materials relied upon to substantiate any representations, and for a copy of the order to be distributed to each operating division.

Appearances

For the Commission: *Michael Dershowitz and Mary Koelbel Engle.*

For the respondents: *Robert D. Forrester, Gibson, Ochsner & Adkins, Amarillo, TX.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Tech Spray, Inc., a corporation, and Richard Russell, individually and as officer of said corporation ("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 Tech Spray, Inc. ("Tech Spray") is a Texas corporation with its office and principal place of business at 88 North Hughes Street, Amarillo, Texas.

Respondent Richard Russell is an officer of Tech Spray. He formulates, directs, and controls the acts and practices of Tech Spray. His business address is the same as that of Tech Spray.

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

PAR. 2. Respondents have advertised, offered for sale, sold, and distributed certain electronic equipment cleaning products containing the chemicals chlorofluorocarbons ("CFCs"), 1,1,1- trichloroethane, and/or hydrochlorofluorocarbons ("HCFCs") to the public, including but not limited to Blue Shower, Flux Stripper OF, Instant Chiller, Precision Duster, and Kleen-All ("respondents' products").

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as commerce is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements, including product labeling, and other promotional materials for respondents' products, including, but not necessarily limited to, the attached Exhibits A and B.

The product labeling on the caps of the Blue Shower (Exhibit A) and Instant Kleen-All cans includes the following statement:

Ozone Friendly Formula

The product labeling on the front of the Precision Duster and Instant Chiller cans (Exhibit B) includes the following statement:

OZONE FRIENDLY

PAR. 5. Through the statements referred to in paragraph four in product labeling (Exhibits A and B), respondents have represented, directly or by implication, that there are no ingredients in respondents' products that deplete the earth's ozone layer.

PAR. 6. Respondents have disseminated or have caused to be disseminated advertisements for respondents' products, including, but not necessarily limited to, the attached Exhibit C.

The aforesaid product labeling on the cap and the can of Flux Stripper OF (Exhibit C) includes the following statements:

Ozone Friendly Formula [cap]
CFC Free [can]

PAR. 7. Through the statements referred to in paragraph six in product labeling (Exhibit C), respondents have represented, directly or by implication, that because respondents' product contains no CFCs, it will not deplete the earth's ozone layer.

PAR. 8. Respondents have disseminated or have caused to be disseminated print advertisements for respondents' products, including, but not necessarily limited to, the attached Exhibit D.

The aforesaid print advertisement (Exhibit D) includes the following statements:

The Best Reason For Our Ozone-Friendly Products.

Because we take our responsibility to future generations seriously, Tech Spray has introduced a line of high performance Ozone-Friendly products. Tech Spray's Ozone-Friendly products have ozone depletion potential levels lower than those specified by the Montreal Protocol or current EPA guidelines.

... Tech Spray will continue to develop efficient and environmentally safe solutions to meet tomorrow's needs. Not only do Tech Spray's new Ozone-Friendly products help protect the environment, but they provide the same level of product quality and efficiency you have come to expect from the leading manufacturer of electronic production and field service chemicals.

PAR. 9. Through the statements referred to in paragraph eight in advertising (Exhibit D), respondents have represented, directly or by implication, that respondents' products are environmentally safe, do not pose a significant adverse risk to the environment or the ozone layer, and contain levels of ozone-depleting chemicals lower than those specified for products by the Montreal Protocol and EPA guidelines.

PAR. 10. In truth and in fact, respondents' products contain harmful ozone-depleting chemicals -- CFCs, 1,1,1-trichloroethane, or HCFCs -- which contribute to the depletion of the earth's ozone layer; the Montreal Protocol and EPA guidelines do not specify ozone-depletion potential levels that products may contain; and respondents' products, though they have lower ozone-depletion potentials than they did before they were reformulated, still consist primarily of ozone-depleting chemicals. Therefore, the representations set forth in paragraphs five, seven, and nine were, and are, false and misleading.

PAR. 11. Through the statements and representations referred to in paragraphs five, seven, and nine 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. 12. 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 eleven was, and is, false and misleading.

PAR. 13. 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

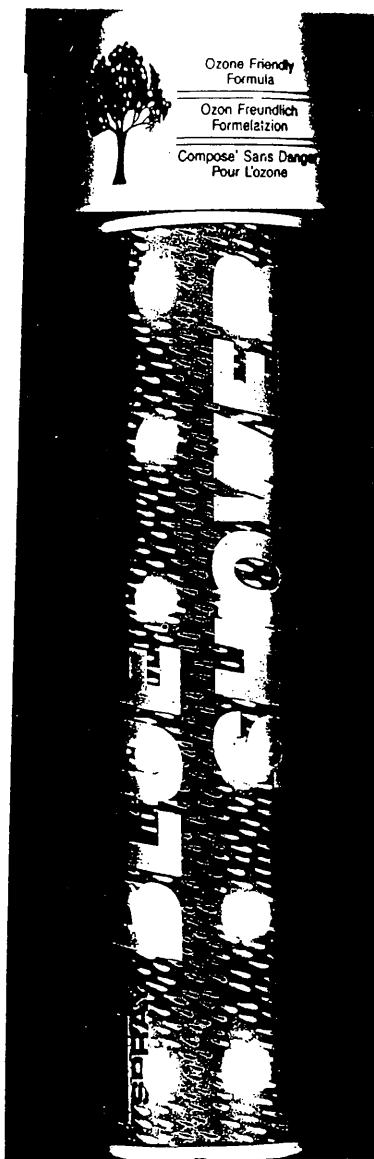


EXHIBIT A

EXHIBIT B



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EXHIBIT C

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The Best Reason For Our Ozone Friendly Products.

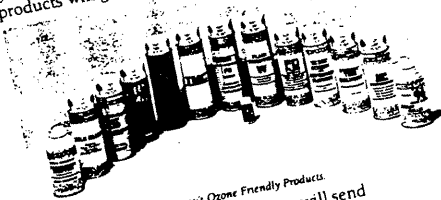
Because we take our responsibility to future generations seriously, Tech Spray has introduced a line of high performance Ozone-Friendly products.

Tech Spray's Ozone-Friendly products have ozone depletion potential levels lower than those specified by the Montreal Protocol or current EPA guidelines.

And this is only the beginning. Tech Spray will continue to develop efficient and environmentally safe solutions to meet tomorrow's needs.

Not only do Tech Spray's new Ozone-Friendly products help protect the environment, but they provide the same level of product quality and efficiency you have come to expect from the leading manufacturer of electronic production and field service chemicals.

The reformulation of these products has not altered their effectiveness, safety or odor. From cleaners and degreasers to dusting gas and freeze sprays, these products will get the job done.



These are just some of Tech Spray's Ozone-Friendly Products. See for yourself. Simply call and we will send you free information and samples of the new Tech Spray Ozone-Friendly products.

TECH SPRAY
Chemically Engineered Solutions ...
Solutions For Your Problems.

P.O. Box 949 ■ Amarillo, TX 79105-9935
Phone: (806) 372-8523 ■ Toll-Free: (800) 858-4043
In TX: (800) 692-4677 ■ Fax: (806) 372-8750
Tech Spray (EC) LTD
55 East Parade ■ Harrogate HG1 5LQ
North Yorkshire ■ England
Phone: 0423-520699
Fax: 0423-504630

EXHIBIT I

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the above caption, 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, their attorneys, 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 the 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, 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 Tech Spray, Inc. ("Tech Spray") is a Texas corporation with its office and principal place of business at 88 North Hughes Street, Amarillo, Texas. Respondent Richard Russell is an officer of Tech Spray. He formulates, directs, and controls the acts and practices of Tech Spray, and his principal office and place of business is located at the above address.

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

DEFINITIONS

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

"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-trichlorethane.

"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 Tech Spray, Inc. ("Tech Spray"), a corporation, its successors and assigns, and its officers, and Richard Russell, individually and 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 that any such product containing any Class I or Class II ozone-depleting substance is "ozone friendly," "ozone safe," or, by words, depictions, or symbols representing directly or by implication that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered, That respondents Tech Spray, a corporation, its successors and assigns, and its officers, and Richard Russell, individually and 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 offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation. To the extent such evidence 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, using procedures generally accepted by others in the profession to yield accurate and reliable results.

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:

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

B. All tests, reports, studies, surveys, or other materials in respondents' 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 the corporate respondent 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 the corporate respondent 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 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, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of industrial cleaning or degreasing 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 industrial cleaning or degreasing products. 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

U.S. PIONEER ELECTRONICS CORP.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND ORDER TO SHOW CAUSE

*Docket C-2755. Consent Order, Oct. 24, 1975--Modifying Order and
Order to Show Cause, April 8, 1992*

This order reopens the proceeding and modifies, in part, the Commission's consent order issued in 1975 [86 FTC 1002], by allowing the company to withhold cooperative advertising allowances from dealers and to unilaterally terminate dealers who have advertised its products at prices other than those suggested by the company. In addition, the Commission ordered the respondent to show cause why additional modification to paragraph I.10. should not be made.

ORDER GRANTING IN PART AND DENYING IN PART REQUEST
TO REOPEN AND MODIFY ORDER ISSUED OCTOBER 24, 1975,
AND ORDER TO SHOW CAUSE

Pioneer Electronics (USA) Inc., the successor corporation to U.S. Pioneer Electronics ("Pioneer"), has filed a "Petition to Reopen Proceedings and to Modify Consent Order ("Petition")¹ in Docket No. C-2755, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. Pioneer asks the Commission to reopen and modify the consent order issued by the Commission on October 25, 1975 ("order"), *U.S. Pioneer Electronics Corp.*, 86 FTC 1002 (1975). The order was previously reopened by the Commission on November 5, 1982, 100 FTC 526 (1982), pursuant to an order to show cause and modified on March 18, 1983, 101 FTC 372 (1983).²

¹ Pioneer submitted a Memorandum in Support of Petition to Reopen Proceedings and to Modify Consent Order ("Petition Memo") with its Petition.

² The Commission modified paragraph I.11. to allow Pioneer to prevent transshipment of its products to outlets that do not provide adequate point of sale promotions and service.