

IN THE MATTER OF

NATIONWIDE INDUSTRIES, INC.

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

Docket C-3457. Complaint, Aug. 26, 1993--Decision, Aug. 26, 1993

This consent order prohibits, among other things, a North Carolina-based manufacturer of automotive maintenance and cleaning products from making false and misleading environmental claims by representing, through the use of certain terms, that any product containing a Class I or Class II ozone-depleting substance, will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere, and also prohibits the respondent from representing that any of its products offer any environmental benefit, unless the respondent possesses competent and reliable scientific evidence that substantiates such representation.

Appearances

For the Commission: *Michael Dershowitz* and *Kevin M. Bank*.

For the respondent: *Laura Luger, Moore & Van Allen*, Durham, N.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nationwide Industries, Inc., 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 in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Nationwide Industries, Inc. is a Pennsylvania corporation, with its office and principal place of business located at 2200 West Main Street, Suite 3000, Durham, North Carolina.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed certain automotive aerosol products to the public, including Snap Fix-a-Flat and Snap Super Fix-a-Flat, which contain the chemicals 1,1,1-trichloroethane and chlorodifluoromethane (HCFC-22) (hereinafter "respondent's products").

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

PAR. 4. Respondent has disseminated or has caused to be disseminated product labeling, advertisements and promotional materials for its products, including but not necessarily limited to, the attached Exhibits A through C.

The aforesaid product labeling (Exhibits A and B) includes the following statements on the front panel of the aerosol container:

- (1) No CFC's Environment Friendly
- (2) No CFC's Environmentally Formulated

The aforesaid product labeling includes the following statements on the back panel of the aerosol container:

- (3) Non-flammable and environment friendly. Contains no chlorofluorocarbons.
- (4) Non-flammable and environmentally formulated. Contains no CFC's or Volatile Organic Compounds (VOC's).

PAR. 5. Through the statements referred to in paragraph four (1) - (4) in product labeling and advertisements (Exhibits A and B), respondent has represented, directly or by implication, that:

- 1. There are no ingredients in respondent's products which are damaging to the environment.
- 2. Because respondent's products contain no CFCs (chlorofluorocarbons), respondent's products do not harm the environment.

PAR. 6. Through the statements referred to in paragraph four (4) on the back panel of the aerosol container (Exhibit B), respondent

has also represented, directly or by implication, that because respondent's products do not contain CFCs (chlorofluorocarbons) or VOCs (volatile organic compounds), respondent's products do not harm the environment.

PAR. 7. The aforesaid promotional materials (Exhibit C) include the following statement:

Formulated to help preserve our environment.

PAR. 8. Through the use of the statement referred to in paragraph seven in its promotional materials (Exhibit C), respondent has represented, directly or by implication, that use of respondent's products helps preserve the environment.

PAR. 9. In truth and in fact, respondent's products contain ozone-depleting ingredients, 1,1,1-trichloroethane and chlorodifluoromethane (HCFC-22), which harm or cause damage to the environment by contributing to the depletion of the earth's ozone layer. Therefore, the representations set forth in paragraphs five, six and eight were, and are, false and misleading.

PAR. 10. Through the statements and representations referred to in paragraphs five, six and eight, respondent has represented, directly or by implication, that at the time respondent made such representations, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 11. In truth and in fact, at the time respondent made such representations, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. The acts and practices of respondent 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

116 F.T.C.

EXHIBIT A


 **fix-a-flat**

Fix-A-Flat is the most advanced emergency tire repair system available today. Developed to seal and inflate 13" and 14" tires on passenger cars, quickly and safely.

- Seals and inflates most tires in as little as 30 seconds. No jacks or tools required.
- Non-flammable and environment friendly. Contains no chlorofluorocarbons.
- Special advanced rubber compound provides permanent repair for most punctures. Contains inhibitors to help combat rim rust and corrosion while not harming tires.

DIRECTIONS

Whenever possible, remove object from tire which caused flat. Shake can well (warm can using car heater vent if weather is sub-zero). With tire valve near the 6 o'clock position screw plastic nozzle clockwise onto tire valve making sure can and stem are vertically aligned. Sealant and inflation gas will automatically discharge into tire. After all product has discharged into tire unscrew nozzle. Although tire may appear under-inflated, immediately drive vehicle a short distance, usually 2 to 4 miles, to allow tire pressure to increase and sealant to spread evenly.

Tire pressure should be monitored and air added if necessary. This product has been formulated to provide a permanent seal for most punctures. It is recommended that tires be checked by qualified repair personnel at earliest opportunity. Fix-A-Flat will not repair severe damage, lateral tears, cracks in wheels or most rim leaks. Tires that have become flat may have structural damage and should be inspected by a tire professional to insure safety.

For use on passenger cars only. Do not use on motorcycles or any two-wheeled vehicles.

Do not use with any other tire sealer/inflator products. Do not store in area over 120°F. Store only in frame of vehicle, preferably in spare tire well. As with any aerosol, never store near heat, in direct sunlight or in interior of car. Never weld on tire rims as recommended by tire and wheel manufacturers.

**USE ONLY AS DIRECTED
KEEP OUT OF REACH OF CHILDREN**

SNAP and Fix-A-Flat are registered trademarks of
Nationwide Industries, Inc.

PATENT PENDING
NATIONWIDE INDUSTRIES, INC.

DATE: 11-10-77

MADE IN U.S.A. PATENT PENDING



EXHIBIT B

C-3457
B144434

5-88-1714-0 SNAP Fix-A-Flat 211-5530-5

SW

BLUE BLACK ORANGE



AMERICA'S FAVORITE

fix a flat BRAND

PERMANENT REPAIR
Safe • Fast • Non-Flammable
EMERGENCY TIRE REPAIR SYSTEM



CAUTION: CONTENTS UNDER PRESSURE
READ ALL CAUTIONS AND DIRECTIONS
ON BACK PANEL BEFORE USING
NET WT. 9 OZ. (255g)

SNAP fix-a-flat

Fix-A-Flat is the most advanced emergency tire repair system available today. Developed to seal and inflate 13" and 14" tires for passenger cars, quickly and safely.

- Seals and inflates most tires in as few as 30 seconds. No jacks or tools required. Reducing your exposure to the hazards of the highway.
- Nonflammable and environmentally formulated. Contains no CFC's or volatile Organic Compounds (VOC's).
- Special advanced rubber compound provides permanent repair for most punctures. Contains inhibitors to help control rust and corrosion. Will not harm tires.

DIRECTIONS

1. Whenever possible, remove object from tire which caused flat.
 2. Shake can well (warm can using car heater vent if weather is sub-zero).
 3. With the valve stem the 6 o'clock position, remove plastic nozzle doorknob onto the valve. Holding tire can and stem are vertically aligned. Sealant and inflation gas will automatically discharge into tire.
 4. After all product has discharged into the tire, remove nozzle.
 5. Although the tire appears under-inflated, immediately drive vehicle a short distance, usually 2 to 4 miles, to allow the pressure to increase and sealant to spread evenly.
 6. Tire pressure should be monitored and air added if necessary.
- This product has been formulated to provide a permanent seal for most punctures. It is recommended that tires be checked by qualified repair professional at earliest opportunity. Fix-A-Flat will not repair severe damage, sidewall injury, cracks in wheels or most rim leaks. Tires that have become flat may have structural damage and should be inspected by a tire professional to ensure safety.

For use on passenger cars only. Do not use on motorcycles or any two-wheeled vehicles.

Do not use with any other tire sealer/inflator products.

Do not store in areas over 120°F. Store only in trunk of vehicle, preferably in spare tire well. As with any aerosol, never store near heat, in direct sunlight or in interior of car.

Never used on tire rims as recommended by tire and wheel manufacturers.

CAUTION: Contents under pressure. Keep away from extreme heat and open flame. May be harmful or fatal if swallowed. Vapor can be harmful. CONTAINERS: Do not puncture. Contact with open flame or extreme heat may produce fire. Do not use if swallowed or on any surface. Gas pressure can rupture container if eye contact. Flush immediately with water for 15 minutes. If inhaled, use with adequate ventilation. Avoid breathing vapor. Intentional misuse by deliberately recapturing and/or inhaling gas can be harmful or fatal. If punctured contact with skin, wash with soap and water. Do not puncture or reuse the can.

USE ONLY AS DIRECTED
KEEP OUT OF REACH OF CHILDREN
Contains Chloroacetylene (CAS# 75-45-6), 1,1,1 Trichloroethane (CAS# 71-55-6), Inert Gas (N2O).

SNAP and Fix-A-Flat are registered trademarks of Nationwide Industries, Inc.

PATENT PENDING

NATIONWIDE INDUSTRIES, INC.

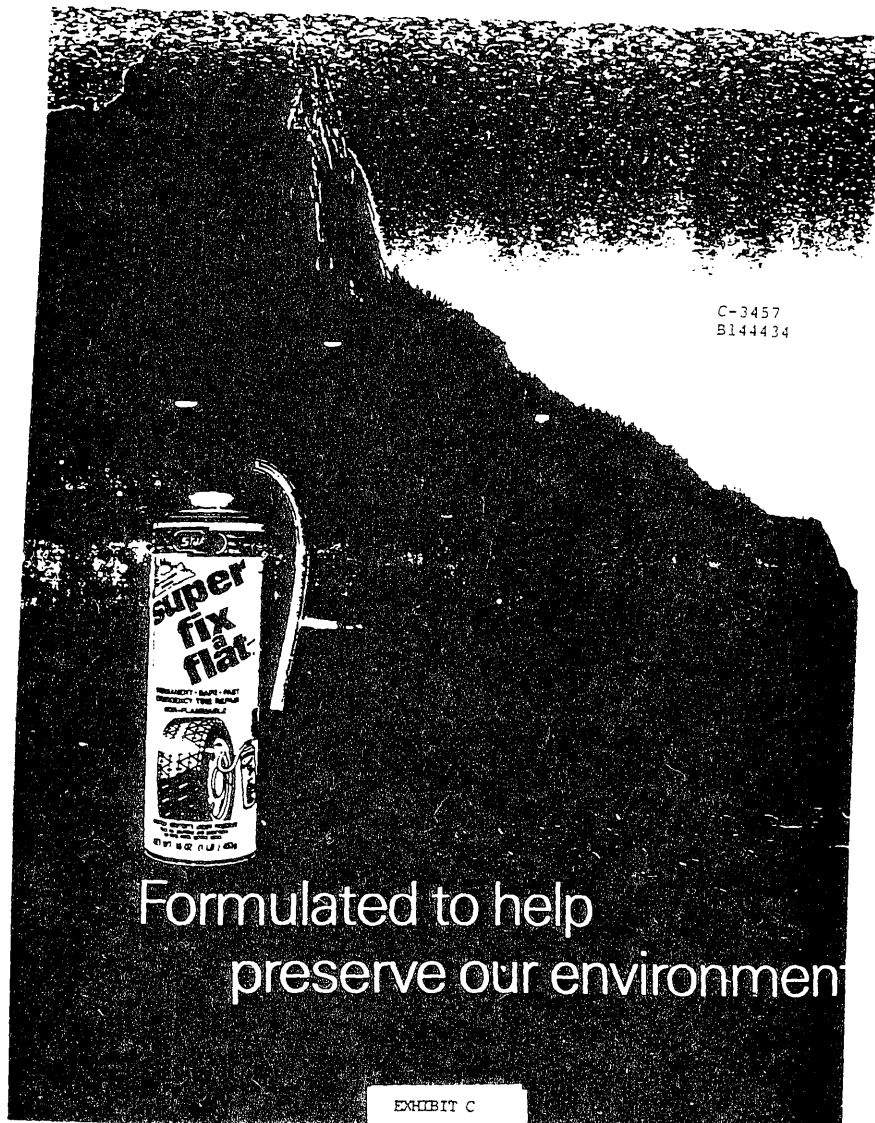
Durham, NC 27702

Made in U.S.A. PART #S457MF

DOT 2-10 811



EXHIBIT C



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the above caption, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent 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 complaint, a statement that the signing of the 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 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 Nationwide Industries, Inc. ("Nationwide") is a Pennsylvania corporation with its office and principal place of business at 2200 West Main Street, Suite 3000, Durham, North Carolina.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, 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-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 respondent Nationwide Industries, Inc. (hereinafter “Nationwide”), a corporation, its successors and assigns, and its officers, 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, through the use of such terms as “no CFCs,” “CFC free,” “no CFCs, environment friendly,” “no CFCs, environmentally formulated,” “formulated to help preserve the environment,” “ozone safe,” “ozone friendly,” or any substantially similar term or expression, or, by words, depictions, or symbols, directly or by implication, that any such product containing any Class I or Class II ozone depleting substance will not deplete,

destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered, That respondent Nationwide, a corporation, its successors and assigns, and its officers, 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, respondent possesses and relies upon a reasonable basis, consisting of 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, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that respondent relied upon in disseminating any representation covered by this order.
2. All tests, reports, studies or surveys in respondent’s possession or control that contradict, qualify, or call into question such

representation or the basis upon which respondent relied for such representation.

IV.

It is further ordered, That 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 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 respondent shall, within sixty (60) days after service of this order upon it, 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 this order.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order, August 30, 1993

ORDER

Counsel for the General Motors and Lincoln Mercury respondents have moved that the complaint against ten respondents be dismissed and that their names be removed from the order of February 22, 1989. The assets of the following eight dealerships have been sold, and their dealership franchises have been terminated: Porterfield Wilson Pontiac-GMC Truck, Inc., Packer Pontiac Company, Dexter Chevrolet Company, Walt Lazar Chevrolet, Inc., Crissman Cadillac, Inc., Roger Rinke Cadillac Company, Avon Lincoln Mercury, Inc., and Barnett Pontiac, Inc. Except for the assets of Roger Rinke Cadillac Company, which were sold to a related individual who is subject to the Commission's order, the sales were to unrelated buyers, and the sellers retained no interest in the assets or dealerships. Two individually named respondents, Harry C. Demorest and Roger A. Rinke, are deceased. Complaint counsel do not oppose the motion.

The Commission has considered the motion and determined to grant it. Accordingly,

It is ordered, That the complaint against Mr. Demorest, Mr. Rinke, Porterfield Wilson Pontiac-GMC Truck, Inc., Packer Pontiac Company, Dexter Chevrolet Company, Walt Lazar Chevrolet, Inc., Crissman Cadillac, Inc., Roger Rinke Cadillac Company, Avon Lincoln Mercury, Inc., and Barnett Pontiac, Inc. is hereby dismissed.

It is further ordered, That the order of February 22, 1989, of the Commission is hereby modified to delete their names.