

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

WHITE CASTLE SYSTEM, INC.

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

Docket C-3477. Complaint, Jan. 6, 1994--Decision, Jan. 6, 1994

This consent order prohibits, among other things, an Ohio-based chain of fast-food restaurants from misrepresenting the extent to which its fast-food container or any product or package is capable of being recycled or the extent of the availability of recycling collection programs for such products. In addition, the consent order prohibits the respondent from representing the environmental benefit of any product or packaging it uses unless it possesses competent and reliable evidence to substantiate the representation.

Appearances

For the Commission: *Theresa McGrew* and *C. Steven Baker*.

For the respondent: *Nicholas W. Zuk*, Columbus, OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that White Castle System, Inc., a corporation ("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 White Castle System, Inc. ("White Castle"), is a Delaware corporation with its principal office or place of business at 555 West Goodale Street, Columbus, Ohio.

PAR. 2. Respondent has offered for sale, sold, advertised, labeled and distributed food products that are contained in disposable paper packaging to the public.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated promotional materials, including product labeling on the paper packaging it uses to contain its food products, including but not necessarily limited to the attached Exhibit 1.

The aforesaid product labeling includes the following statement and a depiction of a three chasing arrow symbol:



Recyclable

PAR. 5. Through the use of the statement and depiction contained in the promotional materials referred to in paragraph four, including but not necessarily limited to the product labeling attached as Exhibit 1, respondent has represented, directly or by implication, that White Castle paper packaging is recyclable after ordinary use.

PAR. 6. In truth and in fact, while White Castle paper packaging is capable of being recycled, the vast majority of consumers cannot recycle the paper packaging because there are virtually no collection facilities that accept food contaminated paper for recycling. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statement and depiction contained in the promotional materials referred to in paragraph four, including but not necessarily limited to the product labeling attached as Exhibit 1, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. 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.

1

Complaint

EXHIBIT 1



**White
Castle®**

Buy 'em by the "Sack"®

9

**SAY NO TO DRUGS AND
YES TO LIFE**



DON'T BE A LITTERBUG!

Complaint

117 F.T.C.

EXHIBIT 1



*The taste
some people
won't live
without!®*



**White
Castle®**

*Hamburger Specialists
since 1921*

PATENT NO.
2,435,355



31

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 the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office 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, its attorney, 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 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; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has 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, and no comments having been filed thereafter by interested parties, pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent White Castle System, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware corporation with its principal office or place of business at 555 West Goodale Street, Columbus, Ohio.

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

3. 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:

The term “*product or package*” means any product or package, including, but not limited to, any item used by respondent to contain, serve, or package goods, offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the White Castle brand name or any other brand name of respondent, its successors and assigns; and, also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

The term “*competent and reliable scientific evidence*” shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I.

It is ordered, That respondent, White Castle System, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

II.

It is further ordered, That respondent, White Castle System, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation,

subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, distribution, or use of any product or package in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product or package offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence, in its possession or control that contradict, qualify or call into question such representation, or the basis relied upon for such representation including complaints from consumers.

IV.

It is further ordered, That the 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 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

THE VALSPAR CORPORATION, ET AL.

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-3478. Complaint, Jan. 25, 1994--Decision, Jan. 25, 1994

This consent order requires, among other things, a Minnesota-based corporation to divest, within 12 months of the date of the order, certain assets it acquired from Cargill, to Newco, an independent corporation that Valspar forms as a successor corporation to McWhorter, and to obtain Commission approval of the divestiture arrangement prior to consummation. In addition, the consent order requires McWhorter and Newco, for 10 years, to obtain the Commission's approval before acquiring any stock or other interest in any entity that manufactures coating resins in the United States.

Appearances

For the Commission: *Robert S. Tovsky* and *Rhett R. Krulla*.

For the respondents: *James F. Rill* and *Robert M. Huber*, *Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Valspar Corporation ("Valspar"), through its wholly-owned subsidiary McWhorter, Inc. ("McWhorter"), has entered into an agreement with Cargill, Incorporated ("Cargill"), that violates said Acts, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows: