

IN THE MATTER OF

ARCHER DANIELS MIDLAND COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3492. Complaint, April 12, 1994--Decision, April 12, 1994*

This consent order prohibits, among other things, an Illinois-based firm from making any claims, unless substantiated by competent and reliable scientific evidence, that any of its products or plastic product additives is degradable, biodegradable, or photodegradable when disposed of in sanitary landfills, or that such products or additives offer any environmental benefit compared to other products when disposed of as trash buried in a sanitary landfill or incinerated.

Appearances

For the Commission: *Michael Dershowitz* and *C. Lee Peeler*.

For the respondent: *Scott Roberts*, in-house counsel, Decatur, IL.

COMPLAINT

The Federal Trade Commission, having reason to believe that Archer Daniels Midland 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 in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Archer Daniels Midland Company ("ADM") is a Delaware corporation with its office and principal place of business located at 4666 Faries Parkway, Decatur, Illinois.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed its cornstarch plastic additive product for use in such consumer plastic products as grocery bags, lawn and trash bags, and disposable diapers, under the trade names "ADM Master Batch" and "Polyclean."

PAR. 3. The acts or 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 television broadcast advertisements, radio advertisements, and promotional materials for its cornstarch plastic additive product, including, but not necessarily limited to, the attached Exhibits A through F.

An aforesaid television advertisement (Exhibit A -- photo board) contains the following claims, among others:

Plastic: Durable, versatile, economical, functional. And now, thanks to a special corn starch that starts breaking the plastic down in just a matter of months, ... biodegradable. ADM. Supermarket to the world.

ENVIRONMENTALLY FRIENDLY.

Exhibit A visually depicts plastic products being thrown away into a trash barrel and then disappearing.

Another television advertisement (Exhibit B -- photo board) contains the following claims, among others:

Plastic: Durable, versatile, economical, functional. And now, thanks to a special corn starch that breaks it down to humus in approximately two years, ... degradable. ADM. Supermarket to the world.

ENVIRONMENTALLY FRIENDLY.

Exhibit B visually depicts plastic products being thrown away into a trash barrel and then disappearing.

Another television advertisement (Exhibit C -- description of the video with a transcription of the audio) contains the following claims, among others:

The plastic we throw away today will still be here three to four hundred years from now. And Americans throw away ten billion pounds of it -- enough to build a mountain as high as Pike's Peak every year. Fortunately, an answer already exists. It's a special corn starch that causes plastic to begin to degrade in as little as six months. Giving us something else to leave the people of the future besides our plastic.

This television advertisement depicts mounds of plastic being added to the trash in a landfill.

Another television advertisement (Exhibit D -- description of the video with a transcription of the audio) contains the following claims, among others:

The plastic you throw away today will still be here three to four hundred years from now. And Americans throw away 10 billion pounds of it every year. That's the bad news. Now the good news. Recently a special corn starch was introduced that causes plastic to begin to degrade in as little as six months. Isn't it funny how a little bit of good news can make the bad news just disappear?

This television advertisement depicts plastic products being thrown away into a trash barrel and then disappearing.

An aforesaid radio advertisement (Exhibit E -- transcript) contains the following claims, among others:

Last year, America produced 3 times as much plastic as it did just 20 years ago. And while plastics are certainly convenient and economical, it can take hundreds of years for them to degrade. In landfills that are already filled to overflowing. Which is why a new product from ADM holds such promise. It's a special corn starch additive that when added to plastic, causes it to start breaking down in just a matter of months. Grocery bags, lawn and trash bags, even disposable diapers made with this new biodegradable technology are available right now.

An aforesaid piece of promotional material (Exhibit F) contains the following claims, among others:

ADM Master Batch greatly speeds up the degradation process.

Buried in a sanitary landfill, polyethylene film will last indefinitely. Preliminary studies indicate that polyethylene films made with ADM Master Batch, on the other hand, will degrade in just six months to two years.

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

1. Compared to other plastic products, plastic products containing ADM's cornstarch additive offer a significant environmental benefit when consumers dispose of them as trash that is buried in a landfill.
2. A few months after disposal as trash in a landfill, plastic products containing ADM's cornstarch additive will begin to break

down, biodegrade, and then disappear in a reasonably short period of time.

3. Plastic products containing ADM's cornstarch additive will break down, biodegrade, and disappear significantly faster than other plastic products after consumers dispose of them as trash that is buried in landfills.

4. Plastic products containing ADM's cornstarch additive will degrade in a landfill in a short enough period of time to significantly reduce the amount of garbage in landfills.

PAR. 6. Through the statements referred to in paragraph four in promotional material (Exhibit F), and others in promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that plastic products containing ADM's cornstarch additive will degrade in a landfill in six months to two years, while other plastic products will last indefinitely in a landfill.

PAR. 7. Through the statements and representations referred to in paragraphs five and six, respondent has represented, directly or by implication, that at the time it made such representations, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 8. In truth and in fact, at the time respondent made the representations referred to in paragraphs five and six, respondent did not possess and rely upon a reasonable basis for such representations. 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.

Commissioner Starek not participating

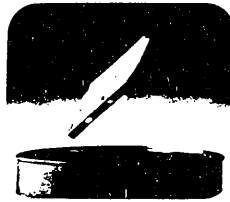
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EXHIBIT A

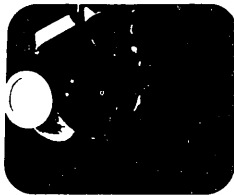
Vanishing Act

An ADM commercial introducing the benefits of a new degradable plastic technology



ANNCR Plastic:

Durable,



versatile,



economical,



functional.



And now, thanks to a special corn starch that



starts breaking the plastic down in just a matter of months,



biodegradable.
ADM Supermarket to the world

See this and other ADM commercials each Sunday on "Meet the Press" (NBC), "This Week with David Brinkley" (ABC) and "Face the Nation" (CBS)

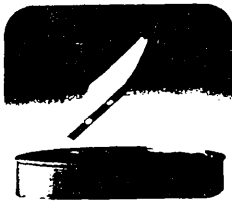


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117 F.T.C.

EXHIBIT B

An ADM commercial introducing the benefits of a new degradable plastic technology.



ANNCR: Plastic:

Durable,



versatile,



economical,



functional.



And now, thanks to a special corn starch that



breaks down to humus in soil in just two years.



degraded 2

See this and other ADM commercials each Sunday on "Meet the Press" (NBC), "This Week with David Brinkley" (ABC), and "Face the Nation" (CBS).



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EXHIBIT C

TELEVISION MW JOB NO ADC-8021-B Rev. #9
 STATION QADM8012
 PROGRAM "Monuments of the Past"
 CLIENT ADM Corporate
 TIME :60

AS PRODUCED:

VIDEO

SHOW A SERIES OF MONU-
 MENTS OF THE PAST. (SPHINX,
 PARTHENON, TAJ MAHAL,
 EILFFEL TOWER AND GREAT
 WALL OF CHINA.)

CAMERA PANS "MOUNTAINS"...

WE HEAR A BULLDOZER &
 SUDDENLY SEE HUGE MOUND
 OF PLASTICS BEING ADDED TO
 THIS "MOUNTAIN."

SUN BURSTS OVER PIKE'S
 PEAK

PAN OVER MOUNTAINS.

BEAUTIFUL MOUNTAIN LAKE
 WITH FLY FISHERMAN.
 LOGO SUPER

AUDIO

ANNCR: If a civilization is remem-
 bered for the monuments it leaves to
 the future, what will we be remem-
 bered for?

The plastic we throw away today
 will still be here three to four
 hundred years from now.

And Americans throw away ten
 billion pounds of it--enough to build
 a mountain as high as Pike's Peak
 every year.

Fortunately, an answer already
 exists. It's a special corn starch that
 causes plastics to begin to degrade in
 as little as six months.

Giving us something else to leave
 the people of the future besides our
 plastic.

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EXHIBIT D

TELEVISION MW

JOB NO ADC-8037-B Rev. #7
STATION QADM8011
PROGRAM "Good News"
CLIENT ADM Corporate
TIME :30

AS PRODUCED:

VIDEO

POLYETHYLENE MATERIALS
FALLING SLO-MO INTO
BARREL.

MORE AND MORE MATERIALS
FALLING.

THEY OVERFLOW INTO A
HEAP.
THE "HEAP" DISSOLVES.

ONLY THE BARREL REMAINS.

LOGO: SUPERS

AUDIO

ANNCR: The plastic you throw
away today will still be here three to
four hundred years from now.

And Americans throw away 10.
billion pounds of it every year.

That's the bad news.

Now the good news.

Recently a special corn starch was
introduced that causes plastic to
degrade in as little as six months.

Isn't it funny how a little bit of good
news can make the bad news just
disappear?

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EXHIBIT E

RADIO MW

JOB NO ADC-9021-B6 Rev. #6
STATION ADC9049
PROGRAM Degradable Plastic-
"Plastics"
CLIENT ADM Corporate
TIME :60

FOR RECORDING

ANNCR: In the 1967 film, "The Graduate," Dustin Hoffman was given some shrewd career-planning advice. In a word, "plastics."

ANNCR: How prophetic that advice turned out to be. Last year, America produced 3 times as much plastic as it did just 20 years ago. And while plastics are certainly convenient and economical, it can take hundreds of years for them to degrade. In landfills that are already filled to overflowing. Which is why a new product from ADM holds such promise. It's a special corn starch additive that when added to plastic, causes it to start breaking down in just a matter of months. Grocery bags, lawn and trash bags, even disposable diapers made with this new biodegradable technology are available right now. And with other products on the way, the future of plastics appears brighter than ever.

ANNCR: The Archer Daniels Midland Company. Supermarket to the world.

Complaint

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EXHIBIT F

NOW THE OPPORTUNITY EXISTS TO PRODUCE DEGRADABLE POLYETHYLENE WITH ADM MASTER BATCH.

By using ADM Master Batch with your polyethylene, you can produce polyethylene films that are degradable.

ADM Master Batch is made with ADM Master Batch with biodegradable additives that break down in the soil, in water, and in water. And the break down rate can be varied with different additive levels.

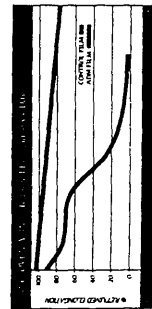
ADM Master Batch works through controlled oxidative and biological action. ADM Master Batch is made with ADM Master Batch with biodegradable additives that break down in the soil, in water, and in water. And the break down rate can be varied with different additive levels.

ADM Master Batch greatly speeds up the degradation process.

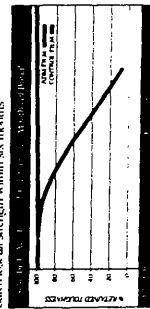
Based on a summary landfill, polyethylene film will last indefinitely. Preliminary studies indicate that polyethylene films made with ADM Master Batch, on the other hand, will degrade in a landfill in less than two years.

ADM Master Batch, when properly sized, has an average film adequate "shell life" for most products. See charts at right for details.

The addition of the polyethylene may vary with light, temperature, soil conditions and the amount of ADM Master Batch in the film.



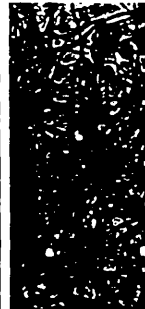
Degradation due to oxidative action. Low density polyethylene film containing ADM Master Batch lost all elongation after 20 days in laboratory oven—equivalent to about two years at room temperature (25° C).



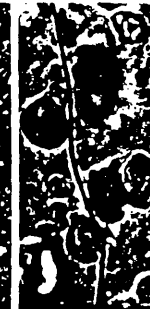
Degradation in soil. LDPE film containing ADM Master Batch lost all strength within six months.



Conventional low density polyethylene film without ADM Master Batch immersed 13 days in activated sludge at 20° C. Free filaments organisms are visible on the film. (Magnified magnified 50X.)



LDPE film with ADM Master Batch immersed 13 days in activated sludge at 20° C. Free filaments organisms are visible on the film and feed on such film. (Magnified magnified 50X.)



LDPE film with ADM Master Batch immersed 14 days in activated sludge at 20° C. Free filaments organisms are visible on the film and feed on such film. (Magnified magnified 50X.)

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 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 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 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 Archer Daniels Midland Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Archer Daniels Midland Company has its offices and principal place of business at 4666 Faries Parkway, Decatur, Illinois.

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:

"*Archer Daniels Midland product*" means any plastic product or any plastic product that contains the plastic product additive defined below, that is advertised, offered for sale, sold, or distributed to the public by respondent, its successors and assigns; and also means any plastic product or any plastic product that contains the plastic product additive defined below, that is offered for sale, sold, or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

"*Plastic product additive*" means "Polyclean," "ADM Master Batch," or any other ingredient added to plastic that is advertised, offered for sale, sold, or distributed to the public by respondent, its successors and assigns; and also means any such ingredient that is offered for sale, sold, or distributed to the public by third parties under licensing or other agreements with respondent, its successors and assigns.

I.

A. *It is ordered*, That respondent Archer Daniels Midland Company, a corporation, its successors and assigns and its officers, and respondent's 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 Archer Daniels Midland product or plastic product additive 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 Archer Daniels Midland product or plastic product additive is "degradable," "biodegradable," or "photodegradable" when disposed of in a sanitary landfill; or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any substantially similar term or

expression, that any such product or any such product containing such additive offers any environmental benefit compared to other products when consumers dispose of them as trash that is buried in a sanitary landfill or incinerated,

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 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, respondent will not be in violation of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive, if it truthfully represents that such products or such additives are designed to degrade or break down and become part of usable compost, when disposed of in programs or facilities that collect yard waste or municipal solid waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such products or such additives and any advertising referring to the degradability of such products or such additives discloses clearly, prominently, and in close proximity to such representation:

(1) That such products are not designed to effectively degrade in landfills; and further discloses

(2)(a) In the case of products designed to be disposed of in yard waste composting programs, that such programs may not be available in the consumer's area; or, in the case of products designed to be disposed of in municipal solid waste composting facilities, that such facilities are generally unavailable in the U.S., or

(2)(b) Depending upon whether the product is designed to be disposed of in yard waste composting programs, or municipal solid waste composting facilities, the approximate percentage of the U.S.

population having access to yard waste composting programs, or having access to municipal solid waste composting facilities.

Provided further, that the disclosures contained in (2)(a) and (2)(b) above need not be made in advertising or on product labels if such products or additives are distributed and advertised only to consumers residing in areas served by yard waste composting programs or municipal solid waste facilities (e.g., Southeastern Oakland County Resource Recovery Authority (SOCRRA) composting program).

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 principal display panel of the package. The principal display panel of the package is that part of the package that faces the consumer when presented under normal and customary conditions of display for retail sale.

If the advertising and labeling of any Archer Daniels Midland product or plastic product additive otherwise complies with Subpart A of Part I of this order, respondent will not be in violation of this order if it does not make the disclosures in this proviso (Subpart B).

II.

It is further ordered, That respondent Archer Daniels Midland Company, a corporation, its successors and assigns, and its officers, and respondent's 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 Archer Daniels Midland product or plastic product additive 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 Archer Daniels Midland product or plastic product additive is "Environmentally Friendly" or 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 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.

III.

Nothing in this order shall prevent respondent from using any of the terms cited in Parts I and II, or substantially similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

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

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

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

V.

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

VI.

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.

VII.

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.

Commissioner Starek not participating.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9189. Complaint,* Dec. 20, 1984--Decision, April 20, 1994*

This consent order requires, among other things, one hundred and forty four Detroit-area automobile dealerships, owners and managers, and dealer associations (including respondents associated with the sale of GM, Ford, Lincoln-Mercury and Volkswagen vehicles, and respondents associated with the sale of Chrysler, Plymouth and Dodge vehicles) to stay open a specified minimum number of hours a week. In addition, the order prohibits the respondents from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation.

Appearances

For the Commission: *Ernest A. Nagata, Morris A. Bloom and Joseph Eckhaus.*

For the respondents: *Martin Crandall, Stringari, Fritz, Kreger, Ahearn & Hunsinger, P.C., Detroit, MI. Howard O'Leary, Dykema, Gossett, Spencer, Goodnow & Trigg, Washington, D.C. Lawrence Raniszesk, Colombo & Colombo, Bloomfield Hill, MI. Christopher Macavoy, Collier, Shannon & Scott, Washington, D.C. Fred L. Woodworth, Dykema, Gossett, Spencer, Goodnow & Trigg, Detroit, MI. Glenn Mitchell, Stein, Mitchell & Mezines, Washington, D.C. John Youngblood, Abbott, Nicholson, Quilter, Esshaki & Youngblood, Detroit, MI.*

DECISION AND ORDER

The Federal Trade Commission having issued its two count complaint charging the respondents named in the complaint issued in this matter on December 20, 1984, with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

* Complaint previously published at 108 FTC 193 (1986).