

Complaint

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IN THE MATTER OF

UNOCAL CORPORATION, ET AL.

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

Docket C-3493. Complaint, April 28, 1994--Decision, April 28, 1994

This consent order prohibits, among other things, the companies from making claims about the attributes or performance of any gasoline without first having competent and reliable scientific evidence to substantiate their claims. In addition, the respondents are required to mail their credit-card customers, in certain states, a notice advising consumers to check their owner's manual to determine the proper octane level of gasoline to purchase.

Appearances

For the Commission: *Russell S. Deitch* and *Sue L. Frauens*.

For the respondents: *William C. MacLeod, Jr., Collier, Shannon, Rill & Scott*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc., corporations, 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 would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Unocal Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Respondent's office and principal place of business is located at 1201 West Fifth Street, Los Angeles, California.

Respondent Union Oil Company of California is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California. Respondent's office and principal

place of business is located at 1201 West Fifth Street, Los Angeles, California. It is a wholly-owned subsidiary of Unocal Corporation.

PAR. 2. Respondents Unocal Corporation and Union Oil Company of California advertise, offer for sale, sell, and distribute gasoline and other petroleum products, including Unocal 92 and 89 octane gasolines.

PAR. 3. Respondent Leo Burnett Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Respondent's office and principal place of business is located at 35 West Wacker Drive, Chicago, Illinois.

PAR. 4. Respondent Leo Burnett Company, Inc., at all times relevant to this complaint, was an advertising agency of Unocal Corporation, and prepared and disseminated advertisements to promote the sale of Unocal gasoline.

PAR. 5. Respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc., at all times mentioned herein, have maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondents Unocal Corporation and Union Oil Company of California have disseminated or have caused to be disseminated advertisements for Unocal 92 and 89 octane gasolines, including, but not necessarily limited to, the attached Exhibits A, B, and C. The aforesaid advertisements contain the following statements:

1. ...With the high cost of falling in love these days you can't trust your investment to just any gasoline. That's why Seventy-Six developed our Ninety-two Unleaded. It's the highest level octane gasoline you can buy to help your car run better, longer. Because after all isn't love supposed to last forever? (Complaint Exhibit A.)

2. When some people buy gasoline economy is all that matters. While others will pay any price for performance. Fortunately, Seventy-Six created a gasoline for the rest of us. Eighty-nine Octane Unleaded. A mid-grade gasoline two octanes higher than regular. To help your car run better longer. But at a price below premium. Eighty-nine Octane Unleaded. A gasoline that's as good for your car as it is for your wallet. (Complaint Exhibit B.)

3. Unocal's unleaded 89 octane gasoline is as good for your car as it is for your wallet. ...Unocal's 89 unleaded is two octanes higher than regular unleaded to keep your car running better, longer. At a cost less than premium. Compared to

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regular unleaded, our 89 octane will give your car smoother starts and stops, help reduce engine knocks and pings. So, move up to our 89 unleaded. See what its two octane advantage can do for your car.

(On the Back)

Premium Performance Without A Premium Price

[Depiction of a gasoline pump containing the wording 89 OCTANE Performance Plus 89] (Complaint Exhibit C.)

PAR. 7. Respondent Leo Burnett Company, Inc. has disseminated or has caused to be disseminated advertisements for Unocal 92 and 89 octane gasolines, including but not necessarily limited to the attached Exhibits A and B.

PAR. 8. Through the use of the statements contained in the advertisements referred to in paragraphs six and seven, including but not necessarily limited to the advertisement attached as Exhibit A, respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. have represented, directly or by implication, that Unocal 92 octane gasoline provides superior engine performance and longevity as compared to regular unleaded gasoline, that would be significant to consumers, for automobiles generally.

PAR. 9. Through the use of the statements contained in the advertisements referred to in paragraphs six and seven, including but not necessarily limited to the advertisements attached as Exhibits B and C, respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. have represented, directly or by implication, that Unocal 89 octane gasoline provides superior engine performance and longevity as compared to regular unleaded gasoline, that would be significant to consumers, for automobiles generally.

PAR. 10. Through the use of statements contained in the advertisements referred to in paragraphs six and seven, including but not necessarily limited to the advertisements attached as Exhibits A, B, and C, respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. have represented, directly or by implication, that at the time they made the representations set forth in paragraphs eight and nine, respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc.

possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 11. In truth and in fact, at the time respondents made the representations set forth in paragraphs eight and nine, respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Respondent Leo Burnett Company Inc. knew or should have known that the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 13. The dissemination by respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. of the aforesaid false and misleading representations, as herein alleged, constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

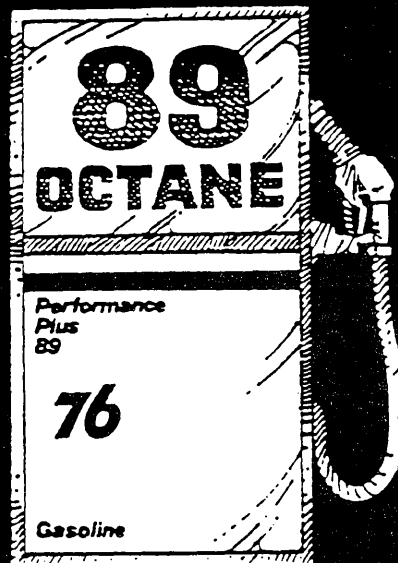
Commissioner Owen noted in the affirmative, but dissented as to Exhibit A, paragraph eight, and all references in the complaint to 92 octane.

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EXHIBIT A

**Premium
Performance
Without A
Premium Price.**



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EXHIBIT B

UNOCAL CORP.

AS FILMED AND RECORDED

1. SINGER: I'M IN LOVE AGAIN.

2. ...

3. AND THE SPRING IS COMIN'...

4. I'M IN LOVE AGAIN.
(CONTINUES UNDER)

5. (AVO): With the high cost...

6. of falling in love...

7. these days...

8. you can't trust your investment to just any gasoline.

9. That's why Seventy-Six...

10. developed our ninety-two...

11. Unleaded.

12. It's the highest level octane gasoline you can buy...

13. to help your car run better, longer. Because after all...

14. isn't love supposed to last forever?

15. Come to Seventy-Six. Where...

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EXHIBIT B

AS TOLD BY THE...
 (MUSIC: UNDER THROUGHOUT)
 1. (AVO): When some people buy gasoline... economy is all that matters.

2. While others will pay any price for performance.

3. Fortunately, Seventy-Six created a gasoline for the rest of us.

4. Eighty-nine Octane Unleaded.

5. A mid-grade gasoline...

6. Two octanes higher than regular.

7. To help your car run better...

8. longer.

9. ...

10. But at a price below premium.

11. Eighty-nine Octane Unleaded.

12. A gasoline that's as good for your car...

13. as it is for your wallet.

14. ...

15. At Seventy-Six, where you find people who care about cars.

EXHIBIT C

Unocal's unleaded 89 octane gasoline is as good for your car as it is for your wallet.

Our 89 octane has long been an exclusive grade to 76. Today, Unocal is still the only company offering an unleaded 89 octane mid-grade. Unocal's 89 unleaded is two octanes higher than regular unleaded to keep your car running better, longer. At a cost less than premium.

Compared to regular unleaded, our 89 octane will give your car smoother starts and stops, help reduce engine knocks and pings. So, move up to our 89 unleaded. See what its two octane advantage can do for your car.

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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 Los Angeles Regional Office 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 Unocal Corporation is a Delaware corporation, with its office and principal place of business at 1201 West Fifth Street, Los Angeles, California.

2. Respondent Union Oil Company of California is a California corporation, with its office and principal place of business at 1201 West Fifth Street, Los Angeles, California.

3. Respondent Leo Burnett Company, Inc. is a Delaware corporation, with its office and principal place of business at 35 West Wacker Drive, Chicago, Illinois.

4. 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

I.

It is ordered, That respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc., corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of Unocal 92 and 89 octane gasolines or any other gasoline in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, about:

A. The superiority of Unocal 92 or 89 octane in providing engine power or acceleration for any automobile;

B. The superiority of Unocal 92 or 89 octane in prolonging the longevity of an engine for any automobile; or

C. The relative or absolute attributes or performance of any gasoline with respect to vehicle engine power, acceleration, longevity, or any other performance characteristic;

unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analysis, 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.

Provided that, nothing in this order shall prohibit respondents from truthfully representing the numerical octane rating of any gasoline.

Provided further that, it shall be a defense hereunder that respondent Leo Burnett Company, Inc. neither knew nor had reason to know of an inadequacy of substantiation for the representation.

II.

It is further ordered, That for three (3) years after the date of the last dissemination of the representation to which they pertain, respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

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

B. All tests, reports, studies or surveys in respondents' possession or control that contradict any representation covered by this order.

III.

It is further ordered, That respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. shall forthwith distribute a copy of this order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of their employees or agents engaged in the preparation or placement of advertisements or promotional materials covered by this order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

IV.

It is further ordered, That respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation(s) 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(s) that may affect compliance obligations under this order.

V.

It is further ordered, That respondents Unocal Corporation, Union Oil Company of California and Leo Burnett Company, Inc.

shall, within sixty (60) days after service upon them of this order 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.

VI.

It is further ordered, That respondents Unocal Corporation and Union Oil Company of California shall mail to the last known address of all consumers who hold an active Unocal credit card on the date this order becomes final, and who reside in any of the states of Oregon, Washington, Nevada, California, or Hawaii, an exact copy of the Notice which is incorporated by reference as Appendix A.

The mailing shall not include any other documents that contradict or in any way mitigate the information in the Notice. Respondents Unocal Corporation and Union Oil Company of California shall bear all costs of printing and disseminating the Notice. The Notice shall be mailed by first class mail within 30 days of the date the order becomes final.

Commissioner Owen noted in the affirmative, but dissented as to Exhibit A, paragraph eight, and all references in the complaint to 92 octane.

Separate Statement

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APPENDIX A

NOTICE

IMPORTANT INFORMATION ABOUT THE
OCTANE NEEDS OF YOUR CAR

As a Unocal customer, you probably know that Unocal offers three grades of unleaded gasoline at its service stations: 87 octane regular, 89 octane mid-grade, and 92 octane premium. The 89 and 92 octane grades are formulated primarily for vehicles that are designed to operate on higher octanes (high-performance vehicles) and for vehicles that may be experiencing engine knocking and pinging.

In July 1991, the Federal Trade Commission issued a brochure that advises consumers to purchase the lowest octane gasoline that their cars can use without engine knocking or pinging. The brochure notes that "many experts believe that most cars do not need a high octane gasoline to perform properly and efficiently." The brochure also advises consumers to "first check your owner's manual for the recommended octane level." According to the brochure, if your vehicle runs without knocking or pinging it generally does not need, and will not perform better with, higher octane gasoline.

The octane requirements of your vehicle can vary over time or under certain weather, altitude and driving conditions. If your car is knocking or pinging at the octane level recommended in your owner's manual, you may need a higher octane gasoline.

SEPARATE STATEMENT OF COMMISSIONER DEBORAH K. OWEN
CONCURRING IN PART AND DISSENTING IN PART

I concur in the Commission's action to issue as final an administrative complaint against, and consent order involving, Unocal Corporation and its advertising agency, Leo Burnett Company, Inc., for allegedly making unsubstantiated octane performance and longevity claims. However, based on the ad itself and the available extrinsic evidence, I do not find reason to believe that Exhibit A to the complaint (commonly referred to as the "Love Is Forever" ad) conveys the message alleged in paragraph 8, that Unocal 92 octane provides significantly superior engine performance and longevity for automobiles generally, as opposed to for high performance automobiles. Accordingly, I respectfully dissent as to Exhibit A, paragraph 8, and all references to 92 octane gasoline in the administrative complaint.

STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III
CONCURRING IN PART AND DISSENTING IN PART

I concur in the decision to charge Unocal Corporation with unsubstantiated representations regarding its 89 octane and 92 octane gasoline. I further concur in the decision to charge Leo Burnett Company, Inc. ("Leo Burnett") with unsubstantiated representations regarding Unocal's 92 octane gasoline.

On both factual and legal grounds, however, I dissent from issuance of this complaint insofar as it charges Leo Burnett with liability for the Unocal 89 octane claims. Complaint paragraphs 9, 11 and 12. In recent years, the Commission has prosecuted three advertising agencies for very significant, even egregious violations of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45. Here, the record supports the conclusion that Leo Burnett made substantial, good faith pre-dissemination efforts to determine whether the 89 octane claim was substantiated. Therefore, the inclusion of the 89 octane allegation in the complaint represents a significant and unnecessary departure from recent precedent regarding advertising agency liability.

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), requires the Commission to make a two-step determination before issuing a complaint. It must conclude, first, that it has reason to believe that an unfair or deceptive act or practice has been committed and, second, that a proceeding would be in the public interest. The record supports the conclusion that Leo Burnett requested, and was presented with, facts in support of the claim for 89 octane gasoline, although it also possessed some information that would tend to undermine the general nature of the benefit provided by 89 octane gasoline. The Commission previously has held that where an advertising agency requested and relied upon evidence that provided some scientific basis for a claim requiring complex scientific substantiation, possession of additional information tending to undermine the substantiation did not put the agency on notice that substantiation was inadequate. *Bristol-Myers Co.*, 102 FTC 21, 365-66 (1983). Given this precedent, and on the record before us, I am not able to conclude that there is reason to believe that Leo Burnett engaged in actionable conduct in connection with the 89 octane claims.

Moreover, elimination of the 89 octane charge from the complaint would have simplified the complaint without the need for any significant change in order coverage.¹ Under these circumstances, it does not appear that it is in the public interest to include this charge in the complaint.

¹ Although it appears appropriate to exempt Leo Burnett from Parts IA and IB of the order insofar as those provisions specifically pertain to engine power, acceleration and longevity claims for 89 octane gasoline, Part IC nevertheless fences in these (and other) performance claims regarding any gasoline.

IN THE MATTER OF

GRIFFIN SYSTEMS, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9249. Complaint, Oct. 8, 1991--Final Order, April 29, 1994*

This final order prohibits the respondents from making misrepresentations about any material terms or conditions of any automobile service contract, from canceling service contracts when they have not disclosed that they have a right to do so before selling the contract, from substantially hindering customers from performing a condition on obtaining a benefit, from denying valid claims, and from refusing to comply promptly with any term or condition of any service contract they sell. In addition, the order requires the respondents to disclose to potential buyers whether the contracts cover the full cost of repairs, whether they include a rental car allowance, and the number and total dollar value of claims that may be submitted.

Appearances

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *Philip Z. Vogel, Cleveland, OH.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Griffin Systems, Inc. ("Griffin"), a corporation; and Gennaro J. Orrico, Robert W. Boughton and Alfonso S. Giordano, individually and as officers of said corporation (hereinafter collectively referred to as "respondents"), have violated certain provisions of said Act in states where their practices are not "regulated by State law" as the "business of insurance" within the meaning of 15 U.S.C. 1012(b), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Griffin is an Ohio corporation with its office and principal place of business located at 4019 and