

IN THE MATTER OF

ORKIN EXTERMINATING COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3495. Complaint, May 25, 1994--Decision, May 25, 1994*

This consent order prohibits, among other things, a Georgia pesticides corporation from advertising or representing that its pesticides used in its lawn care service programs are as safe as some common household products or that they pose no significant risk to human health or the environment, without possessing competent and reliable scientific evidence to substantiate the claims.

Appearances

For the Commission: *Judith Wilkenfeld, Michael Dershowitz and Sydney Knight.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Orkin Exterminating Company, Inc., ("Orkin" or "respondent"), a corporation, 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. Orkin is a Delaware corporation, with its offices and principal place of business located at 2170 Piedmont Road, N.E., Atlanta, Georgia.

PAR. 2. Orkin has advertised, offered for sale, and sold certain residential lawn care services ("residential lawn care services") which use pesticides or pesticide products. The pesticides or pesticide products are applied to lawns as a means to prevent, destroy, or repel pests such as weeds, rodents, and insects.

PAR. 3. Respondent disseminated or caused to be disseminated advertisements for residential lawn care services. These advertisements were disseminated by various means in or affecting commerce,

for the purpose of inducing purchases of such residential lawn care services by members of the public.

PAR. 4. 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. 5. Respondent disseminated or caused to be disseminated advertisements for its residential lawn care services, including but not necessarily limited to, the advertisements attached hereto as Exhibits A and B. The aforesaid advertisements contain the following statements:

(a) In addition, we'll keep weeds and harmful bugs out, using environmentally safe, biodegradable products that are neither harmful to you nor your soil. [Exhibit A]

(b) YOUR ORKIN LAWN CARE PROFESSIONAL PROGRAM
Safe, Timely, Effective Applications

Under the most accepted product rating scale our applications are rated "practically nontoxic"; the lowest toxicity rating and have lower toxicity rating than many common household products like suntan lotion or shaving cream.

Common sense suggests avoiding unnecessary contact with any chemical. In an effort to further promote safety please keep children and pets off sprayed areas for 1-2 hours after application or until materials dry. [Exhibit B]

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent represented, directly or by implication, that:

(a) The pesticides it uses in its residential lawn care services, when used as directed in such services, are as safe or safer than common household products such as suntan lotion and shaving cream; and

(b) The pesticides it uses in its residential lawn care services, when used as directed in such services, are practically non-toxic and do not pose any significant risk to human health and the environment.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent represented, directly or by implication, that at the time it made the representations set forth in paragraph six, respondent

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

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

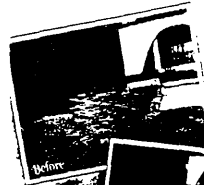
PAR. 9. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

117 F.T.C.

EXHIBIT A

KEEP YOUR LAWN LOOKING BEAUTIFUL WITH A YEAROUND® GUARANTEE



We'll put the glow of health back into your yard. Imagine the luxury of letting a pro take care of your lawn. Making it beautifully thick, green and healthy. With custom-blended fertilizers. Biodegradable weed and insect control products. FREE troubleshooting calls. And a variety of seasonal treatments for specific problems.

It's true. YEAROUND lawn care is *guaranteed* to help keep your lawn looking great, month after month. In fact, if your lawn develops a problem between service calls, all you have to do is notify us. We'll be out to troubleshoot for you within 48 hours, at no extra charge.

YEAROUND beauty starts with the basics.

First stop: a FREE, NO OBLIGATION Lawn Analysis to determine just which nutrients your lawn needs. We examine the condition of your soil, note any insect activity and specific weeds that need to be eliminated.

Once you've decided to give us a try, we'll service your home at regular intervals—at least 5 times a year—unless you decide to stop. Effective and consistent fertilization with our custom-blended nutrients will grow your lawn greener and thicker in

no time. In addition, we'll keep weeds and harmful bugs out, using environmentally safe, biodegradable products that are neither harmful to you nor your soil.

Perk up trees and shrubs.

Deep root fertilization and proper insect and disease control will go a long way to improve the health and vigor of your trees and shrubs. So treat these valuable plants to YEAROUND Tree & Shrub Care and let them reward you with extra foliage, flowering and fruit.



Yearound
Lawn Care Experts

**MAIL THIS CARD TODAY FOR A FREE
LAWN ANALYSIS & PRICE QUOTE**

YES! I'd like a free, no-obligation lawn analysis. I'm interested in the following:

☐ Weed Control	☐ Shrub & Tree Care
☐ Fertilization and Insect Control	☐ Commercial Landscape Care

Please print clearly:

Name _____

Address _____

City _____ State _____ Zip _____

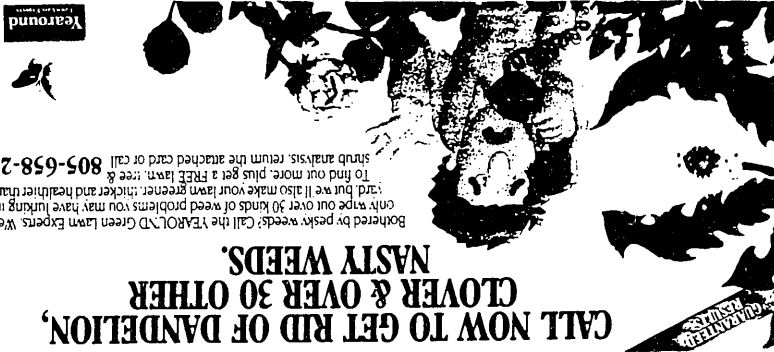
Phone (home) _____ (business) _____

☐ If I'm not home, leave the results and price quote on the door.

747

Complaint

EXHIBIT A



CALL NOW TO GET RID OF DANDELION, CLOVER & OVER 30 OTHER NASTY WEEDS.

Bothered by pesky weeds? Call the YEAROUND Green Lawn Experts. We'll only wipe out over 30 kinds of weed problems you may have lurking in your yard. But we'll also make your lawn greener, thicker and healthier than ever. To find out more, plus get a FREE lawn, tree & shrub analysis, return the attached card or call **805-658-24**

YEAROUND
Lawn Care Experts



32 A Palma Drive
Ventura, CA 93003

FE. EFFECTIVE & AFFORDABLE
Fertilization, Weed, Insect
Disease Control for
Lawns, Trees & Shrubs
Residential • Commercial
Year Round Servicing
Guaranteed Results

Bulk Rate
U.S. Postage
PAID
YEAROUND
CAR RT 5071



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO 936 OXNARD, CA

POSTAGE WILL BE PAID BY ADDRESSEE

YEAROUND Lawn Care Experts
32 A Palma Drive
Ventura, CA 93003



EXHIBIT B

**Your Orkin Lawn Care
Professional Program****Safe, Timely, Effective Applications**

Your Orkin Lawn Care program consists of six treatments with the safest, most effective materials available. Our specialized equipment allows us to treat your lawn for its unique problems and characteristics. We recognize that every lawn is different and we can tailor our applications to fit individual needs.

Your Orkin lawn specialist has been thoroughly trained in the science of lawn care. He understands weeds, insects, and diseases. He knows what to apply and when to apply it. Every Orkin lawn specialist has passed a written exam in order to be licensed.

Orkin Lawn Care has always placed a major emphasis on the subject of proper use of lawn care materials from the perspective of our employees, our customers and the public at large.

Our six application program involves the discriminate use of pesticides. A pesticide is a material used to destroy a pest or protect your landscape from a pest. A pest is an unwanted organism [ie: weed, insect, fungus, etc.]. Pesticides are not for amateurs. To protect people and the environment, pesticide applicators must be professionally trained and licensed by their respective state [as required].

Orkin Lawn Care follows all EPA standards for pesticide handling and use. All of our pesticides are registered by the U.S. Environmental Protection Agency and the appropriate state agency. State law requires that you be given a certain label information for pesticides applied to your landscape. This information is enclosed for your review. Should you have questions, refer to your local branches. It should be understood this label information is representative of the product in its concentrated form. This would therefore, represent the product only if and when handled by your Orkin lawn specialist at the time of mixing. As an example, our standard spray mix of our round two insecticide is diluted over five hundred times. [e.g. five hundred parts water to each part insecticide.]

Under the most accepted product rating scale our applications are rated "practically nontoxic"; the lowest toxicity rating and have lower toxicity rating than many common household products like suntan lotion or shaving cream.

Common sense suggests avoiding unnecessary contact with any chemical. In an effort to further promote safety please keep children and pets off sprayed areas for 1-2 hours after application or until materials dry.

Should you ever have questions or desire additional information, feel free to contact your local branch office at your earliest convenience.

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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the 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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 comment received, 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 Orkin Exterminating Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at 2170 Piedmont Road, N.E., Atlanta, Georgia.

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

For the purposes of this order:

1. "*Pesticide*" shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest (as defined in 40 CFR 152.5) or intended for use as a plant regulator, defoliant, or desiccant.
2. "*Pesticide Product*" shall mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, delivered or applied.

I.

It is ordered, That respondent Orkin Exterminating Company, Inc., 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, distribution or use of any residential lawn care services which use any pesticide or pesticide product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication, that:

1. The pesticides it uses in its residential lawn care services, when used as directed in such services, are as safe or safer than common household products such as suntan lotion and shaving cream; or
2. The pesticides it uses in its residential lawn care services, when used as directed in such services, are practically nontoxic and do not pose any significant risk to human health and the environment; or

B. Making any representation in any manner, directly or by implication, concerning the safety or degree of risk to human health or the environment of any pesticides it uses in its residential lawn care services, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable

scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

Provided however, that nothing in this order shall prohibit respondent from disseminating (1) any pesticide label approved by the United States Environmental Protection Agency, or (2) any Material Safety Data Sheets prepared pursuant to 29 CFR 1910.1200 by a source other than respondent or its agent, unless at the time of dissemination of the Material Safety Data Sheets respondent knew or should have known that the representation was deceptive.

II.

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 or assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

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

III.

It is further ordered, That respondent shall forthwith 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 or other such sales materials covered by this order.

IV.

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.

V.

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

W.D.I.A. CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FAIR CREDIT REPORTING ACT AND THE
FEDERAL TRADE COMMISSION ACT

Docket 9258. Complaint, May 4, 1993--Decision, May 27, 1994

This consent order prohibits, among other things, an Ohio-based information corporation and two of its officers from furnishing any consumer report for any purposes not permitted under the Fair Credit Reporting Act, and requires the respondents to take certain steps to ensure subscribers have permissible purposes for accessing consumer reports in the future. In addition, the respondents are required to maintain a toll-free telephone number available to consumers who have questions regarding the purpose for which a consumer report on them was furnished.

Appearances

For the Commission: *Ronald G. Isaac, David G. Grimes, Jr. and Lucy Morris.*

For the respondents: *Arthur L. Herold and Frank M. Northam, Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that W.D.I.A. Corporation, a corporation, and Mark W. Hanna and Janice L. Campanello, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 in that respect as follows: