

IN THE MATTER OF

LEPAGE'S, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3506. Complaint, July 19, 1994--Decision, July 19, 1994*

This consent order prohibits, among other things, the Pennsylvania manufacturers of adhesive tapes from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making unsubstantiated claims that its products or packages are degradable, biodegradable or photodegradable, or that their degradability offers any environmental benefit when disposed of as trash in a sanitary landfill.

Appearances

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

For the respondents: *Nancy Bryson, Crowell & Moring, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation ("respondents"), have 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 LePage's, Inc. ("LePage's"), is a Pennsylvania corporation. Respondent LP Holdings, Inc. is a Delaware corporation. It dominated and controlled the acts and practices of its then wholly-owned subsidiary, LePage's, Inc. Respondents have their principal offices or places of business at 120 Delta Drive, Pittsburgh, Pennsylvania.

PAR. 2. Respondents have advertised, labeled, offered for sale, sold, and distributed adhesive tapes, including LePage's Biodegradable Transparent Tape, and other products to the public.

PAR. 3. The acts and practices of respondents 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. LePage's Biodegradable Transparent Tape is a cellophane tape made from wood pulp and adhesive material. The retail tape product is sold with a hard clear non-foam polystyrene plastic dispenser. The dispenser does not identify the type(s) of plastic resin from which it is made. The tape and dispenser are attached to a non-corrugated paperboard or cardboard backcard.

PAR. 5. Respondents have disseminated or have caused to be disseminated advertisements, including product labeling, and other promotional materials, for LePage's Biodegradable Transparent Tape, including but not necessarily limited to the attached Exhibits A through C.

The aforesaid product labeling (Exhibit A) includes the following statement on the front:

NEW! BIODEGRADABLE TRANSPARENT TAPE

The aforesaid product labeling (Exhibit A) also includes the following statements on the back:

BIODEGRADABLE TRANSPARENT TAPE
DEGRADES RAPIDLY
ENVIRONMENTALLY SAFE

A subsequent version of the aforesaid product labeling (Exhibit B) includes the following statements on the front:

NEW! BIODEGRADABLE TRANSPARENT TAPE
... ON A RECYCLABLE DISPENSER

The aforesaid product labeling (Exhibit B) also includes the following statements on the back:

BIODEGRADABLE TRANSPARENT TAPE
DEGRADES RAPIDLY
ENVIRONMENTALLY SAFE
Recyclable Package

The aforesaid product labeling (Exhibit B) also includes the following depiction of a three chasing arrow symbol on both the front and back:



Another version of the aforesaid product labeling (Exhibit C) includes the following statements on the front:

NEW! BIODEGRADABLE TRANSPARENT TAPE
DISPENSER IS RECYCLABLE IN COMMUNITIES WHICH HAVE P.S.
RECYCLING FACILITIES

The aforesaid product labeling (Exhibit C) also includes the following statement on the back:

BIODEGRADABLE TRANSPARENT TAPE

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

A. LePage's Biodegradable Transparent Tape will completely break down and return to nature -- *i.e.*, decompose into elements found in nature -- within a reasonably short period of time after customary disposal;

B. Compared to other transparent tape, LePage's Biodegradable Transparent Tape offers a significant environmental benefit after customary disposal.

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-C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph six, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time they made the representations set forth in paragraph six, respondents 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. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibits B and C, respondents have represented, directly or by implication, that their plastic tape dispenser is recyclable.

PAR. 10. In truth and in fact, while the plastic tape dispenser is capable of being recycled, the vast majority of consumers cannot recycle it because there are only a few collection facilities nationwide that will accept the non-foam polystyrene dispenser for recycling. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibit B, respondents have represented, directly or by implication, that their paperboard backcard is recyclable.

PAR. 12. In truth and in fact, while the paperboard backcard is capable of being recycled, the vast majority of consumers cannot recycle it because there are only a few collection facilities nationwide that will accept the non-corrugated paperboard or cardboard backcard for recycling. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertising and labeling attached as Exhibits B and C, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraphs nine and eleven, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 14. In truth and in fact, at the time they made the representations set forth in paragraphs nine and eleven, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. The acts and practices of respondents 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.

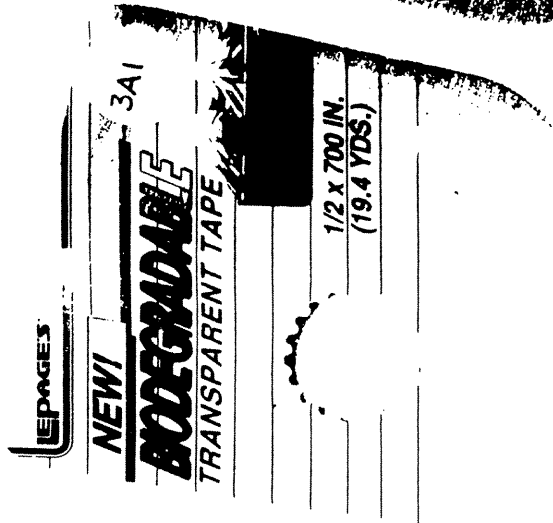


Exhibit A

Complaint

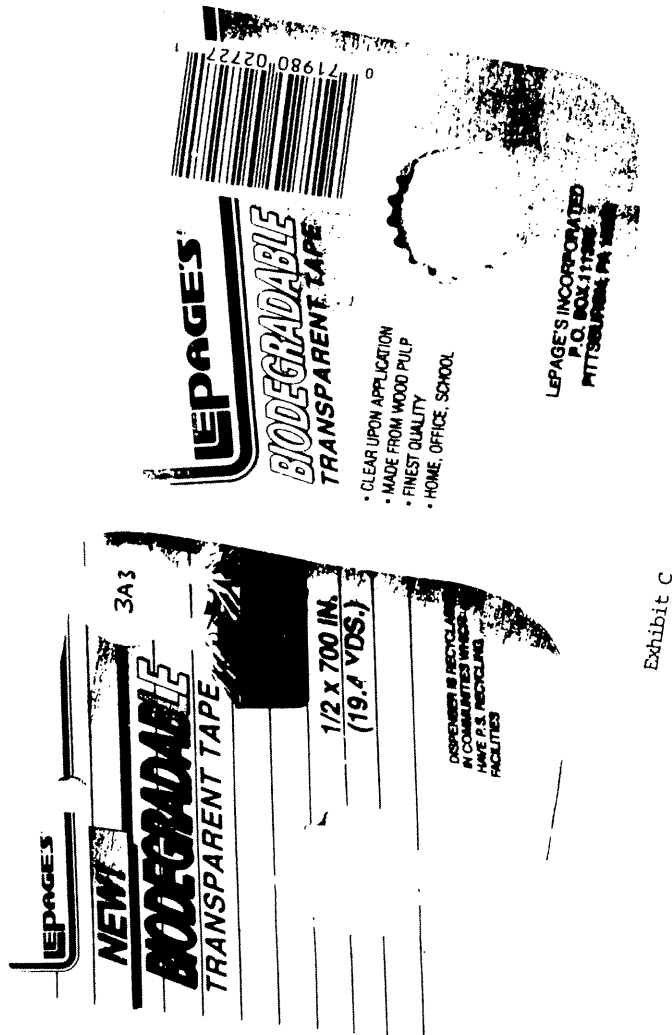
118 F.T.C.

EXHIBIT B



Exhibit B

EXHIBIT C



DECISION AND ORDER

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

The respondents 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 LePage's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 120 Delta Drive, in the City of Pittsburgh, State of Pennsylvania.

Respondent LP Holdings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 120 Delta Drive, in the City of Pittsburgh, State of Pennsylvania. It

dominates and controls the acts and practices of its wholly-owned subsidiary, LePage's, Inc.

2. 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

DEFINITIONS

For purposes of this order, the following definitions shall apply:

The term "*product or package*" means any product or package that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the LePage's brand name or any other brand name of respondents, their successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

"*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 respondents, LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution 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:

(1) That any such product or package is degradable, biodegradable, or photodegradable; or,

(2) Through the use of such terms as degradable, biodegradable, or photodegradable or any other similar term or expression, that any such product or package offers any environmental benefits when consumers dispose of it as trash that is buried in a sanitary landfill,

unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

II.

A. *It is further ordered*, That respondents, LePage's, Inc., a corporation, and LP Holdings, Inc., a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution 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:

(1) Any such product or package is capable of being recycled; or,

(2) Recycling collection programs for such product or package are available.

B. Provided, however, respondents will not be in violation of Part II(A)(2) of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-foam polystyrene or any non-corrugated paperboard or cardboard product

or package, if they truthfully represent that such product or package is recyclable, provided that:

(1) Respondents disclose clearly, prominently, and in close proximity to such representation:

(a) In regard to any non-foam polystyrene product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene; and in regard to any non-corrugated paperboard or cardboard product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-corrugated paperboard or cardboard; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and

(2) In addition, in the case of a non-foam polystyrene product or package, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation 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 part of the package on which the representation appears.

III.

It is further ordered, That respondents, LePage's, Inc., a corporation, and LP Holdings, Inc, a corporation, their successors and assigns, and their officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution 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 such product or package offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

IV.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their 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 their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their

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.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations 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 corporations which may affect compliance obligations under this order.

VII.

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

IN THE MATTER OF

OAK HILL INDUSTRIES CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3507. Complaint, July 19, 1994--Decision, July 19, 1994*

This consent order prohibits, among other things, a New York manufacturer, of plastic plates, bowls and utensils, and its officer from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making any unsubstantiated representation that any product or package it markets offers any environmental benefit.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondents: *Nancy Cascella, Hahn & Hessen, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Oak Hill Industries Corp., a corporation, and Malcolm Foster, individually and as an officer of said corporation ("respondents"), have 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 Oak Hill Industries Corp. ("Oak Hill"), is a New York corporation with its principal office or place of business at 330 East 59th Street, New York, NY.

Respondent Malcolm Foster is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporate respondent.