

Complaint

118 F.T.C.

IN THE MATTER OF

BPI ENVIRONMENTAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3535. Complaint, Oct. 17, 1994--Decision, Oct. 17, 1994*

This consent order prohibits, among other things, a Massachusetts-based corporation from making unsubstantiated degradability claims for its plastic grocery bags or any of its plastic products in the future. The order also requires the respondent to possess competent and reliable evidence to substantiate claims regarding any environmental benefit of its plastic products.

*Appearances*For the Commission: *Gary S. Cooper.*For the respondent: *Dennis N. Caulfield*, President, North Dighton, MA.

COMPLAINT

The Federal Trade Commission, having reason to believe that BPI Environmental, Inc., successor to Beresford Packaging, Inc., 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 BPI Environmental, Inc. ("BPI") is a Delaware corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts.

Beresford Packaging, Inc. ("Beresford") was a Massachusetts corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts.

On or about August 2, 1990, Beresford was merged into BPI, at which time the separate corporate existence of Beresford ceased and BPI became the surviving corporation. BPI, as the successor in merger to Beresford, is the legal successor to Beresford and is responsible for the acts or practices of Beresford alleged herein.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed throughout the United States plastic grocery bags or sacks containing cornstarch additives under such trade names as "BIO-SAC," and plastic grocery bags or sacks containing ultra-violet radiation enhancing additives under such trade names as "PHOTO-SAC."

PAR. 3. The acts or practices of respondent alleged in this complaint constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, through the sale of its plastic grocery bags or sacks to third party purchasers, has caused plastic grocery bags or sacks containing product labeling, including, but not necessarily limited to the attached Exhibit A, to be distributed to consumers throughout the United States. In the course and conduct of its business, and for the purpose of promoting the sale or distribution of its plastic grocery bags or sacks, respondent has also disseminated or caused to be disseminated to purchasers of its plastic grocery bags or sacks various advertisements and promotional materials, including, but not necessarily limited to the attached Exhibit B.

PAR. 5. The product labeling, referred to in paragraph four above, an example of which is attached hereto as Exhibit A, contains, among others, the following statements or claims concerning respondent's BIO-SAC plastic grocery sack:

- a. "BIO-DEGRADABLE" [In large, bold typeface]
- b. "TOTALLY BIO-DEGRADABLE"
- c. "DECOMPOSES WITHOUT SUNLIGHT"
- d. "ENVIRONMENTALLY SAFE IN LANDFILLS AND INCINERATION"

PAR. 6. The advertisements or promotional materials, referred to in paragraph four above, an example of which is attached hereto as Exhibit B, contain, among others, the following statements or claims concerning respondent's BIO-SAC plastic grocery sack:

- a. "BIO-SAC IS SAFE FOR THE ENVIRONMENT" [In large typeface]
- b. "Cornstarch additives in the sack are attacked by micro-organisms which ultimately results in complete degradation of the plastic."
- c. "BIO-SAC will completely disappear when buried in landfills in 3 to 6 years"
- d. "BIO-SAC decomposes in the environment without sunlight, naturally"

PAR. 7. Through the use of the statements and claims referred to in paragraphs five and six above, and others not specifically set forth herein, respondent has represented, directly or by implication, that compared to untreated plastic grocery sacks, respondent's BIO-SAC plastic grocery sacks offer a significant environmental benefit when consumers dispose of them as trash.

PAR. 8. Through the use of the statements and claims referred to in paragraph six above, and others not specifically set forth herein, respondent has represented, directly or by implication, that respondent's BIO-SAC plastic grocery sacks will completely break down, decompose, and return to nature within 3 to 6 years when buried in landfills.

PAR. 9. The product labeling referred to in paragraph four above, contains, among others, the following statements or claims concerning respondent's PHOTO-SAC plastic grocery sack:

- a. "DEGRADABLE"
- b. "LANDFILL-SAFE"

PAR. 10. Through the use of the statements and claims referred to in paragraph nine above, and others not specifically set forth herein, respondent has represented, directly or by implication, that:

- a. Compared to untreated plastic grocery sacks, respondent's PHOTO-SAC plastic grocery sacks offer a significant environmental benefit when consumers dispose of them as trash.
- b. Respondent's PHOTO-SAC plastic grocery sacks will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

PAR. 11. Through the use of the statements and claims and the representations referred to in paragraphs five, six, seven, eight, nine and ten above, and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time the representations set forth in paragraphs seven, eight and ten above were made respondent possessed and relied upon a reasonable basis for such representations.

PAR. 12. In truth and in fact, at the time the representations set forth in paragraphs seven, eight, and ten above were made, respon-

dent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph eleven above was, and is, false and misleading.

PAR. 13. Respondent's dissemination of the false and misleading representations as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said false and misleading representations, constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

EXHIBIT A

LABELING ON BIO-SAC PLASTIC SACK

**beresford packaging inc.**155 myles standish blvd.
taunton, massachusetts 02780Tel. (508) 824-8636
FAX (508) 822-6872
IN MASS. (800) 641-8900
OUTSIDE MASS. (800) 628-8206**We care about
our environment**

• TOTALLY BIO-DEGRADABLE • DECOMPOSES
WITHOUT SUNLIGHT • NON TOXIC • ENVIRONMENTALLY
SAFE IN LANDFILLS AND INCINERATION.

BIO-DEGRADABLE
BIO-DEGRADABLE
BIO-DEGRADABLE
BIO-DEGRADABLE

ADM is a registered trademark of ADM. All other trademarks are the property of their respective owners.beresford
packaging inc.
(508) 824-8636
1-800-628-8206
BIO-SAC

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EXHIBIT B

EXHIBIT B
PROMOTIONAL LITERATURE

BIO-SAC™ IS SAFE FOR THE ENVIRONMENT.

Cornstarch additives in the sack are attacked by microorganisms which ultimately results in complete degradation of the plastic. Therefore:

BIO-SAC™ will completely disappear when buried in landfills in 3 to 6 years.

BIO-SAC™ decomposes in the environment without sunlight, naturally.

BIO-SAC™ is printed with only water based inks.

BIO-SAC™ leaves no toxic or harsh chemicals to harm the environment.

BIO-SAC™ is incinerator safe.

BIO-SAC™ is recyclable.

BIO-SAC™ is non-leaching in landfills.

BIO-SAC™ is available only from:

Beresford Packaging Inc.
155 Myles Standish Blvd.
Taunton, Massachusetts 02780
Tel. (508) 824-8636 FAX (508) 822-6872

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 Boston 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,

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 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, and having duly considered the recommendations of its staff to modify the consent agreement pursuant to the comments received and the supplemental letter agreement executed by the respondent's counsel, 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 BPI Environmental, Inc. ("BPI") is a Delaware corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts. Beresford Packaging, Inc. ("Beresford") was a Massachusetts corporation with its office and principal place of business located at 155 Myles Standish Boulevard, Taunton, Massachusetts. On or about August 2, 1990, Beresford was merged into BPI, at which time the separate corporate existence of Beresford ceased and BPI became the surviving

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corporation. BPI, as the successor in merger to Beresford, is the legal successor to Beresford.

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

DEFINITION

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

"BPI Environmental plastic product" means any product or product packaging composed of plastic, in whole or in part, including but not limited to plastic grocery bags or sacks, plastic T-shirt bags or sacks, plastic produce bags or sacks, and plastic bakery bags or sacks, that is offered for sale, sold, or distributed by respondent, its successors and assigns, or that is distributed to the public by any other person, corporation or third party who has purchased said plastic product from respondent, its successors and assigns, under the "BIO-SAC" or "PHOTO-SAC" brand names or any other brand name of respondent, its successors and assigns; and also means any plastic product that is sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

I.

It is ordered, That respondent BPI Environmental, 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, or distribution of any BPI Environmental plastic product, 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 word or depiction:

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

(2) Through the use of such terms as “degradable,” “biodegradable,” “photodegradable,” or any other substantially similar term or expression, that the degradability of any such plastic product offers any environmental benefits when disposed of as trash in a sanitary landfill, or when incinerated,

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substantiates such representation. For purposes of this order, 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.

II.

It is further ordered, That respondent BPI Environmental, 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, or distribution of any BPI Environmental plastic product, 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 word or depiction, that any such product 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 a period of three (3) years from the date that any representation covered by this order is last disseminated, respondent shall maintain and upon request make available to the Commission for inspection and copying:

A. All materials that were relied upon to substantiate such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in respondent's possession or control, that contradict, qualify, or call into question such representation or the basis relied upon for such representation.

IV.

It is further ordered, That respondent shall distribute a copy of this order within sixty (60) days after service of this order upon them to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling or the preparation or placement of advertisements or other such sales or promotional 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 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.

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.

Commissioner Varney not participating.

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IN THE MATTER OF

ADOBE SYSTEMS INCORPORATED, 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-3536. Complaint, Oct. 18, 1994--Decision, Oct. 18, 1994

This consent order permits the consummation of the acquisition of Aldus Corporation by Adobe Systems Incorporated and requires, among other things, the two software firms to divest Aldus Corporation's FreeHand professional-illustration computer software and name to Altsys Corporation within six months. In addition, for ten years, the order requires the respondents to obtain Commission approval before acquiring any stock or other interest in any firm engaged in the development or sale of professional-illustration software for the Macintosh or Power Macintosh.

Appearances

For the Commission: *Mary Lou Steptoe* and *Mark Menna*.

For the respondents: *Wayne D. Collins, Sherman & Sterling*, New York, N.Y. and *Harvey I. Saferstein, Irell & Manella*, Los Angeles, CA.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission (Commission), having reason to believe that respondent Adobe Systems Incorporated, a corporation, has agreed to acquire the Aldus Corporation, a corporation, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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: