

IN THE MATTER OF

CHEMOPHARM LABORATORY, INC.

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

Docket C-3545. Complaint, Dec. 6, 1994--Decision, Dec. 6, 1994

This consent order prohibits, among other things, a Utah corporation that markets the ice melting product, Superior Sno-N-Ice, from making any environmental benefit claim about any product unless it possesses and relies on competent and reliable scientific evidence to substantiate the claims. In addition, the respondent is prohibited from misrepresenting the existence or contents of any test or study.

Appearances

For the Commission: *C. Steven Baker, Mary Tortorice and John Hallerud.*

For the respondent: *Jack Schoenhals, Salt Lake City, UT.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Chemopharm Laboratory, Inc., d/b/a CP Industries, a corporation ("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 Chemopharm Laboratory, Inc. is a Utah corporation with its principal office or place of business at 503 North 400 West, Salt Lake City, Utah.

PAR. 2. Respondent has offered for sale, sold, advertised, labeled and distributed de-icing products, including Superior Sno-N-Ice Melter, to the public.

PAR. 3. The acts and practices of respondent 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. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, for Superior Sno-N-Ice Melter, including but not necessarily limited to the

attached Exhibits 1 through 4. These advertisements and product labeling contain the following statements:

- A. Superior Sno-N-Ice Melter For The Total Environment (Exhibit 1)
- B. Superior Sno-N-Ice with CMA gives total environmental protection. (Exhibits 1 and 3)
- C. Superior Sno-N-Ice Melter now Contains CMA . . . Calcium Magnesium Acetate (CMA) offers the world an environmentally safe de-icer. (Exhibits 1 and 3)
- D. The blending of Superior Sno-N-Ice with CMA offers the benefits of a fast acting, environmentally safer, more effective ice melter. (Exhibits 1, 3, and 4)
- E. The combinations of Superior Sno-N-Ice with CMA makes a great product even better . . . Superior Sno-N-Ice with CMA offers total protection for the total environment in an effective ice melter. A safer environment begins with you! Finally! The best ice melter and de-icer are combined into one Superior product. (Exhibits 1 and 3)
- F. NOW CONTAINS . . . CMA NATURE'S CHOICE™ A Safer Environment Begins With You (Exhibits 1 and 3)
- G. The only ice melter that protects the total environment. (Exhibit 2)
- H. QUESTION: Why is SUPERIOR SNO-N-ICE MELTER with CMA safer than other de-icers? ANSWER: . . .Vegetation: CMA can improve soil conditions and will assist aeration of tight soil conditions. CMA is not a fertilizer as many ice melters are and does not cause plant tissue burn. (Exhibit 2)
- I. NEW CONTAINS CMA NATURE'S CHOICE™ ENVIRONMENTALLY SAFER (Exhibit 4)
- J. Proven in ten years of independent studies by corporate laboratories, government agencies and universities, CMA is the first de-icer to actually improve the environment. (Exhibits 1 and 3)
- K. Independent test results show CMA can improve soil conditions and be of benefit to vegetation and flowers. (Exhibits 1 and 3)

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits 1 through 4, respondent has represented, directly or by implication, that:

- A. Superior Sno-N-Ice Melter does not harm or damage the environment.
- B. Superior Sno-N-Ice Melter provides the environmental benefits of Calcium Magnesium Acetate ("CMA").
- C. Scientific studies of CMA demonstrate that Superior Sno-N-Ice Melter is beneficial to the environment.

Par. 6. In truth and in fact:

A. Superior Sno-N-Ice Melter does harm or damage the environment. Superior Sno-N-Ice Melter contains about 95% sodium chloride (*i.e.*, rock salt) which does harm or damage the environment.

B. Superior Sno-N-Ice Melter does not provide the environmental benefits of CMA.

C. Scientific studies of CMA do not demonstrate that Superior Sno-N-Ice Melter is beneficial to the environment.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the attached Exhibits 1 through 4, respondent has represented, directly or by implication, that at the time that it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time that it made the representations set forth in paragraph five, 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.

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EXHIBIT 1



CMA - A Step Into The Future

Superior Sno-Nice Melter now Contains CMA...

Superior Sno-Nice Melter is better than ever!

Finally! The best ice melter and de-icer are combined into one Superior product.

CP Industries
The Best In The Business
A Later Environment Begins With You

Now Contains CMA
A Later Environment Begins With You

Superior Sno-Nice Melters
For The Total Environment

Now Contains CMA

Superior Sno-Nice Melters
For The Total Environment

Finally! The best ice melter and de-icer are combined into one Superior product.

EXHIBIT 1

EXHIBIT 2

EXHIBIT 2

INFORMATION SHEET

**THE ONLY ICE MELTER
THAT PROTECTS
THE TOTAL ENVIRONMENT**

**SUPERIOR
SNO-N-ICE
MELTER**

CP Industries

PENNSYLVANIA
765 West Philadelphia Street
York, PA 17403

UTAH
503 North 400 West
Salt Lake City, Utah 84103

**FOR ORDERS & INFORMATION
(800) 453-4931**

QUESTION: What is the SUPERIOR SNO-N-ICE MELTER with CMA positive traction program?

ANSWER: Calcium Chloride will leave a very slick oily surface residue on all areas of application. SUPERIOR SNO-N-ICE MELTER with CMA creates a rough surface on ice that builds a surface traction area which, in turn, reduces slick conditions. SUPERIOR SNO-N-ICE MELTER with CMA penetrates the surface area and creates traction where needed.

QUESTION: Who is my prospective customer?

ANSWER: Any business or government agency that is concerned about safety and liability that occurs with ice, slippery sidewalks, parking lots, driveways, and streets. SUPERIOR SNO-N-ICE MELTER with CMA has been accepted as a proven product in all locations where winter conditions are a problem.

QUESTION: What sales aids are available to assist in the sale of SUPERIOR SNO-N-ICE MELTER with CMA?

ANSWER: SUPERIOR SNO-N-ICE MELTER with CMA offers more sales support than other de-icers including individual sales training from factory representatives, literature that is complete and professional, video tapes and slides that graphically tell the SUPERIOR SNO-N-ICE MELTER with CMA story, and samples for key accounts. There will also be testimonials from trade journals and other publications and the best packaging that is available in all sizes. All information is designed to illustrate safety and the improvement of the ecological system.

QUESTION: How is SUPERIOR SNO-N-ICE MELTER with CMA different from KCl, potassium chloride?

ANSWER: Potassium chloride is a fertilizer often used as a low-cost ice-melter. The melting properties of SUPERIOR SNO-N-ICE MELTER with CMA are much better and faster than potassium chloride which is very corrosive and contains no action inhibitors. Tests indicate that concrete spalling occurs faster when potassium chloride is applied.

SUPPORTING DOCUMENTATION

"Studies have shown the material (CMA) to have little effect on plants and animals."

Tom Harvey, Chickasaw County Agriculturalist
New Hampton Economist January, 1991

"Calcium Magnesium Acetate (CMA) also doesn't do any known harm. Scientists believe it actually does some good for the soil and plant life."

Frank Edward Allen - "Environment"
Wall Street Journal January, 1991

"CMA is environmentally safe. It breaks down and goes safely into the soil."

Dr. Shang-Tian Yang, Chemical Engineer
Ohio State University
Scholastic Newsline New York, January 1991

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A Safe Environment Begins with You

Complaint

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EXHIBIT 3

EXHIBIT 3

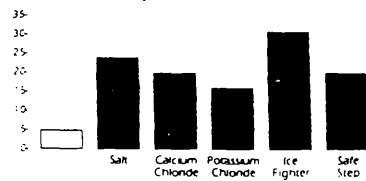
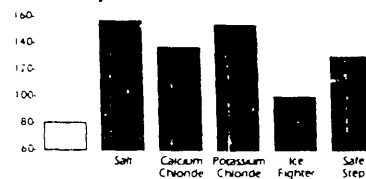


Sno-Nice Melters
For The Total Environment
 Now contains CMA

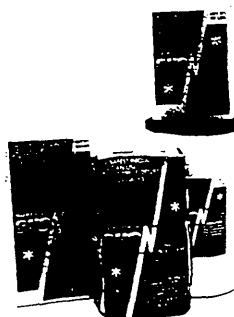
Unique Corrosion Inhibitor System

Superior Sno-Nice with its unique CMA inhibitor system has shown in test results to be environmentally safer. As shown in the tests below, Superior Sno-Nice with CMA inhibits corrosion in metals normally found in the environment as compared with other commonly used ice melters.

Graphs show milligrams of corrosion per year on metal plates in normal solutions of equal amounts.

Aluminum Comparison**Steel Comparison****Total Environmental Protection**

Superior Sno-Nice with CMA gives total environmental protection. Its unique formula offers a fast acting ice melter that works up to -8°F. , with a residual coating action for long lasting effectiveness. Superior Sno-Nice is available in boxes, drums and bags.



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Complaint

EXHIBIT 4

EXHIBIT 4

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Superior SNOW-N-ICE®
The Proven Alternative

SNOW-N-ICE

NEW

ENVIRONMENTALLY SAFER

- REDUCES DAMAGE TO CONCRETE
- CONTAINS ANTI-CORROSION AGENTS
- CONTAINS ANTI-CAKING AGENTS
- ATTACKS ICE & SNOW QUICKLY

THE SAFEST PRODUCT YOU CAN USE ON CONCRETE DRIVES AND SIDEWALKS

EXHIBIT 4

11.1.10013

Superior SNOW-N-ICE®
The Proven Alternative

SNOW-N-ICE

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EXHIBIT 4

11.1.10013

Superior SNOW-N-ICE®
The Proven Alternative

SNOW-N-ICE

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SNOW-N-ICE

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- ATTACKS ICE & SNOW QUICKLY

THE SAFEST PRODUCT YOU CAN USE ON CONCRETE DRIVES AND SIDEWALKS

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 Chicago Regional Office 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 of 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 Commissions'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 said 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 no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Chemopharm Laboratory, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah with its principal office or place of business at 503 North 400 West, Salt Lake City, Utah.
2. The acts and practices of the respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.
3. 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:

1. The term “*product*” means any product that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the “Superior Sno-N-Ice Melter” brand name or any other brand name of respondent, its successors and assigns; and also means any product sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

2. The term “*competent and reliable scientific evidence*” means 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 respondent, Chemopharm Laboratory, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product 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:

A. Such product is “environmentally safe,” “protects the total environment,” or otherwise offers any environmental benefit; or

B. Such product provides the environmental benefits of Calcium Magnesium Acetate,

unless such representation is true and, 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.

II.

It is further ordered, That respondent, Chemopharm Laboratory, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product 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 existence, contents, validity, results, conclusions, or interpretations of any test or study.

III.

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 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 representations; 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, including complaints from consumers.

IV.

It is further ordered, That the respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales 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.

IN THE MATTER OF

RITE AID CORPORATION

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-3546. Complaint, Dec. 15, 1994--Decision, Dec. 15, 1994

This consent order requires, among other things, Rite Aid, in conjunction with its acquisition of LaVerdiere's Enterprises, Inc., to divest the pharmacy assets either in its own Rite Aid stores, or in the LaVerdiere's stores it will acquire, in three specified cities, to a Commission-approved entity within 12 months of the order. If the divestitures are not accomplished within the time-frame, the Commission can appoint a trustee to accomplish them. In addition, the consent order requires the respondent, for a period of ten years, to obtain Commission approval before acquiring any assets or stocks in any entity engaged in the business of selling prescription drugs at retail outlets in the three designated cities.

Appearances

For the Commission: *Ann D. Malester, Catharine M. Moscatelli and E. Eric Elmore.*

For the respondent: *Lewis A. Noonberg, Piper & Marbury, Washington, D.C. Eric Saunders and Larry Bryant, Bernestein, Shur, Sawyer & Nelson, Portland, ME.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Rite Aid Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, has agreed to acquire LaVerdiere's Enterprises, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 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: