

IN THE MATTER OF

THE AMERICAN TOBACCO COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3547. Complaint, Jan. 3, 1995--Decision, Jan. 3, 1995*

This consent order prohibits, among other things, a Connecticut-based company from disseminating advertising, for Carlton or any other cigarettes, that represents that consumers will get less tar or nicotine by smoking any number of cigarettes of any of its brands than by smoking one or more cigarettes of any other brand, unless such representations are both true and substantiated by competent and reliable scientific evidence.

Appearances

For the Commission: *Shira D. Modell.*

For the respondent: *Daniel O'Neill* and *Thomas Beazon*,
Chadbourne & Park, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that The American Tobacco Company, 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 The American Tobacco Company is a Delaware corporation, with its office and principal place of business located at 281 Tresser Boulevard, Stamford, Connecticut.

PAR. 2. Respondent has manufactured, labelled, promoted, offered for sale, sold, and distributed cigarettes, including Carlton brand cigarettes, to consumers.

PAR. 3. The acts or 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 for its Carlton brand cigarettes, including, but not necessarily limited to, the attached Exhibits A-C,

which depict ten packs of Carlton brand cigarettes and single packs of other brands of cigarettes, with the tar and nicotine ratings for Carlton and the other brands of cigarettes under each pack. Exhibits A-C contain the following statements:

- A. "10 packs of Carlton have less tar than 1 pack of these brands." (Exhibit A.)
- B. "A WHOLE CARTON OF CARLTON HAS LESS TAR THAN 1 PACK OF THESE BRANDS." (Exhibit B.)
- C. "10 to 1. 10 packs of Carlton have less tar than 1 pack of these brands." (Exhibit C.)

PAR. 5. Through the presentation of the tar of its Carlton product as a numerical multiple, fraction or ratio of the tar of other brands of cigarettes, and/or the visual depiction of ten packs or a carton of Carlton cigarettes versus one pack of the other brands in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that consumers will get less tar by smoking ten packs of Carlton brand cigarettes than by smoking a single pack of the other brands of cigarettes depicted in the ads, which are rated as having more than 10 mg. of tar.

PAR. 6. In truth and in fact, consumers will not necessarily get less tar by smoking ten packs of Carlton brand cigarettes than by smoking a single pack of the other brands of cigarettes depicted in the ads. Although the cigarettes depicted are rated as having more than 10 mg. of tar, those ratings are obtained through smoking machine tests that do not reflect actual smoking, in part because the machines do not take into account such behavior as compensatory smoking. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the presentation of the tar of its Carlton product as a numerical multiple, fraction or ratio of the tar of other brands of cigarettes, and/or the visual depiction of ten packs or a carton of Carlton cigarettes versus one pack of the other brands in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated that representation.

PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. 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

119 F.T.C.

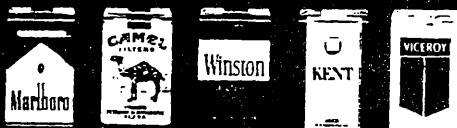
EXHIBIT A

Exhibit A

1 mg. tar, 0.1 mg. nic.



10 packs of Carlton
have less tar than 1 pack
of these brands.



Marlboro	Camel	Winston	Kent	Viceroy
16 mg. tar 1.1 mg. nic.	14 mg. tar 1.0 mg. nic.	16 mg. tar 1.1 mg. nic.	12 mg. tar 0.9 mg. nic.	17 mg. tar 1.3 mg. nic.

U.S. Gov't. Test Method confirms of all king soft packs:

Carlton is lowest.

U.S. News 1-27-72

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

Long filter, full length cigarette. Lowest of all brands tested by U.S. Gov't. Test Method. Tar and nicotine content by FTC method. 1 mg. tar, 0.1 mg. nic. per cigarette. © 1972 The American Tobacco Co.

EXHIBIT B

1 mg. tar, 0.1 mg. nic..

LOWEST SOFT PACK

Carlton
CARLTON IS LOWEST



**A whole carton of
Carlton has less tar than
just 1 pack of these
brands.**

16 mg. tar 1.1 mg. nic.	15 mg. tar 1.1 mg. nic.	18 mg. tar 1.5 mg. nic.	12 mg. tar 0.9 mg. nic.	17 mg. tar 1.2 mg. nic.
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U.S. Gov't. Test Method confirms of all king soft packs:

***Carlton is lowest
in tar and nicotine.***

1 mg. "tar", 0.1 mg. nicotine.
Lowest of all brands: Ultra Carlton: less than 0.5 mg. "tar",
less than 0.05 mg. nicotine av. per cigarette by FTC method.

**SURGEON GENERAL'S WARNING: Quitting Smoking
Now Greatly Reduces Serious Risks to Your Health.**

Complaint

119 F.T.C.

EXHIBIT C

EXHIBIT C

10 to 1

1 mg. tar,
0.1 mg. nic.

**10 packs of Carlton have less tar
than 1 pack of these brands.**

Brand	Tar (mg.)	Nicotine (mg.)
Marlboro	15	1.1
Camel	14	1.0
Winston	17	1.4
Kent	12	0.9
Carlton	1	0.1

U.S. Gov't. Test Method confirms of all king soft packs:

Carlton is lowest^{*}
in tar and nicotine.

© The American Tobacco Co. 1963.

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

*1 mg. tar, 0.1 mg. nicotine.
*Lowest of all brands. 10 packs Carlton have less than 0.5 mg. tar and less than 0.05 mg. nicotine tar per cigarette by FTC method.

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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations 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 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 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 said Act, and that a 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 The American Tobacco Company 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 281 Tresser Boulevard, Stamford, Connecticut.

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

I.

It is ordered, That respondent, The American Tobacco Company, 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 cigarette in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the presentation of the tar ratings of any of respondent's brands of cigarettes as a numerical multiple, fraction or ratio of the tar of any other brand of cigarettes, and/or the visual depiction of ten packs or a carton of any of respondent's brands versus one pack of any other brand, directly or by implication, that consumers will get less tar by smoking ten packs of any cigarette rated as having 1 mg. of tar than by smoking a single pack of any other brand of cigarettes that is rated as having more than 10 mg. of tar. For purposes of this order, the term "cigarette" shall be as defined in Section 1332 (1) of Title 15 of the United States Code.

II.

It is further ordered, That respondent, The American Tobacco Company, 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 cigarette in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the presentation of the tar or nicotine ratings of any of respondent's brands of cigarettes as a numerical multiple, fraction or ratio of the tar or nicotine ratings of any other brand of cigarettes, and/or the visual depiction of more than one pack of any of respondent's brands versus one pack of any other brand, directly or by implication, that consumers will get less tar or nicotine by smoking any number of cigarettes (or packs or cartons of cigarettes) of any of respondent's

brands than by smoking one or more cigarettes (or packs or cartons of cigarettes) of any other brand, unless such representation is true and, 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 based on the expertise of professionals in the relevant area, that has been conducted and evaluated in any objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That presentation of the tar and/or nicotine ratings of any of respondent's brands of cigarettes and the tar and/or nicotine ratings of any other brand (with or without an express or implied representation that respondent's brand is "low," "lower," or "lowest" in tar and/or nicotine) shall not be deemed to constitute a numerical multiple, fraction or ratio and shall not, in and of itself, be deemed to violate paragraph I or II of this order where no more than a single cigarette or pack of respondent's brand is visually depicted versus a single cigarette or pack of any other brand.

IV.

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 representation; 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.

V.

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

VI.

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 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.

VII.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade 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
CREATIVE AEROSOL CORP.

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

Docket C-3548. Complaint, Jan. 13, 1995--Decision, Jan. 13, 1995

This consent order prohibits, among other things, a New Jersey manufacturer of children's bath soap from representing that certain products or packaging will not harm the environment or atmosphere, or that any product or package offers any environmental benefit, unless it possess competent and reliable evidence that substantiates the representation. The consent order also prohibits the respondent from misrepresenting the extent to which any product or packaging is capable of being recycled, or the availability of recycling collection programs.

Appearances

For the Commission: *Michael Dershowitz* and *Michael Ostheimer*.

For the respondent: *James Mulligan*, President, Freehold, N.J.

COMPLAINT

The Federal Trade Commission, having reason to believe that Creative Aerosol Corp., 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 Creative Aerosol Corp. is a New Jersey corporation with its principal office or place of business at 71 West Main Street, Freehold, New Jersey.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed foam soap products, including Funny Color Foam, and other products 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.