

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.

PAR. 4. The product pictured in the attached Exhibit A contains the volatile organic compounds ("VOCs") isobutane and propane. The product was reformulated by substituting chlorodifluoromethane (HCFC-22) for isobutane and propane. The product pictured in the attached Exhibit B contains chlorodifluoromethane (HCFC-22), a hydrochlorofluorocarbon. The product is sold in an aluminum aerosol can. The can has a plastic cap which is made from high-density polyethylene. There is no indication on the cap of the type(s) of plastic resin from which it is made.

PAR. 5. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, for Funny Color Foam, including but not necessarily limited to the attached Exhibit A.

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

ENVIRONMENTALLY SAFE

Contains no fluorocarbons.

Non-Irritant • Non-Toxic

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph five, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Funny Color Foam does not contain any ingredients that harm or damage 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 product labeling attached as Exhibit A, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph six, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 8. In truth and in fact, at the time it made the representation set forth in paragraph six, 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. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, for Funny

Color Foam, including but not necessarily limited to the attached Exhibit B.

The aforesaid product labeling (Exhibit B) includes the following statement:

NO FLUOROCARBONS

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph nine, including but not necessarily limited to the product labeling attached as Exhibit B, respondent has represented, directly or by implication, that because Funny Color Foam contains no fluorocarbons, it will not deplete the earth's ozone layer or otherwise harm or damage the atmosphere.

PAR. 11. In truth and in fact, Funny Color Foam contains the harmful ozone-depleting ingredient chlorodifluoromethane (HCFC-22), which harms or causes damage to the atmosphere by contributing to the depletion of the earth's ozone layer. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, for Funny Color Foam, including but not necessarily limited to the attached Exhibits A and B.

The aforesaid product labeling (Exhibit A) includes the following statements and depiction:

RECYCLABLE



CAN & CAP

The aforesaid product labeling (Exhibit B) includes the following statement:

RECYCLABLE WHERE
FACILITIES EXIST

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the product labeling attached as Exhibits A and B, respondent has represented, directly or by

implication, that Funny Color Foam's aluminum aerosol can is recyclable.

PAR. 14. In truth and in fact, while the aluminum aerosol can is capable of being recycled, the vast majority of consumers cannot recycle it because there are virtually no collection facilities that accept aluminum aerosol cans for recycling. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. Through the use of the statements and depictions contained in the advertisements referred to in paragraph twelve, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Funny Color Foam's plastic cap is recyclable.

PAR. 16. In truth and in fact, while the plastic cap is capable of being recycled, the vast majority of consumers cannot recycle it because there are only a few collection facilities nationwide that accept the high-density polyethylene cap for recycling. Therefore, the representation set forth in paragraph fifteen was, and is, false and misleading.

PAR. 17. Through the use of the statements and depictions contained in the advertisements referred to in paragraph nine and twelve, including but not necessarily limited to the product labeling attached as Exhibits A and B, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraphs ten, thirteen and fifteen, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 18. In truth and in fact, at the time it made the representations set forth in paragraphs ten, thirteen and fifteen, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seventeen was, and is, false and misleading.

PAR. 19. 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.

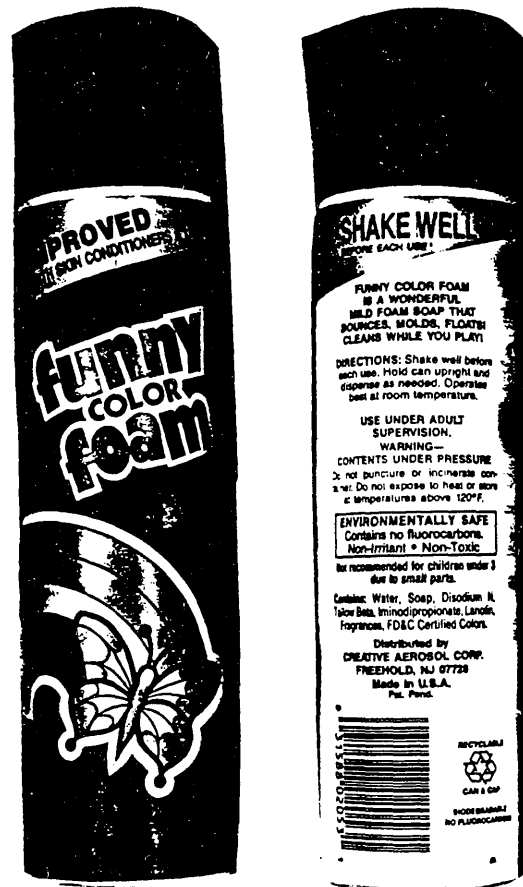


Exhibit A

Complaint

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EXHIBIT B



Exhibit B

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 violation of the Federal Trade Commission Act; and

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 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, 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, 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 Creative Aerosol Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 71 West Main Street, in the City of Freehold, State of New Jersey.

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

DEFINITIONS

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

"Volatile Organic Compound" ("VOC") means any compound of carbon which participates in atmospheric photochemical reactions as defined by the U.S. Environmental Protection Agency at 40 CFR 51.100(s), and as subsequently amended. When the final rule was promulgated, 57 Fed. Reg. 3941 (February 3, 1992), the EPA definition excluded carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and certain listed compounds that EPA has determined are of negligible photochemical reactivity.

"Class I ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride, and 1,1,1-trichloroethane.

"Class II ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

"Product or package" means any product or package that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the Funny Color Foam brand name or any other brand name of respondent, its successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

"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, Creative Aerosol Corp., 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package containing any volatile organic compound, 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, through the use of such terms as "environmentally safe," "environmentally safe, contains no fluorocarbons," or any other term or expression, that any such product or package will not harm the environment, or through the use of such terms as "no fluorocarbons," or any other term or expression, that any such product or package will not harm the atmosphere, 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.

II.

It is furthered ordered, That respondent, Creative Aerosol Corp., 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package containing any Class I or Class II ozone-depleting substance, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any such product or package contains "no fluorocarbons" or representing, in any manner, directly or by implication, that any such product or package will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere or otherwise harm the atmosphere.

III.

A. *It is further ordered*, That respondent, Creative Aerosol Corp., 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 labeling, advertising, 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, respondent will not be in violation of Part III(A)(2) of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any high-density polyethylene cap or aluminum aerosol can, if it truthfully represents that such packaging is recyclable, provided that:

1. Respondent discloses clearly, prominently, and in close proximity to such representation:

(a.) In regard to any high-density polyethylene cap, that it is recyclable in the few communities with recycling collection programs for high-density polyethylene caps; and in regard to any aluminum aerosol can, that such packaging is recyclable in the few communities with recycling collection programs for aluminum aerosol cans; or

(b.) The approximate number of U.S. communities with recycling collection programs for such high-density polyethylene cap or aluminum aerosol can; or

(c.) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such high-density polyethylene cap or aluminum aerosol can are available; and

2. In addition, in the case of a high-density polyethylene cap, such cap itself bears a clear identification of the specific plastic resin(s) from which it is made.

For purposes of this order, 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.

IV.

It is further ordered, That respondent, Creative Aerosol Corp., 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 labeling, advertising, 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, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

V.

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.

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VI.

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.

VII.

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.

VIII.

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

RN NUTRITION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3549. Complaint, Jan. 13, 1995--Decision, Jan. 13, 1995*

This consent order prohibits, among other things, the California marketers of the calcium supplement product, BoneRestore, from making unsubstantiated claims that any food, drug, or food or dietary supplement products will treat or cure any disease or condition; prohibits the respondents from using the name BoneRestore in a misleading way; and restricts the use of testimonial endorsements that do not represent typical results.

Appearances

For the Commission: *Phoebe D. Morse* and *Barbara E. Bolton*.

For the respondents: *Andrew J. Strenio, Jr., Hunton & Williams*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition ("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 RN Nutrition is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office or place of business at 3402-M West MacArthur, Santa Ana, California.

Respondent George Page Rank is an individual who has been, and is now, a general partner of RN Nutrition. As such, he formulates, or participates in the formulation of, directs and controls the acts and practices of RN Nutrition, including the acts and practices alleged in

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