

Complaint

121 F.T.C.

IN THE MATTER OF

BENCKISER CONSUMER PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3659. Complaint, May 22, 1996--Decision, May 22, 1996*

This consent order prohibits, among other things, the Connecticut-based company from misrepresenting that a portion of the revenue from the sale of any household cleaning product is donated to any organization. If the respondent chooses to make such claims in the future, the consent order requires the respondent to clearly and prominently disclose the method of determining the amount of the donation.

Appearances

For the Commission: *Thomas B. Carter, James R. Golder and Gary D. Kennedy.*

For the respondent: *Herbert C. Ross, Oppenheimer, Wolff & Donnelly, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Benckiser Consumer Products, Inc., 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 Benckiser Consumer Products, Inc. is a Delaware corporation with its principal office or place of business at Corporate Centre I, 55 Federal Road, Danbury, Connecticut.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed household cleaning products, under the tradename EarthRite, 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. Respondent has disseminated or has caused to be disseminated advertisements, including product hangtags, for its EarthRite products, which include the following statement:

One percent of EarthRite's proceeds are donated to non-profit organizations working to restore and preserve our natural environment.

PAR. 5. Through the use of the statement contained in the advertisements referred to in paragraph four, including but not necessarily limited to the product hangtag, respondent has represented, directly or by implication, that respondent donates some portion of its revenue from the sale of EarthRite products to non-profit environmental organizations.

PAR. 6. In truth and in fact, respondent has not donated any portion of its revenue from the sale of EarthRite products to non-profit environmental organizations. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statement contained in the advertisements referred to in paragraph four, including but not necessarily limited to the product hangtag, 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 such representation.

PAR. 8. In truth and in fact, at the time respondent 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.

DECISION AND ORDER

The Federal Trade Commission ("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 of complaint which the Dallas Regional Office proposed to present to the Commission for its

consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 of the Federal Trade Commission Act, as amended; and

The respondents, their attorney, 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 of complaint, a statement that the signing of said 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, or that the facts as alleged in such complaint other than jurisdictional facts, are true 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 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 Benckiser Consumer Products, 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 Corporate Centre I, 55 Federal Road, in the City of Danbury, State of Connecticut.

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

I.

It is ordered, That respondent Benckiser Consumer Products, 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, promotion, offering for sale, sale, or

distribution of any household cleaning 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 any portion of the revenues from the sale of such household cleaning product is donated to any organization; provided, however, respondent will not be in violation of this Part I if it truthfully represents that a portion of the revenues from the sale of such household cleaning product is donated to an organization and discloses, clearly, prominently, and in close proximity to such representation, the method of determining the amount of such donation. A disclosure shall be deemed to be "in close proximity" to a 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 advertisement or part of the package on which the representation appears.

II.

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.

III.

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.

IV.

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.

V.

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.

VI.

It is further ordered, That this order will terminate on May 22, 2016, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though

the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

THE VONS COMPANIES, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3233. Consent Order, Aug. 29, 1988--Modifying Order, May 24, 1996

This order reopens a 1988 consent order that settled allegations that The Vons Companies' ("Vons") acquisition of three Safeway divisions with stores in southern California and Nevada violated federal antitrust laws. This order modifies the consent order by replacing the 1988 order's prior-approval provision for acquisitions of supermarkets in Las Vegas, Nevada, or in numerous specified cities and towns in California, with a prior-notice provision for such acquisitions.

ORDER REOPENING AND MODIFYING ORDER

On November 15, 1995, The Vons Companies, Inc. ("Vons" or "respondent"), one of the respondents named in the consent order issued by the Commission on August 29, 1988, in Docket No. C-3233 ("order"), filed its Petition To Reopen and Modify Consent Orders ("Petition") in this matter.¹ Vons asks that the Commission reopen and modify the prior approval requirements of the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").² The order requires Vons to seek the prior approval of the Commission to acquire any retail grocery store in a number of California cities and towns and in the city of Las Vegas, Nevada.³ In addition, paragraph IV(B) of the order contains a proviso that requires Vons to give the Commission 30-days' prior

¹ In its Petition, Vons also requested that the order in Docket No. C-3391 be reopened and similarly modified. The Commission has determined to deny Vons' Petition as to that order and has notified Vons by letter as to the reasons for its denial.

² 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

³ Although SSI Associates, L.P. ("SSI") and Safeway Stores, Incorporated ("Safeway"), a subsidiary of SSI, are also respondents, the order's prior approval provisions only apply to Vons. Order at ¶ IV(A) and ¶ IV(B).