

Complaint

128 F.T.C.

IN THE MATTER OF

R. J. REYNOLDS TOBACCO COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3892. Complaint, Aug. 16, 1999--Decision, Aug. 16, 1999*

This consent order, among other things, prohibits R.J. Reynolds Tobacco Company, the North Carolina-based advertiser and distributor for Winston cigarettes, from making deceptive or unsubstantiated representations, and requires certain disclosures in the advertisements for cigarettes and other tobacco products.

Participants

For the Commission: *Beth Grossman, Lisa Kopchik, Joel Winston, C. Lee Peeler, Joseph Mulholland and Margaret Patterson.*

For the respondent: *Judith Oldham, Collier, Shannon, Rill & Scott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that R.J. Reynolds Tobacco Company, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent R.J. Reynolds Tobacco Company is a New Jersey corporation with its principal office or place of business at 401 North Main Street, P.O.B. 2959 Winston-Salem, North Carolina.

2. Respondent has advertised, promoted, offered for sale, sold and distributed tobacco products, including Winston cigarettes.

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.

4. Respondent has disseminated or has caused to be disseminated advertisements for Winston cigarettes, including but not necessarily limited to the attached Exhibits A through F. These advertisements contain the following statements:

262

Complaint

- (A) "Yours have additives. New Winstons don't.
 94% tobacco 100% tobacco
 6% additives True taste."
 Circular brand containing the words "No BULL"
- (B) "Winston just got
 naked.
 No additives."
 Circular brand containing the words "No BULL"
- (C) "Thank you for not smoking additives."
 Circular brand containing the words "No BULL"
 "100% tobacco
 True taste"
- (D) "I get enough
 bull at work.
 I don't need to smoke it.
 WINSTON
 NO ADDITIVES
 TRUE TASTE"
 Circular brand containing the words "No BULL"
- (E) "I'm not all
 sugar & spice.
 And neither are my smokes.
 WINSTON
 NO ADDITIVES
 TRUE TASTE"
 Circular brand containing the words "No BULL"
- (F) "Still smoking additives?"
 Circular logo containing the words:
 Winston
 straight up
 NO ADDITIVES • TRUE TASTE

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that smoking Winston cigarettes, because they contain no additives, is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives.

6. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made. Among other reasons, the smoke from Winston cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. 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.

SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.

16 mg "tar," 1.1 mg nicotine av.
per cigarette by FTC method.

Yours have additives.*

94% tobacco

*Laboratory analyses of the top ten U.S. non-menthol brand styles show all
of their tobaccos contain a minimum of 6% additives on a dry weight basis.

New Winstons don't.

100% TOBACCO.

True taste.



©1997 R.J. REYNOLDS TOBACCO CO.

EXHIBIT A

EXHIBIT B



EXHIBIT B

**Thank you for
not smoking additives.**



Winston

No additives are in our tobacco for true taste

10 mg "tar" 0.9 mg nicotine av per cigarette by FTC method

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



100% tobacco
True taste | **Wins**

Ex. C

Complaint

128 F.T.C.

EXHIBIT D

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

**"I get enough
bull at work
I don't need to smoke it**

**NEW WINSTON
NO ADDITIVES
TRUE TASTE**

Ex D-1

262

Complaint

EXHIBIT D



Complaint

128 F.T.C.

EXHIBIT E

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

**I'm not all
sugar & spice,
And neither are my smokes."**

**WINSTON
NEW NO ADDITIVES
TRUE TASTE**



© 1974 Philip Morris Inc. Winston is a registered trademark of Philip Morris Inc.

EXHIBIT F

WINSTON BOX
16 mg. tar, 1.1 mg. nicotine
av. per cigarette by FTC method
No additives in our tobacco
mean: true taste, straight up

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

Still smoking additives?



EXF-1

Complaint

128 F.T.C.

EXHIBIT F

*Ex. F-2*

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 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, its attorneys, and counsel for Federal Trade 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, 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 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 having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 R.J. Reynolds Tobacco Company is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its principal office or place of business at 401 North Main Street, P.O.B. 2959, Winston-Salem, North Carolina.

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:

1. "*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.

2. Unless otherwise specified, "*respondent*" shall mean R.J. Reynolds Tobacco Company, a corporation, its successors and assigns and its officers, agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. "*Advertisement*" shall mean any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of any tobacco product, including but not limited to a statement, illustration or depiction in or on a brochure, newspaper, magazine, free standing insert, pamphlet, leaflet, circular, mailer, book insert, letter, coupon, catalog, poster, chart, billboard, transit advertisement, point of purchase display, specialty or utilitarian item, sponsorship material, package insert, film, slide, or the Internet or other computer network or system.

5. "*Tobacco product*" shall mean cigarettes, cigars, cigarillos, little cigars, smokeless tobacco, cigarette tobacco, pipe tobacco, and any other product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product.

6. "*Winston cigarettes*" shall mean all varieties and styles of the Winston brand of cigarettes, including but not limited to all lengths, strengths, hard pack or soft pack, menthol or not.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Winston cigarettes or any other tobacco product in or affecting commerce, shall display in advertisements as specified below, clearly

and prominently, the following disclosures (including the line breaks, punctuation and capitalization illustrated):

In cigarette advertisements:

**No additives in our tobacco
does NOT mean a safer cigarette.**

In advertisements for any other tobacco product:

**No additives in our tobacco
does NOT mean safer.**

These disclosures shall be displayed:

A. Beginning no later than July 15, 1999, and continuing for a period of one year thereafter, in all advertisements for Winston cigarettes that contain no additives.

B. Except as provided for in Part II.A of this order, beginning no later than thirty (30) days after the date of issuance of this order, in any advertisement that, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, represents that a tobacco product has no additives.

Provided, that the above disclosures shall not be required in any advertisement that is not required to bear a health warning pursuant to 15 U.S.C. 1333.

Provided further, that the above disclosures shall not be required in any advertisement for a *bona fide* event, entrant, team or series presented or sponsored by any Winston tobacco product where (i) the advertisement contains the word Winston *only* as part of the name of the event, entrant, team or series and/or as part of the phrase "brought to you by Winston King," "presented by Winston King," "sponsored by Winston King," or the equivalent ("the Phrase"); (ii) the Phrase is displayed in a type size, manner and color contrast no greater than reasonably necessary so that it may be read; (iii) the advertisement does not, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, represent that the tobacco product has no additives; and (iv) there is no other selling message describing a feature or attribute of Winston tobacco products.

Provided further, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such cigarettes or other tobacco product pose materially lower health risks than other cigarettes or other products of the same type.

For purposes of this Part, "clearly and prominently" shall mean, as exemplified by Exhibits 1 and 2, attached to this order:

1. In black type and black rule on a solid white background, or in white type and white rule on a solid red background, or in any other color combination that would provide an equivalent or greater degree of print contrast as objectively determined by densitometer or comparable measurements of the type and rule color and the background color; and

2. Centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than 40% of the size of the area enclosed by the ruled rectangle surrounding the health warnings mandated by 15 U.S.C. 1333. The width of the rule forming the rectangle shall be no less than 50% of the width of the rule required for the health warnings mandated by 15 U.S.C. 1333.

Provided that, if, at any time after this order becomes final, 15 U.S.C. 1333 is amended, modified, or superseded by any other law, the area enclosed by the ruled rectangle shall be no less than 40% of the area required for health warnings by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than 50% of the width of any surrounding rule required by such amended, modified, or superseding law; and

3. In the same type style and type size as that required for health warnings pursuant to 15 U.S.C. 1333. The word "NOT" shall be in bold typeface.

Provided that, if, at any time after this order becomes final, 15 U.S.C. 1333 is amended, modified, or superseded by any other law, the type style and type size of the disclosure shall be the same as the type style and type size required for warnings by such amended, modified, or superseding law; and

4. In a clear and prominent location but not immediately next to other written or textual matter or any rectangular designs, elements, or similar geometric forms, including but not limited to any warning statement required under the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331 *et seq.*, or the Comprehensive

Smokeless Tobacco Health Education Act, 15 U.S.C. 4401 *et seq.* In addition, the disclosure shall not be positioned in the margin of a print advertisement. A disclosure shall be deemed "not immediately next to" other geometric or textual matter if the distance between the disclosure and the other matter is as great as the distance between the outside left edge of the rule of the rectangle enclosing the health warning required by 15 U.S.C. 1333 and the top left point of the letter "S" in the word "SURGEON" in that health warning; and

5. For audiovisual or audio advertisements, including but not limited to advertisements on videotapes, cassettes, discs, or the Internet; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the disclosure shall appear on the screen at the end of the advertisement in the format described above for a length of time and in such a manner that it is easily legible and shall be announced simultaneously at the end of the advertisement in a manner that is clearly audible.

Provided, however, that in any advertisement that does not contain a visual component, the disclosure need not appear in visual format, and in any advertisement that does not contain an audio component, the disclosure need not be announced in audial format.

Nothing contrary to, inconsistent with, or in mitigation of any disclosure provided for in this part shall be used in any advertisement. Provided, however, that this provision shall not prohibit respondent from truthfully representing, through the use of such phrases "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, that a tobacco product has no additives, where such representation is accompanied by the disclosure mandated by this order.

II.

It is further ordered, That respondent shall:

A. Instruct each R.J. Reynolds Tobacco Company sales representative to remove or sticker with the disclosure specified in Part I of this order any advertisement for Winston cigarettes displayed in a retail establishment where such advertisement, through the use of such phrases as "no additives," "100% tobacco," "additive-free," "pure tobacco," "does not contain additives," or substantially similar terms, represents that Winston cigarettes have no additives and does

not include the disclosure specified in Part I of this order. The sales representative may remove or sticker such advertisements in the ordinary course of performing his or her duties, but in any event, shall remove or sticker all such advertisements in each of the retail establishments for which the representative is responsible no later than July 15, 1999.

B. For five (5) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying 1) a copy of each different version of the letter instructing R.J. Reynolds Tobacco Company sales representatives to remove or sticker advertising pursuant to subparagraph A of this Part; and 2) a list of the name and address of each R.J. Reynolds Tobacco Company sales representative to whom such a letter was sent.

III.

It is further ordered, That respondent R.J. Reynolds Tobacco Company, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements containing the representation;

B. For any representation covered by this order that is not accompanied by a disclosure set forth in Part I of this order:

1. All materials that were relied upon in disseminating the representation; and

2. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

It is further ordered, That respondent R.J. Reynolds Tobacco Company, and its successors and assigns, shall deliver a copy of this order, in either paper or electronic form, to all current and future principals, officers, and directors, and to all current and future managers, employees, agents, and representatives having responsibilities with

respect to the subject matter of this order. Respondent shall secure from each such person either 1) a signed and dated statement acknowledging receipt of the order; or 2) a dated, electronic acknowledgment indicating that the person has read, downloaded or printed the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying a copy of each signed statement acknowledging receipt of the order or a record, in either electronic or paper form, of each electronic acknowledgment of receipt of the order.

V.

It is further ordered, That respondent R.J. Reynolds Tobacco Company and its successors and assigns shall notify the Commission at least thirty (30) days prior to the sale of any Winston cigarettes for which the composition or formula has been changed in such a manner as may affect compliance obligations arising under this order, including but not limited to the addition of any additives to any variety of Winston cigarettes. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C.

VI.

It is further ordered, That respondent R.J. Reynolds Tobacco Company and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of

Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C.

VII.

It is further ordered, That respondent R.J. Reynolds Tobacco Company, and its successors and assigns shall, within sixty (60) days after the date of 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 they have complied with this order.

VIII.

This order will terminate on August 16, 2019, 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 Part 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 Part.

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 Part as though the complaint had never been 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.

All taste. No bull.



Winston

No additives in our tobacco
does NOT mean a safer cigarette.

16 mg "tar", 1.1 mg nicotine av per cigarette by FTC method.

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



100% tobacco
No additives



Ex. 1

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

**"I get enough
bull at work.
I don't need to smoke it."**

**No additives or any chemicals.
Does NOT require a prescription.**

**No Additives,
No Bull.**

WILLIAMS
WILLIAMS
WILLIAMS

PROFESSIONAL TASTE

EXHIBIT 2

Ex. 2

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE

I have voted to issue this consent order because the remedies, including a corrective statement in Winston advertisements for one year, are warranted by the facts of this case. The nationwide advertising campaign for "no additives" Winston cigarettes, launched in August 1997, is unusually extensive. Based on my reading of the record, I am convinced that many consumers interpret ads containing express "no additives" claims to mean that Winstons are not as harmful as other cigarettes, and such a health claim is presumably important to consumers in their purchasing decisions. Based on the extent and magnitude of the ongoing ad campaign and the demonstrated strength of the implied health claim, I am willing to infer that the claim will linger in the minds of consumers for one year absent a corrective statement. I am particularly concerned about a lingering effect of the ads because of the well-recognized health risks of smoking. Under these circumstances, I support the corrective advertising remedy contained in the consent order.

Complaint

128 F.T.C.

IN THE MATTER OF

FEDERATED DEPARTMENT STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3893. Complaint, Aug. 20, 1999--Decision, Aug. 20, 1999*

This consent order, among other things, prohibits Federated Department Stores, Inc., the Ohio-based retail business, from misrepresenting to consumers who have filed petitions for bankruptcy protection: that reaffirmation agreements will be filed in bankruptcy court; that any reaffirmation agreement is legally binding on the consumer; or that any action will be taken to collect any debt that has been legally discharged in bankruptcy proceedings.

Participants

For the Commission: *Randall Brook, Charles Harwood and Genevieve Fu.*

For the respondent: *Mark Herrmann, Jones, Day, Reavis & Pogue, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Federated Department Stores, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Federated Department Stores, Inc., is a Delaware corporation with its principal office or place of business at 7 West Seventh Street, Cincinnati, Ohio. Respondent conducts relevant business through, among other affiliates or subsidiaries, FDS National Bank, The Bon, Inc., Bloomingdales, Inc., Burdines, Inc., Rich's Department Stores, Inc., Macy's East, Inc., Macy's West, Inc., and Stern's Department Stores, Inc.

2. Respondent, through one or more of its affiliates, is engaged in, among other things, the consumer retail business. In the course and conduct of its business, respondent has regularly extended credit (hereinafter "consumer credit accounts") for the purpose of facilitating consumers' purchase of respondent's products and services.