

Complaint

IN THE MATTER OF

**SANTA FE NATURAL TOBACCO COMPANY,
INC.**

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

Docket C-3952; File No. 9923026
Complaint, June 12, 2000--Decision, June 12, 2000

This consent order requires Respondent Santa Fe Natural Tobacco Company, Inc. to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." The order exempts Santa Fe from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Santa Fe possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. Respondent is also required to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." The disclosure must be included in all advertising and on packaging for herbal smoking products that represent that the product has no tobacco, unless respondent possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks.

Participants

For the Commission: *Michael Ostheimer, Shira Modell, Matthew D. Gold, Linda K. Badger, Kerry O'Brien, C. Lee Peeler, and BE.*

For the Respondents: *C. Randall Nuckolls and Mark R. Heilbrun, Long Aldridge & Norman.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Santa Fe Natural Tobacco Company, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade

Complaint

Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation with its principal office or place of business at 1368 Cerrillos Road, Santa Fe, NM 87505-3507.
2. Respondent has advertised, promoted, offered for sale, sold and distributed cigarettes, including Natural American Spirit tobacco cigarettes and Natural American Spirit herbal 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 disseminated or caused to be disseminated advertisements for Natural American Spirit tobacco cigarettes, including but not necessarily limited to the attached Exhibits A through C. These advertisements contain the following statements:

(A) "If you use tobacco the way Native Americans intended ...

or if you smoke out of choice rather than habit ...

Here is an alternative you should try.

**100% FREE OF CHEMICAL ADDITIVES
• NATURAL TOBACCO AND CIGARETTES**

[Depiction of Natural American Spirit cigarettes]

Made from 100% Chemical-Additive-Free, Whole Leaf,
Natural Tobacco
and nothing else."

Complaint

(Exhibit A, June - August 1997 magazine advertisement) (emphasis in original).

(B) "If you smoke *because you enjoy smoking*, Natural American Spirit is the natural tobacco alternative you should try.

Natural American Spirit cigarettes are made from 100% chemical-additive-free, natural tobacco ... and nothing else."

(Exhibit B, Fall 1997 magazine advertisement).

(C) "100% Chemical-Additive-Free
Whole Leaf, Natural Tobacco Products"

(Exhibit C, Winter 1996 - 97 magazine advertisement).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that smoking Natural American Spirit tobacco cigarettes, because they contain no additives or chemicals, is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives or chemicals.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 5, 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 5, at the time the representation was made. Among other reasons, the smoke from Natural American Spirit tobacco cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.

Complaint

Therefore, the representation set forth in Paragraph 6 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.

THEREFORE, the Federal Trade Commission this twelfth day of June, 2000, has issued this complaint against respondent.

By the Commission.

Complaint Exhibits

Complaint Exhibits

didn't happen a hundred years ago—they are still happening today.

After five hundred years of White exploitation, there is a very real feeling among some Native people that, now that Whites have taken everything else, we want their religion, too. Louis always spoke of such things as the sacred pipe and the drum as his people's "instruments of worship" and the ceremonies as their "ways of worship." The statement is often made that these "ways of worship" do not constitute a religion. This is usually stated in the positive sense—that these ways are not reliant on a written code and that they are a way of life, as opposed to something outside of daily life. Yet, I believe such statements can lead some people to want to borrow bits and pieces of these ways of worship as spiritual "exercises." Within Native communities, the ceremonies are used to help heal broken families, alcoholism, and all the terrible effects of oppression. It should not surprise us if some Natives are reluctant to welcome Whites who want to use Native sacred instruments of worship because it is now the "spiritually cool" thing to do.

The bridge Louis wanted to create was one of mutual respect. If calling his people's spiritual ways a religion afforded them the same respect as the so-called Great Religions, then he would call them a religion. It bothered him to no end that money was being charged for his people's sacred ceremonies. He likened it to money being charged to take part in a Catholic Mass.

Many aspects of the New Age approach to Native American spirituality both amused and troubled Louis. The idea that picking up a drum and performing certain rituals learned in one or two weekend workshops could make one a shaman was an utterly foreign concept to him. Within most Native traditions, a shaman is one who is chosen or deemed worthy by the spirits. The ease with which some people claimed to have obtained animal spirit guides was also amusing to Louis. Almost everyone today has an eagle, bear, or other equally majestic animal as a guide, but few understand those powers. Bear medicine, for example, was very powerful—something obtained through a dangerous encounter with a bear, or through a lifetime of observing and living and breathing Bear. These days, most people's knowledge of bears is limited to images from Disney cartoons or, at best, from Discovery documentaries; few people are willing to make any effort to learn more—much less to make the sacrifices necessary to obtain and maintain Bear medicine.

Something Louis stressed was that the

If you use tobacco the way Native Americans intended ... **Here is an alternative you should try.** ... or if you smoke out of choice rather than habit ...

100% FREE OF CHEMICAL ADDITIVES • NATURAL TOBACCO AND CIGARETTES



Made from 100% Chemical-Additive-Free, Whole Leaf, Natural Tobacco and nothing else.

First time customers receive free shipping and handling on pre-paid orders for a full carton or more. Or send \$1.00 for each sample of the Natural American Spirit® product checked below. Only one sample of each product per household:

☐ pack of Mild Cigarettes ☐ pack of Regular Filter Cigarettes ☐ pack of Menthol Cigarettes ☐ pack of Non-Filter Cigarettes

☐ I certify that I am of legal age to purchase tobacco products. ☐ pouch of rolling tobacco to make my own cigarettes

NAME _____ Charge telephone orders for cartons or for sample orders (\$4) to MC/V: 1-(800)-332-5595

STREET _____

CITY/STATE _____ ZIP _____

Natural American Spirit, PO Box 25140, Santa Fe, NM 87504

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

SD39

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Dan Alford, Matthew Bronson, Lisa Faithorn, Peter Gold, Michael Harner, Joanna Macy, Margaret Mackenzie, Mutombo Mpanya, Richard Shapiro, Jody Timms



Complaint Exhibits

**THE SECRET TO OUR
GREAT TASTING
CIGARETTES?**

**OUR
INGREDIENTS...**

If you smoke *because you enjoy smoking*, Natural American Spirit is the natural tobacco alternative you should try.

Natural American Spirit cigarettes are made from 100% chemical-additive-free natural tobacco... and nothing else. The result is great tobacco flavor, with no chemical aftertaste. Discover the slower-burning, longer-lasting, *all-natural* smoking experience already enjoyed by hundreds of thousands of satisfied smokers across America.

Try them yourself — Call today for samples! If you are of legal age to purchase tobacco products, you can order sample packs at only \$1 each (Limit: 1 pack each of Regular, Mild, Menthol, or Non-Filter). We'll also send you a list of retailers in your area who carry Natural American Spirit products.

**For SAMPLES and more INFORMATION
Call toll-free:
1 (800) 332-5595
ext. 6100**

Natural Tobacco... nothing else. 100% Free of Chemical Additives.

SURGEON GENERAL'S WARNING: Smoking hu

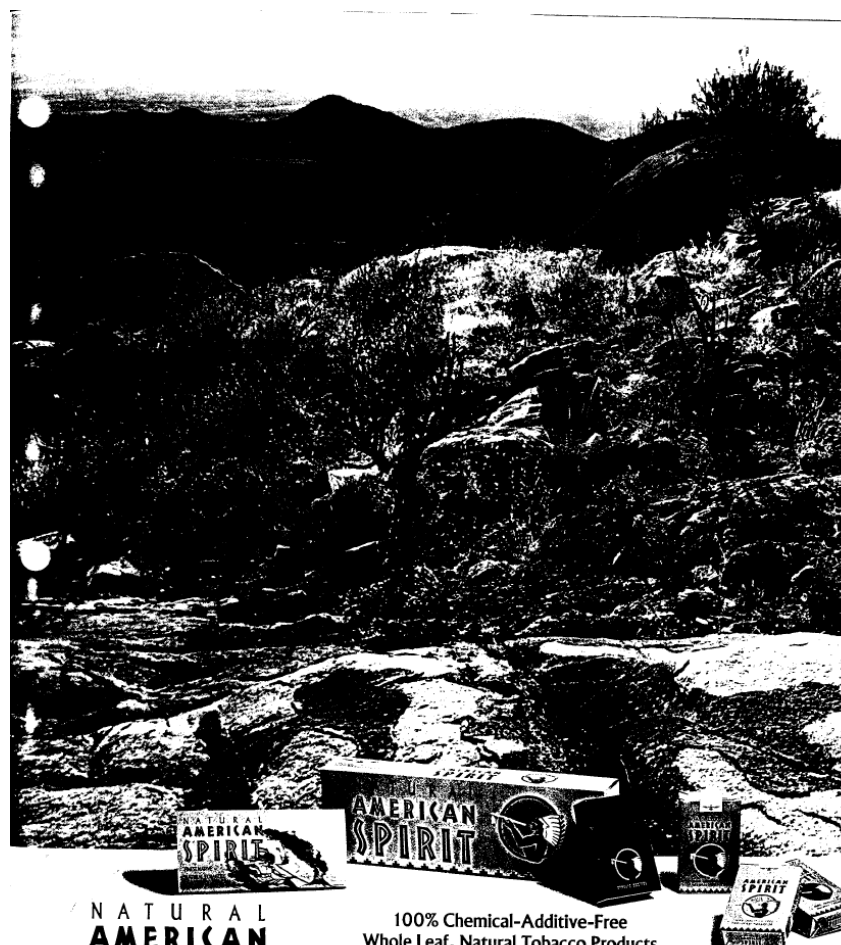
Santa Fe Natural

Exhibit B

Santa Fe, NM 87504



Complaint Exhibits



**NATURAL
AMERICAN
SPIRIT**

100% Chemical-Additive-Free
Whole Leaf, Natural Tobacco Products
Regular filter, Mild filter, Non-filter,
and Menthol filter Cigarettes;
Pouch Tobacco, and Pow-Wow Blend

and A List of Stores in Your Area Please
5595 or Send Your Name and Address to:
NATURAL TOBACCO COMPANY
40, SANTA FE, NM 87504

Exhibit C

SURGEON GENERAL
Causes Lung Cancer
Emphysema, And A

Decision and Order

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 attorney, 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 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation with its principal office or place of business at 1368 Cerrillos Road, Santa Fe, NM 87505-3507.

Decision and Order

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 Santa Fe Natural Tobacco Company, Inc., 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 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.

Decision and Order

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. "Herbal smoking product" shall mean cigarettes, cigars, cigarillos, little cigars and any other product made or derived from plant material other than tobacco, that is intended for human smoking, including any component, part, or accessory of an herbal smoking product.

7. "Clearly and prominently" shall mean:

- a. With regard to advertisements for tobacco and herbal smoking products, in black type on a solid white background, or in white type 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 the background color. The color of the ruled rectangle shall be the same color as that of the type; and
- b. (i) With regard to advertisements for tobacco products, 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 for tobacco cigarettes 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 for tobacco cigarettes mandated by 15 U.S.C. § 1333.

Decision and Order

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 for tobacco cigarettes 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 for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- (ii) With regard to advertisements for herbal smoking products, centered, both horizontally and vertically, in a ruled rectangle. The area enclosed by the rectangle shall be no less than the size of the area enclosed by the ruled rectangle surrounding the health warnings for tobacco cigarettes mandated by 15 U.S.C. § 1333. The width of the rule forming the rectangle shall be no less than the width of the rule required for the health warnings for tobacco cigarettes 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 the area required for health warnings for tobacco cigarettes by such amended, modified, or superseding law, and the width of the rule forming the rectangle shall be no less than the width of any surrounding rule required for health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- c. In the same type style and type size as that required for health warnings for tobacco cigarettes pursuant to 15 U.S.C. § 1333.

Decision and Order

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 health warnings for tobacco cigarettes by such amended, modified, or superseding law; and

- d. 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
- e. 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.

Decision and Order

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 audio format.

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 Natural American Spirit tobacco 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, bold font 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 beginning no later than thirty (30) days after the date of service of this order, in any advertisement that, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, represents that a tobacco product has no additives or chemicals.

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

Decision and Order

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

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 as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, that a tobacco product has no additives or chemicals, where such representation is accompanied by the disclosure mandated by this provision.

II.

IT IS FURTHER 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 any herbal smoking product in or affecting commerce, shall display in advertisements and on packaging as specified below, clearly and prominently, the following disclosure (including the line breaks, punctuation and capitalization illustrated):

In advertisements and on packaging for herbal cigarettes:

Herbal cigarettes are dangerous to your health.
They produce tar and carbon monoxide.

Decision and Order

In advertisements and on packaging for other herbal smoking products:

Smoking this product is dangerous to your health.
It produces tar and carbon monoxide.

These disclosures shall be displayed beginning no later than thirty (30) days after the date of service of this order, in any advertisement and on any package that, through the use of such phrases as "no tobacco," "tobacco-free," "herbal," or substantially similar terms, represents that an herbal smoking product has no tobacco.

Provided, that the above disclosures shall not be required if respondent possesses and relies upon competent and reliable scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. 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 as "no tobacco," "tobacco-free," "herbal," or substantially similar terms, that an herbal smoking product has no tobacco, where such representation is accompanied by the disclosure mandated by this provision.

III.

IT IS FURTHER ORDERED that respondent shall:

- A. Provide, within forty-five (45) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A to each retailer, distributor, or other purchaser for resale to whom respondent has supplied Natural American Spirit tobacco cigarettes since January 1, 1998. Respondent shall send the notice by first class mail. The mailing shall not include any other documents.

Decision and Order

- B. Discontinue dealing with any retailer, distributor, or other purchaser for resale once respondent has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has continued to use or disseminate any of respondent's advertisements for any of respondent's tobacco products that:
1. represents, through the use of such phrases as "no additives," "no chemicals," "additive-free," "chemical-free," "chemical-additive-free," "100% tobacco," "pure tobacco," or substantially similar terms, that the tobacco products have no additives or chemicals; and
 2. does not include the disclosure specified in Part I of this order

unless, upon notification by respondent, such retailer, distributor, or other purchaser for resale immediately ceases using or disseminating such advertisements. If, after such notification, respondent obtains actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such retailer, distributor, or other purchaser for resale has not permanently ceased using or disseminating such advertisements, respondent must immediately and indefinitely, discontinue dealing with such retailer, distributor, or other purchaser for resale, until such time as respondent has obtained written assurance and verified that such retailer, distributor, or other purchaser for resale has permanently ceased using or disseminating such advertisements.

Decision and Order

- C. For five (5) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:
1. copies of all notification letters sent to retailers, distributors, or other purchasers for resale pursuant to subparagraph A of this part; and
 2. copies of all communications with retailers, distributors, or other purchasers for resale pursuant to subparagraph B of this part.

IV.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., 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 and packaging containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. 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.

Decision and Order

V.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., 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.

VI.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to the sale of any of its tobacco products or herbal smoking products 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 such products. 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

Decision and Order

Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., 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. 20580.

VIII.

IT IS FURTHER ORDERED that respondent Santa Fe Natural Tobacco Company, Inc., 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.

IX.

This order will terminate on June 20, 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

Decision and Order

violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not effect 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.

By the Commission.

ATTACHMENT A

[To be printed on Santa Fe Natural Tobacco Company, Inc. letterhead]

[date]

Dear [retailer, distributor, or other purchaser for resale]:

Decision and Order

This letter is to inform you that Santa Fe Natural Tobacco Company, Inc. recently reached a settlement agreement with the Federal Trade Commission ("FTC") concerning certain past advertising for Natural American Spirit cigarettes. The FTC has been reviewing "no additive" claims for cigarettes and other tobacco products as a result of concerns that such representations might mislead consumers to believe that tobacco products without additives are safer than tobacco products containing additives. As part of this review, the FTC conducted an investigation of past advertising for Natural American Spirit cigarettes and alleged that certain of our past advertising was misleading. Although we do not admit the FTC's allegations, we have agreed to notify our distributors, retailers and others who sell our cigarettes to consumers that we will be adding a new disclosure statement to certain advertisements making a "no additive" claim and that they should discontinue the use of certain old advertising materials not containing the new disclosure language.

The FTC Agreement

The FTC claimed that because we state that the tobacco used in Natural American Spirit cigarettes contains no additives or chemicals, we made implied, unsubstantiated claims that smoking our cigarettes is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives or chemicals. Beginning in late 1997, we voluntarily began placing the statement "To our knowledge there is no research indicating cigarettes containing additive-free tobacco are safer than cigarettes with tobacco containing additives" in certain ads for Natural American Spirit tobacco cigarettes. Since early 1998, we have also included the statement "We make no representation expressed or implied that these cigarettes are any less hazardous than any other cigarettes" on the packaging of Natural American Spirit cigarettes. We have now agreed to revise our disclosure in certain advertisements for Natural American Spirit tobacco cigarettes to state the following:

Decision and Order

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

Our Notification Obligations

In addition to agreeing to revise our disclosure statement, we have also agreed to request that you discontinue using, relying on or distributing certain old Natural American Spirit advertisements or promotional materials in your possession that do not contain the new disclosure statement. Certain existing point of sale items may continue to be used without the new disclosure statement while other items will need to be discontinued or removed unless a sticker is applied containing the new disclosure statement. In the near future, we will provide instructions for dealing with these existing items and we will be sending you new Natural American Spirit promotional materials. If you are a distributor, we also ask that you make this information available to your Natural American Spirit dealers who may have existing materials so that they can take similar action. The FTC agreement requires us to cease doing business with even our most loyal customers in the event they continue using noncompliant materials, so please help us make this transition in an orderly and prompt fashion.

If you have any questions, you may call us at (xxx) xxx-xxxx. We apologize for any inconvenience this may cause you and thank you for your assistance.

Sincerely,
Robin Sommers, President
Santa Fe Natural Tobacco Company, Inc.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Santa Fe Natural Tobacco Company, Inc. ("Santa Fe").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves an alleged misleading representation for Natural American Spirit cigarettes, which Santa Fe has advertised as containing no additives. According to the FTC complaint, through these advertisements, Santa Fe represented that because Natural American Spirit cigarettes contain no additives, smoking them is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives. The complaint alleges that Santa Fe did not have a reasonable basis for the representation at the time it was made. Among other reasons, according to the complaint, the smoke from Natural American Spirit cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide¹.

The proposed consent order contains provisions designed to prevent Santa Fe from engaging in similar acts and practices in the future.

¹ In late 1997, Santa Fe voluntarily did begin placing the statement, "To our knowledge there is no research indicating cigarettes containing additive-free tobacco are safer than cigarettes with tobacco containing additives" in certain ads for Natural American Spirit tobacco cigarettes. Since early 1998, Santa Fe has also included the statement "We make no representation expressed or implied that these cigarettes are any less hazardous than any other cigarettes" on the packaging of Natural American Spirit cigarettes.

Analysis to Aid Public Comment

Part I of the order requires Santa Fe to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." (The order requires a similar disclosure in advertising for other tobacco products Santa Fe advertises as having no additives.) The disclosure must be included in all tobacco advertising that represents (through such phrases as "no additives" or "100% tobacco") that the product has no additives. This Part exempts Santa Fe from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Santa Fe possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. In general, the disclosure required by Part I must be in the same type size and style as the Surgeon General's warning and must appear within a rectangular box that is no less than 40% of the size of the box containing the Surgeon General's warning.

Part II of the order requires Santa Fe to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." (The order requires a similar disclosure for other herbal smoking products.) The disclosure must be included in all advertising and on packaging for herbal smoking products that represent (through such phrases as "no tobacco," "tobacco-free," or "herbal") that the product has no tobacco. This Part also contains an exemption from the disclosure requirement if Santa Fe possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. In general, the disclosure required by Part II must be in the same type size and style as the Surgeon General's warning and for advertisements must appear within a rectangular box that is the same size as the box containing the Surgeon General's warning.

Analysis to Aid Public Comment

Part III requires Santa Fe to send a letter to its purchasers for resale notifying them that they should discontinue the use of certain existing Natural American Spirit cigarette advertisements and promotional materials and that Santa Fe is required to stop doing business with purchasers for resale that do not comply with this request.

Parts IV VIII of the order require Santa Fe to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of its personnel; to notify the Commission of changes in the composition or formula of Natural American Spirit cigarettes that may affect the order; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

QVC, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3955; File No. 9823152
Complaint, June 14, 2000--Decision, June 14, 2000

This consent order addresses representations by respondent Quigley Corporation concerning the effectiveness of its Cold-Eeze Zinc Lozenges, Cold-Eezer Plus Zinc Gluconate Lozenges, and Kids-Eeze Bubble Gum ("Kids-Eeze") products. The consent order prohibits the respondent from making representations that its products prevent users from contracting colds and pneumonia; will treat allergies; will reduce the severity of colds in children; and that Kids-Eeze will reduce the severity of cold symptoms in children unless it possesses and relies upon competent and reliable scientific evidence that substantiates such representations. The consent order also prohibits the respondent from making any representation that any food, drug, or dietary supplement can or will cure, treat, or prevent any disease, or have any effect on the structure or function of the human body, unless it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Participants

For the Commission: *Daniel Kaufman, Lisa B. Kopchik, C. Lee Peeler and Michelle K. Rusk.*

For the Respondent: *Lewis Rose, Arent Fox Plotkin & Kahn, PLLC; Alan K. Palmer, Cooper, Carvin & Rosenthal; Glenn A. Mitchell, Stein, Mitchell & Mezines; and Ed Glynn, Venable, Baetjer, Howard & Civiletti, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that QVC, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing