

Complaint

IN THE MATTER OF

STOKER, INC.

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

Docket C-4013; File No. 0123015
Complaint, May 31, 2001--Decision, May 31, 2001

This consent order addresses Respondent Stoker, Inc.'s manufacturing, packaging, importing, and advertising of smokeless tobacco products; these activities are subject to the Comprehensive Smokeless Tobacco Health Education Act of 1986 -- and Commission regulations promulgated pursuant to that statute -- and the Act and the regulations require smokeless tobacco product packages and advertisements to bear specified health warnings. The order, among other things, prohibits the respondent from violating any provision of the Smokeless Tobacco Act or the Commission regulations. It also requires the respondent to keep copies of relevant packaging and advertisements and to provide copies of the order to certain of its personnel.

Participants

For the Commission: *Michael Ostheimer, Maame A. Gyamfi, Anne Maher, C. Lee Peeler, and Russell Porter.*

For the Respondent: *Benjamin O. Tayloe, Jr., Patton Boggs, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Stoker, 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 Stoker, Inc., is a Tennessee corporation with its principal office or place of business at 3846 Sharon Highway 89, Dresden, Tennessee, 38225-1756.

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2. Respondent has manufactured, packaged, and imported for sale or distribution within the United States, and has advertised within the United States, smokeless tobacco products. These activities are subject to the Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. §§ 4401, *et seq.* (“Smokeless Tobacco Act”), and the regulations promulgated pursuant thereto, 16 C.F.R. §§ 307, *et seq.* (“regulations”). The Smokeless Tobacco Act and the regulations require smokeless tobacco product packages and advertisements bear specified health warnings. 15 U.S.C. § 4402, 16 C.F.R. § 307.4.

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 manufactured, packaged, and imported for sale or distribution within the United States, and has advertised within the United States, smokeless tobacco products, including but not necessarily limited to products, the packaging and advertising of which are attached as Exhibits A through D, and bear health warnings in the following manner:

- A. A label for a sixteen ounce (16 oz.) package of Red Label smokeless tobacco. The health warning statement is printed in 5 point type. (Exhibit A).
- B. A label for a sixteen ounce (16 oz.) package of Wintergreen smokeless tobacco. The health warning statement is printed in 5 point type. (Exhibit B).
- C. A package intended for use as a retail dispenser of individual packages of Our Pride Peach Chewing Tobacco. The health warning statement is located on the top rear of the dispenser. When the dispenser is opened and displayed as intended, a flap in front of the warning is folded up and the health warning is not visible to the public from the dispenser’s normal viewing position. (Exhibit C).

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D. A point-of-sale advertisement for Oliver Twist smokeless tobacco with a display area measuring 20 ¼ square inches. The health warning statement is printed in 4 ½ point type and appears within a circle whose diameter is one-half inch. (Exhibit D).

5. Through the means described in Paragraph 4, including but not necessarily limited to Exhibits A and B, respondent has distributed or caused to be distributed in commerce, smokeless tobacco products, the packaging of which did not bear health warning statements in conspicuous and legible type, as required by the Smokeless Tobacco Act, 15 U.S.C. § 4402(b)(1)(B), and the regulations, 16 C.F.R. § 307.6(b).

6. Through the means described in Paragraph 4, including but not necessarily limited to Exhibit C, respondent has distributed or caused to be distributed in commerce, smokeless tobacco products that did not bear health warning statements in a conspicuous and prominent place on the package, as required by the Smokeless Tobacco Act, 15 U.S.C. § 4402(b)(1)(A), and the regulations, 16 C.F.R. § 307.6(a).

7. Through the means described in Paragraph 4, including but not necessarily limited to Exhibit D, respondent has advertised smokeless tobacco products the advertising of which did not bear health warning statements in conspicuous and legible type and with a circle of the size determined by the Federal Trade Commission, as required by the Smokeless Tobacco Act, 15 U.S.C. § 4402(b)(2)(A) and (C), and the regulations, 16 C.F.R. § 307.7(a)-(c).

8. Since 1987, respondent manufactured, packaged, or imported smokeless tobacco products while failing to submit a plan to the Federal Trade Commission that specified the method respondent would use to rotate, display, and distribute the health warning statements on its packages and advertisements, as required by the

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Smokeless Tobacco Act, 15 U.S.C. § 4402(d), and the regulations, 16 C.F.R. §§ 307.4(c), 307.11-307.12.

9. The acts and practices of respondent alleged in this complaint have constituted, and now constitute, violations of the Smokeless Tobacco Act and the implementing regulations, and by virtue of Section 5 of the Smokeless Tobacco Act, 15 U.S.C. § 4404, constitute violations of Section 5 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this thirty-first day of May, 2001, has issued this complaint against respondent.