

Complaint

IN THE MATTER OF

ENHANCED VISION SYSTEMS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4265; File No. 092 3010**Complaint, September 3, 2009 - Decision, September 3, 2009*

This consent order addresses the respondent, Enhanced Vision Systems, Inc., a developer of technology to assist the visually impaired. The complaint alleges that respondent violated Section 5(a) of the FTC Act through claiming false or misleading information on where its products were produced. The respondent advertised the products were purportedly “Made in the U.S.A.”, but a significant portion of their components are of foreign origin. The consent order contains a provision designed to prevent respondent from engaging in similar acts and practices in the future. The order prohibits respondent from representing the extent to which its vision-related products are made in the United States unless the representation is true and not misleading.

Participants

For the *Commission*: *Laura Schneider*.

For the *Respondents*: *Amy Ralph Mudge* and *Randal Shaheen, Arnold and Porter, LLP*

COMPLAINT

The Federal Trade Commission, having reason to believe that Enhanced Vision Systems, Inc. (“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 Enhanced Vision Systems, Inc. is a California corporation with its principal office or place of business at 5882 Machine Drive, Huntington Beach, California 92649.
2. 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.

Complaint

3. Respondent advertises, labels, develops, manufactures, offers for sale, sells, and/or distributes goods to the public throughout the United States, including vision enhancement products such as the Merlin desktop magnifier and Acrobat 3-in-one LCD portable video magnifier, and the Merlin and Acrobat family of products. Respondent sells these products to the public through dealers and retail outlets.

4. Respondent has disseminated or has caused to be disseminated advertisements, including in national print publications, on shipping boxes, and on data sheets provided to dealers and consumers, for certain of its products, including but not necessarily limited to the attached Exhibits A through E. The advertisements contain the following statements or depictions:

A. Enhanced Vision ad featuring the 3-in-1 Acrobat Magnifier, Exhibit A

“made in the USA”

Newsweek, May 12, 2008 and June 16, 2008

B. Enhanced Vision ad featuring the Desktop Merlin Magnifier, Exhibit B

“made in the USA”

AAA Journey - Maine, New Hampshire, Vermont,
September 2008

C. Enhanced Vision Ad, featuring the Desktop Merlin Magnifier, the handheld Amigo magnifier, and the 3-in-one Acrobat Magnifier, Exhibit C

“made in the USA”

VFW Magazine, August 2008

D. Acrobat LCD Data Sheet, Exhibit D

In text: “Acrobat, like all Enhanced Vision products is made in the U.S.A.”

Complaint

Under Enhanced Vision Logo and contact information:
“MADE IN THE U.S.A.”

E. Merlin Plus Data Sheet, Exhibit E

1. Under Enhanced Vision Logo and contact information in red ink: “Made in the USA”

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that certain of its vision enhancement products, including the Merlin and Acrobat family of products, are made in the United States.

6. In truth and in fact, a significant portion of the components of such products is, or has been, of foreign origin. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. 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 third day of September, 2009, has issued this complaint against respondent.

By the Commission.

Complaint

Exhibit A



Your vision is your independence.

With Enhanced Vision, you can get both back!

Now you can read, watch TV, and function outside your home independently with affordable, high quality, made in the USA, low vision solutions.

Enhanced Vision offers the widest selection of innovative low vision aids, from desktop to portable devices. One simple call will get you one step closer to getting your independence back.

The 3-in-1 Acrobat magnifier

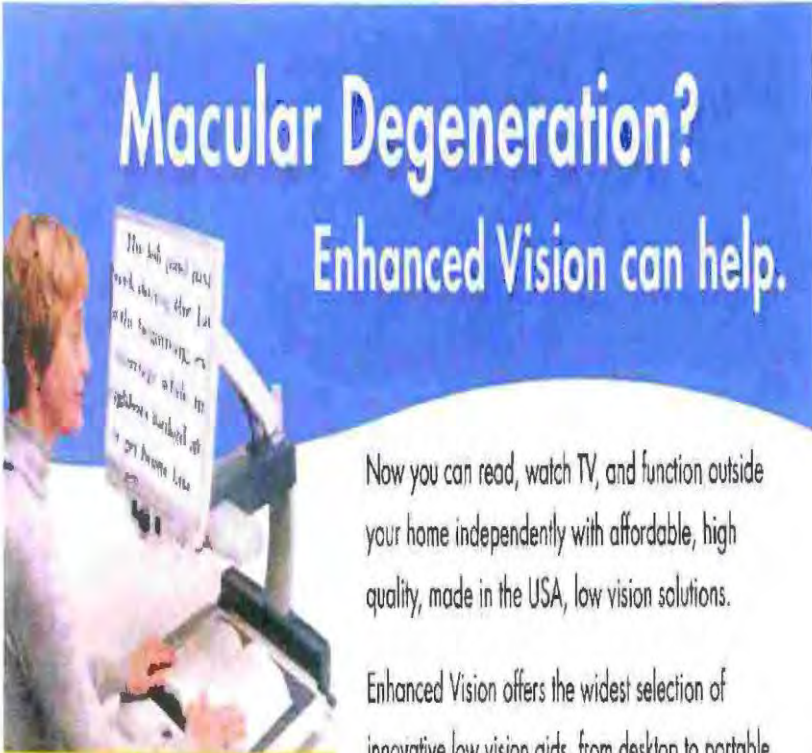
enhanced vision

More choices. More solutions.
You'll see
(888) 811-3161

Call (888) 811-3161 today for a no obligation demonstration.
Or visit us at EnhancedVision.com

Newsweek 50 Plus Edition - 5/12/08 & 6/16/08 Issues - 4.653 x 4.375 inches

Complaint

Exhibit B

Macular Degeneration?
Enhanced Vision can help.

Now you can read, watch TV, and function outside your home independently with affordable, high quality, made in the USA, low vision solutions.

Enhanced Vision offers the widest selection of innovative low vision aids, from desktop to portable devices. One simple call will get you one step closer to getting your independence back.

The desktop **Merlin** magnifier

enhanced
vision

More choices. More solutions. You'll see.

EnhancedVision.com

Call (888) 811-3161 today
for a no obligation demonstration.

AAA members receive \$50 off!

Complaint

Exhibit C



Complaint

Exhibit D



Complaint

12 The above will be reported

Complaint

Do not write on this page.

Complaint

13 The patient will be reported

Complaint

Exhibit E

Complaint

12 The above will be reported

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“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 that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondent with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*; and

The Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said consent agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in the complaint, or that any of 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 has reason to believe that the Respondent has violated the 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 consent agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in 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 Enhanced Vision Systems, Inc. is a California corporation with its principal office or place of business at 5882 Machine Drive, Huntington Beach, California 92649. Respondent assembles its vision-related products from domestic and foreign components at that location.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the

Decision and Order

Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, “Respondent” shall mean Enhanced Vision Systems, Inc., and its successors and assigns and its officers, agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that Respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, marking, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any vision-related product or package, in or affecting commerce, shall not represent, in any manner, expressly or by implication, the extent to which any such product or package is made in the United States, unless the representation is true and not misleading.

II.

IT IS FURTHER ORDERED that Respondent Enhanced Vision Systems, 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 Commission for inspection and copying:

- A. All advertisements, labeling, packaging, and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation;

Decision and Order

- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its 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; and
- D. All acknowledgments of receipt of this order, obtained pursuant to Part III.

III.

IT IS FURTHER ORDERED that for a period of three (3) years after the date of issuance of this order, Respondent Enhanced Vision Systems, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of 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.

IV.

IT IS FURTHER ORDERED that Respondent Enhanced Vision Systems, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in respondent or any business entity that respondent directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this order, including but not limited to formation of a new business entity; a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or 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 business or corporate name or address. *Provided, however,* that, with respect to any proposed change about which respondent learns less than thirty (30) days prior to

Decision and Order

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.

V.

IT IS FURTHER ORDERED that Respondent Enhanced Vision Systems, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

VI.

This order will terminate on September 3, 2029, or twenty (20) years from the most recent date that the United States or the 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

Analysis to Aid Public Comment

later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Enhanced Vision Systems, Inc., a corporation (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for reception 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 respondent’s marketing and sale of vision enhancement products purportedly “Made in the U.S.A.” According to the FTC complaint, respondent represented that certain of its vision enhancement products were made in the United States, when, in fact, a significant portion of their components are of foreign origin. See Enforcement Policy Statement on U.S. Origin Claims (1997) (“A product that is all or virtually all made in the United States will ordinarily be one in which all significant parts and processing that go into the product are of U.S. origin.”). Thus, the complaint alleges that respondent’s claim is false or misleading in violation of Section 5(a) of the FTC Act.

The proposed consent order contains a provision designed to prevent respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from

Analysis to Aid Public Comment

representing the extent to which its vision-related products are made in the United States unless the representation is true and not misleading. Parts II through V require respondent to keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; to provide copies of the order to certain of its personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission and respond to other requests from FTC staff. Part VI 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. 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

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

Docket No. C-4266; File No. 092 3035
Complaint, October 2, 2009 - Decision, October 2, 2009

This consent order addresses respondent Constellation Brands, Inc., an International producer and marketer of wine, beer, and spirits. The complaint alleged unsubstantiated claims made in advertising for the beverage alcohol product “Wide Eye” schnapps. According to the complaint, the company represented, expressly or by implication, that consumers who drink “Wide Eye” will remain alert when consuming alcohol, but could not substantiate the representation at the time it was made. Therefore, the representation was, and is, in violation of Section 5 of the FTC Act by being false and misleading. The consent order prohibits the company from advertising that consumers who drink its product will remain alert when consuming alcohol unless that representation is true, non-misleading, and, at the time it is made, the company possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Participants

For the *Commission*: Janet M. Evans.

For the *Respondents*: Marc E. Sorini, McDermott, Will & Emery, LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Constellation Brands, Inc. 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 Constellation Brands, Inc. (“respondent”) is a Delaware corporation with its principal office or place of business at 207 High Point Drive, Building 200, Victor, NY 14561.