

Complaint

IN THE MATTER OF

MARS PETCARE US, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4599; File No. 152 3229**Complaint, December 12, 2016 – Decision, December 12, 2016*

This consent order addresses Mars Petcare US, Inc.'s advertising, marketing, and sale of dog food under the Eukanuba brand. The complaint alleges that respondent violated Section 5 of the FTC Act by falsely representing that dogs in a ten-year study that were fed Eukanuba brand dog food and received proper care lived exceptionally long lives – including 30 percent or more longer than their typical lifespan. The complaint also alleges that respondent falsely represented that scientific tests prove that feeding dogs its Eukanuba brand dog food can enable dogs to live exceptionally long lives or to live 30 percent or more longer than their typical lifespan.. The consent order prohibits respondent from making misleading or unsubstantiated claims regarding the health benefits of any pet food and requires that respondent possess and rely upon “competent and reliable scientific evidence” to substantiate any such representation.

Participants

For the *Commission*: David M. Newman.

For the *Respondent*: Richard Mann, Keller & Heckman; John Graubert, Covington & Burling.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mars Petcare US, Inc., (“Respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 310 Cool Springs Boulevard, Franklin, Tennessee 37067.
2. Respondent has manufactured, advertised, labeled, promoted, offered for sale, sold and distributed dog food under

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the brand name Eukanuba, among others. Respondent's dog foods are "foods," within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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.

Eukanuba Dog Foods

4. Respondent markets and promotes its Eukanuba brand dog food as a premium dog food. The retail price of Eukanuba brand dog foods ranges from \$13.99 to \$57.99, depending on the formulation and size of the packaging.

5. Beginning in May 2015, and continuing for approximately one month, Respondent disseminated or caused to be disseminated advertisements, packaging and promotional materials for its Eukanuba brand dog food, including but not necessarily limited to the television, online and print advertisements excerpted in the attached Exhibits A to C. These materials contain the following statements and depictions:

a. (Exhibit A – online video):

Man is always searching for the fountain of youth,
a way to live longer yet stay younger.

One decade ago, Eukanuba set out on the same quest.
We launched a long life study, with a band of
Labradors, their devoted caretakers, and enough
Eukanuba to last them a lifetime.

Or so we thought. While the typical Labrador lives 12
years, some dogs in the study even lived past the age
of 16.

Like our relentless fetcher Iowa
Iowa at Age 17
Living 30% longer than her typical lifespan
Typical Labrador lifespan: 12 years

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Or the water lover Utah
Utah at Age 17
Living 30% longer than his typical lifespan
Typical Labrador lifespan: 12 years

And not just them:
Georgia at Age 17
Living 30% longer than her typical lifespan
Typical Labrador lifespan: 12 years

Bunny at age 16
Typical Labrador lifespan: 12 years

Clown at age 16
Typical Labrador lifespan: 12 years

Each living an exceptionally long life and still full of vitality.

b. (Exhibit B – television commercial and online video):

10 Years ago, we launched a long life study.
What we observed was astonishing.
With Eukanuba and proper care,
Dogs in the study were able to live beyond their
typical lifespan.

Iowa at Age 17
Living 30% longer than her typical lifespan
*typical Labrador lifespan: 12 years

Utah at Age 17
Living 30% longer than his typical lifespan
*typical Labrador lifespan: 12 years

Living an exceptionally long life
And still full of vitality

c. (Exhibit C – two-sided point-of-sale card):

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Utah at age 17. Living 30% longer than his typical lifespan. He's enjoying an exceptionally long life, with many more adventures ahead.

Iowa at age 17. Living 30% longer than her typical lifespan. She's enjoying an exceptionally long life, with plenty of chase left to give.

6. Beginning in June 2015, Respondent disseminated or caused to disseminated advertisements, packaging and promotional materials for its Eukanuba brand dog food, including but not necessarily limited to the television and online advertisements excerpted in the attached Exhibit D. These materials contain the following statements and depictions:

a. (Exhibit D – television commercial and online video):

10 Years ago, we launched a long life study.
What we observed was astonishing.
With Eukanuba and proper care,
some dogs in the study were able to live exceptionally
long lives.

Meet Iowa at Age 17, our relentless fetcher

Meet Utah at Age 17, our tireless explorer

This is the life we want for all dogs, to live long and be
full of vitality.

Count I

False or Unsubstantiated Efficacy Claims

7. In connection with the advertising, promotion, offering for sale or sale of Eukanuba brand dog food, Respondent has represented, directly or indirectly, expressly or by implication, that

a. With Eukanuba, dogs live 30 percent or more longer than their typical lifespan; and

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- b. Eukanuba brand dog foods enable dogs to live exceptionally long lives.

8. The representations set forth in Paragraph 7 were, and are, false or misleading or were not substantiated at the time the representations were made.

Count II
False Establishment Claims

9. In connection with the advertising, promotion, offering for sale or sale of Eukanuba brand dog food, Respondent has represented, directly or indirectly, expressly or by implication, that

- a. Scientific tests prove that, with Eukanuba, dogs live 30 percent or more longer than their typical lifespan; and
- b. Scientific tests prove that Eukanuba brand dog foods enable dogs to live exceptionally long lives.

10. In fact,

- a. Scientific tests do not prove that, with Eukanuba, dogs live 30 percent longer than their typical lifespan; and
- b. Scientific tests do not prove that Eukanuba brand dog foods enable dogs to live exceptionally long lives.

Among other things, the evidence relied on by Respondent for its representations concerning the Eukanuba brand dog food consisted primarily of results from a single study, the results of which showed no significant difference in the median age at death of the dogs in the study relative to the typical age at death of dogs of the same breed. Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

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Violations of Sections 5 and 12

11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twelfth day of December, 2016, has issued this complaint against Respondent.

By the Commission.

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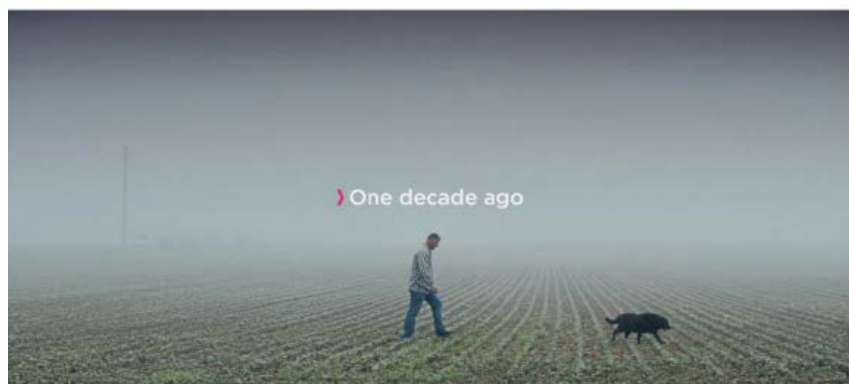
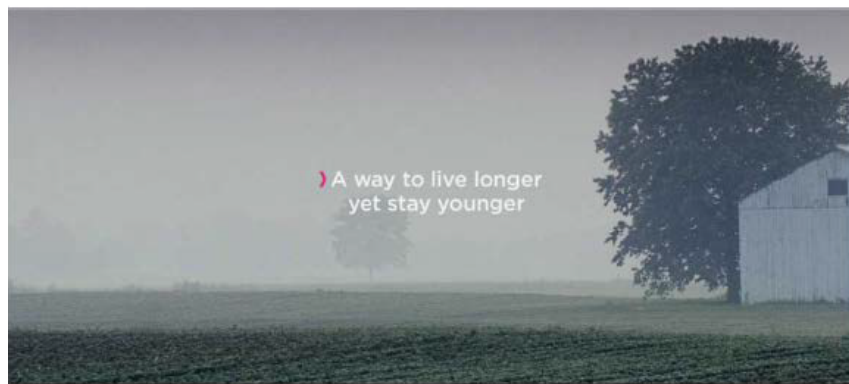
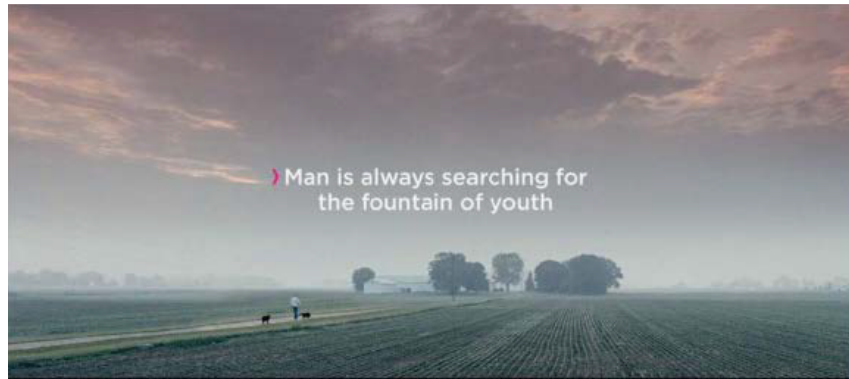
Exhibit A

Exhibit A

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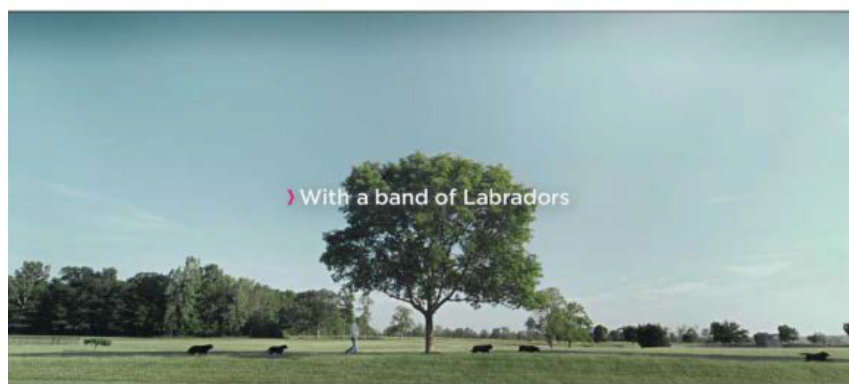
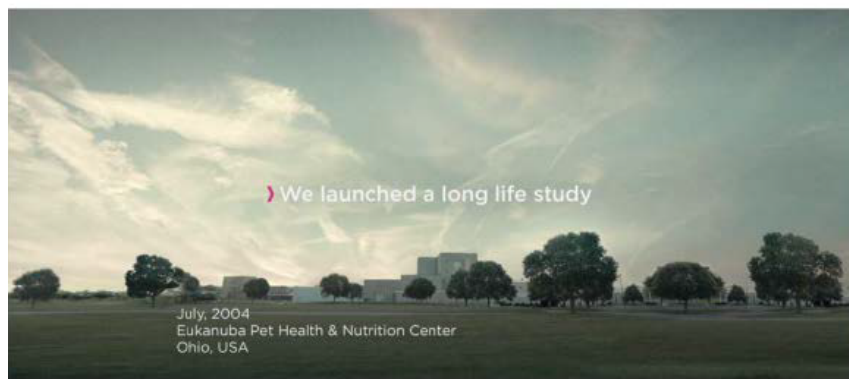


Exhibit A

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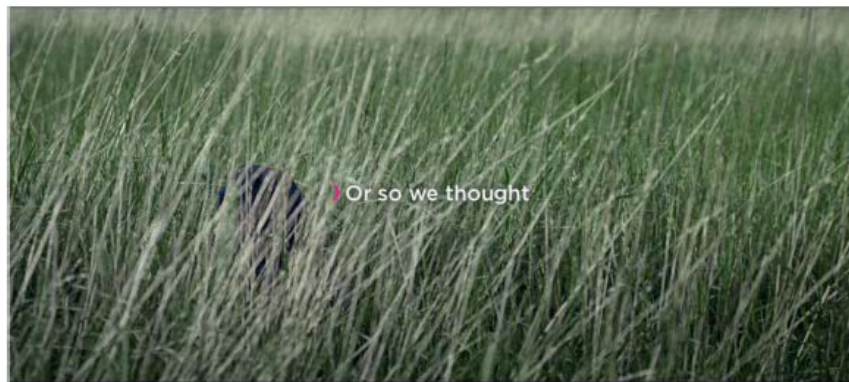
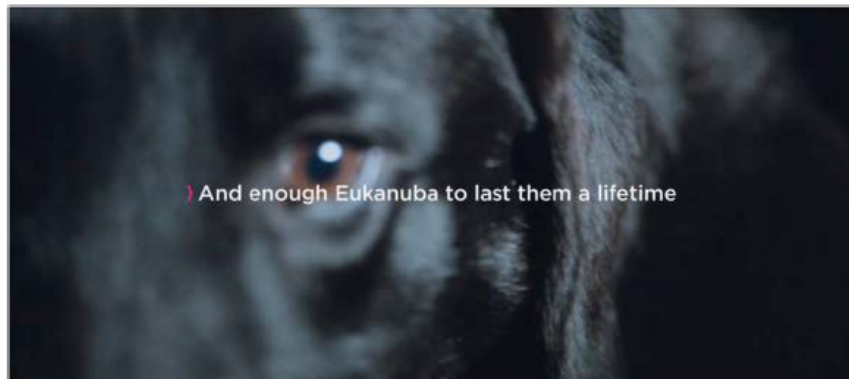
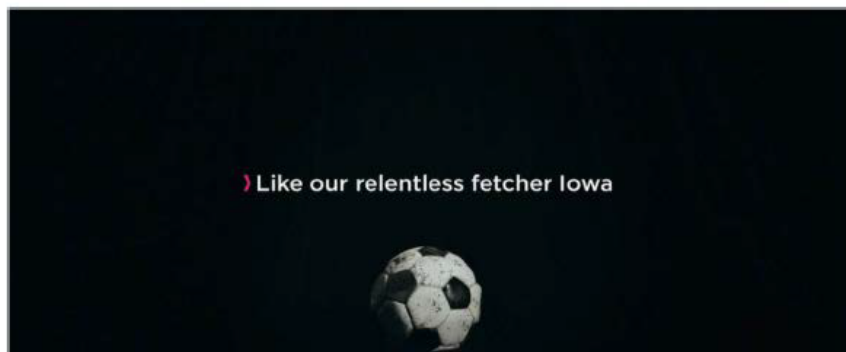


Exhibit A

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Complaint

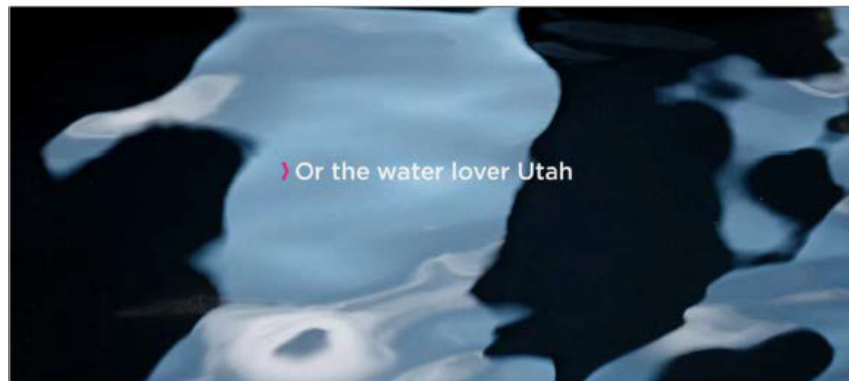
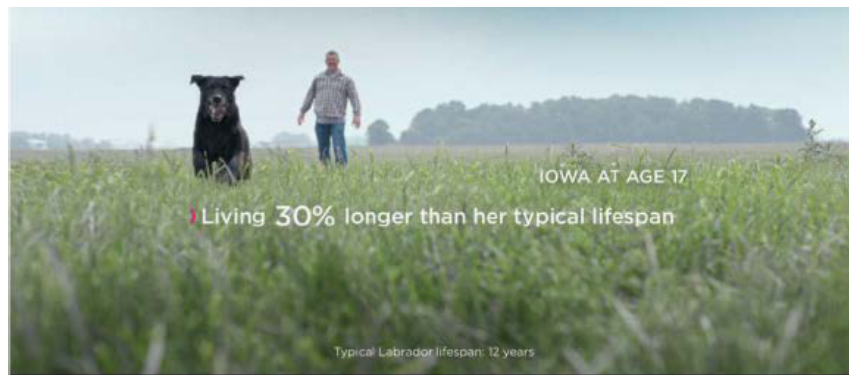


Exhibit A

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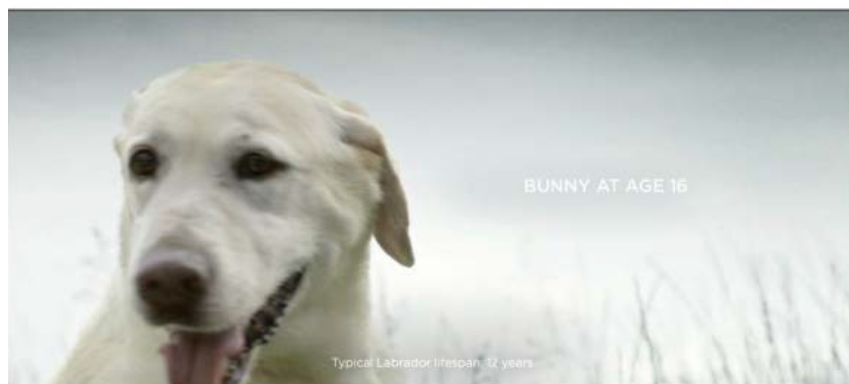
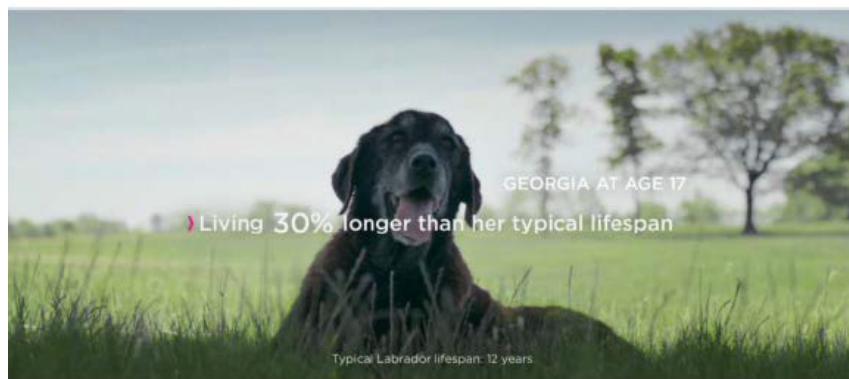


Exhibit A

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Exhibit A

Complaint

Exhibit B

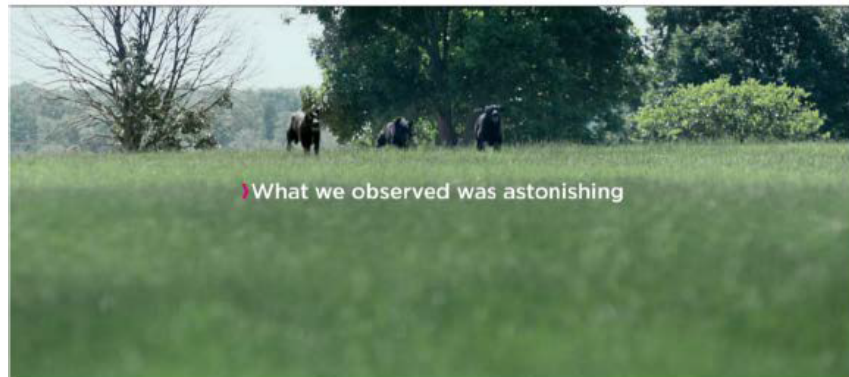
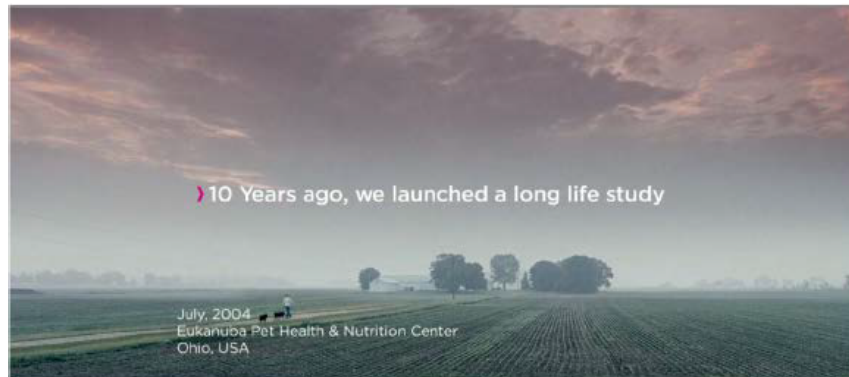


Exhibit B

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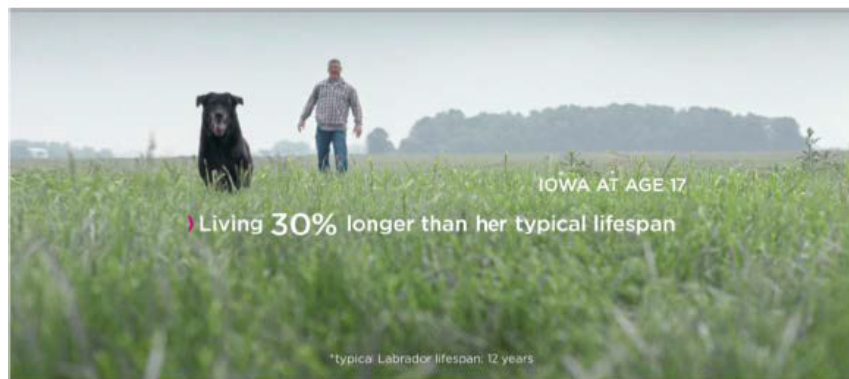


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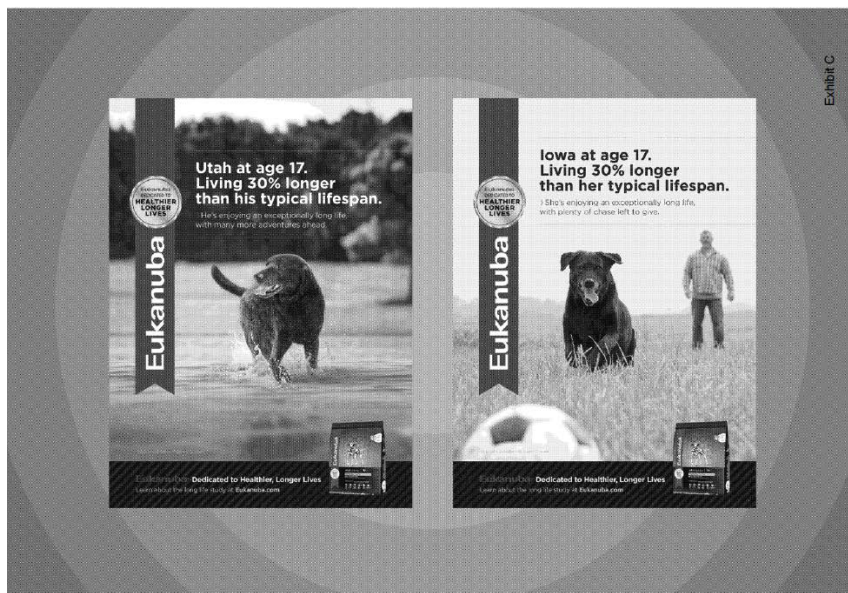
Complaint



Exhibit B

Complaint

Exhibit C



Complaint

Exhibit D

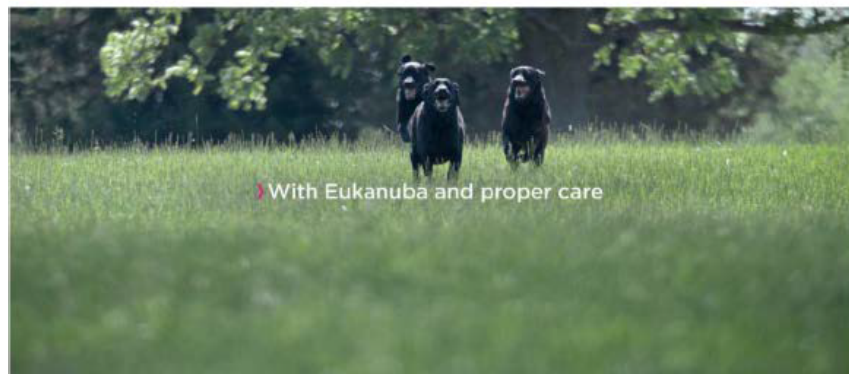
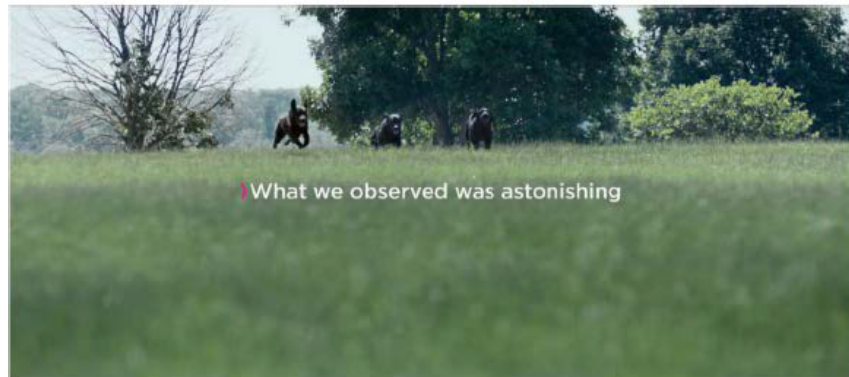
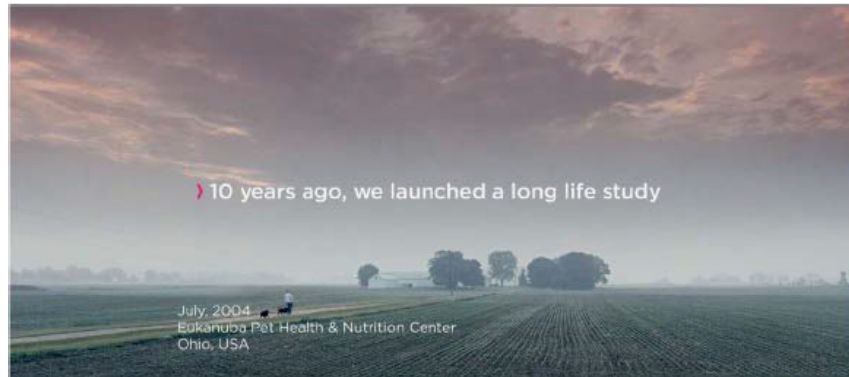


Exhibit D

Complaint



Exhibit D

Complaint

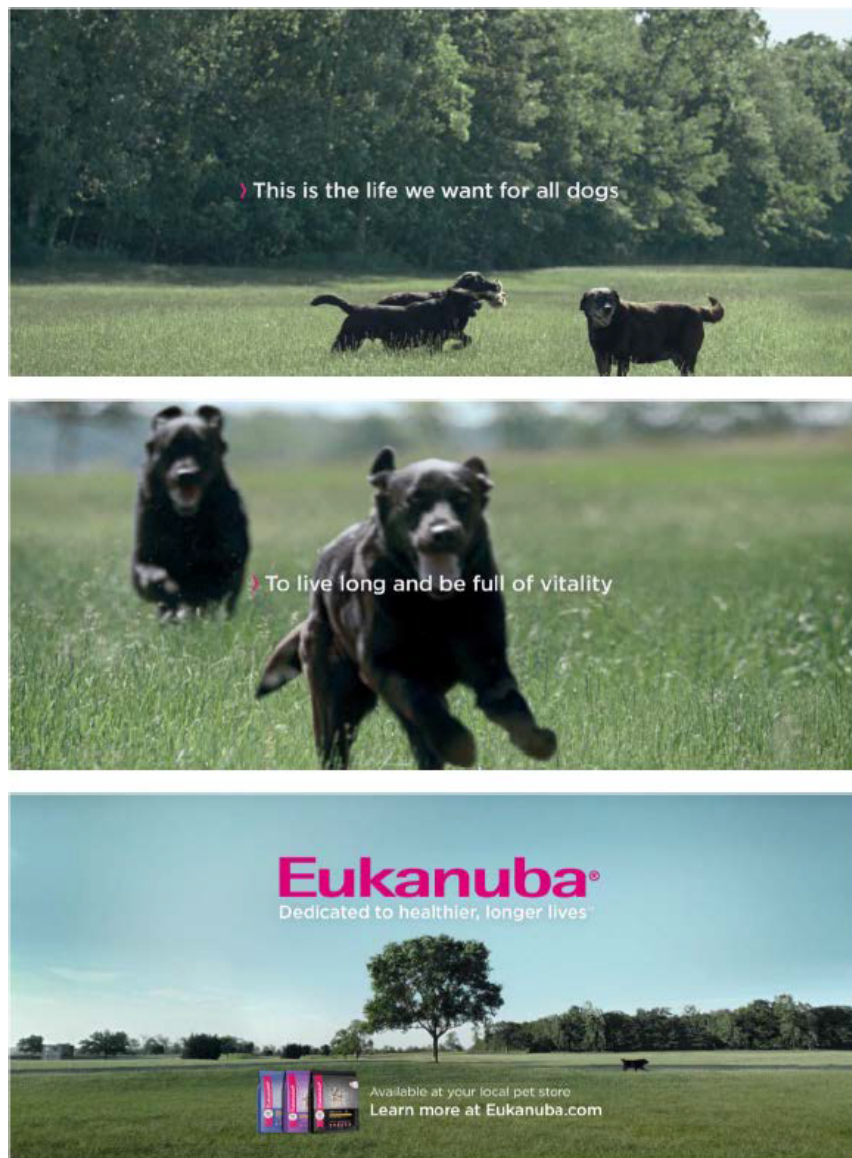


Exhibit D

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violation of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, it admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. Respondent Mars Petcare US, Inc., is a Delaware corporation with its principal office or place of business at 310 Cool Springs Boulevard, Franklin, Tennessee.

Decision and Order

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Food” means: (a) any article used for food or drink for humans or other animals; (b) chewing gum; and (c) any article used for components of any such article.
- B. “Pet Food” means any Food that is used for food or drink for domestic pets.

Provisions**I. Prohibited Misleading and Unsubstantiated Representations about Longevity and Other Health Benefits of Pet Foods**

IT IS ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Eukanuba-brand dog food or any other Pet Food, must not make any representation, expressly or by implication:

- A. That with such Pet Food, dogs live 30 percent or more longer than their typical lifespan;
- B. That such Pet Food can enable dogs to live exceptionally long lives; or
- C. About the health benefits of such products

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unless the representation is non-misleading, including that, at the time such representation is made, they possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Provision, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

II. Prohibited Misrepresentations Regarding Tests or Studies

IT IS FURTHER ORDERED that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Pet Food must not make any misrepresentation, expressly or by implication:

- A. About the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, including that studies, research, or trials prove that, with Respondent’s Pet Foods, dogs live 30 percent or more longer or substantially longer than their typical lifespan or that Respondent’s Pet Foods enable dogs to live exceptionally long lives; or
- B. That any health benefits of such product are scientifically proven or otherwise established.

III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondent obtain acknowledgments of receipt of this Order:

Decision and Order

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reporting. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IV. Compliance Reports and Notices

IT IS FURTHER ORDERED that Respondent make timely submissions to the Commission:

- A. One year after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must:
 - 1. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent;
 - 2. identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;

Decision and Order

3. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales;
 4. describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order; and
 5. provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. any designated point of contact; or
 2. the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

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- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Mars Petcare US, Inc., Docket No. C-4599.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondent must create certain records and retain each such record for five (5) years. Specifically, Respondent must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. copies or records of all consumer complaints and refund requests concerning the subject matter of this Order, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. a copy of each unique advertisement or other marketing material making a representation subject to this Order; and

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- F. for five (5) years from the date of the last dissemination of any representation covered by this Order:
1. all materials that were relied upon in making the representation; and
 2. all tests, analyses, research, studies, demonstrations, or other evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls 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.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of

Decision and Order

identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate December 12, 2036, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 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 Provision.

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 Provision 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.

Analysis to Aid Public Comment

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

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order from Mars Petcare US, Inc. (“respondent”). 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 and take appropriate action or make final the agreement’s proposed order.

This matter involves the advertising, marketing, and sale by respondent of dog food under the Eukanuba brand. Respondent has marketed its Eukanuba brand dog foods through retail outlets. According to the FTC complaint, respondent claimed that its dog food could increase the longevity of dogs by 30 percent or more.

Specifically, the FTC complaint alleges that respondent represented that dogs in a ten-year study that were fed Eukanuba brand dog food and received proper care lived exceptionally long lives – including 30 percent or more longer than their typical lifespan. The complaint alleges that these claims are false or unsubstantiated and thus violate the FTC Act. The complaint also alleges that respondent represented that scientific tests prove that feeding dogs its Eukanuba brand dog food can enable dogs to live exceptionally long lives or to live 30 percent or more longer than their typical lifespan. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. Specifically, Part I addresses the unsubstantiated claims alleged in the complaint. Part I prohibits respondent from making misleading or unsubstantiated representations that its Eukanuba-brand pet foods or any other pet food can enable dogs to live 30 percent or more longer than their typical lifespan or live exceptionally long lives. It also prohibits respondent from making misleading or unsubstantiated claims regarding the health

Analysis to Aid Public Comment

benefits of any pet food. It requires that respondent possesses and relies upon “competent and reliable scientific evidence” to substantiate any such representation.

Part II of the proposed order addresses the allegedly false claims that scientific tests prove that feeding dogs respondent’s Eukanuba brand dog food can enable dogs to live 30 percent or more longer or substantially longer than their typical lifespan. Part II prohibits respondent, when advertising any pet food, from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, or misrepresenting that any health benefits of the pet food are scientifically proven.

Parts III-VI of the proposed order contain compliance and recordkeeping requirements. Part III requires respondent acknowledge receipt of the order, to provide a copy of the order to certain current and future principals, officers, directors and employees, and to obtain an acknowledgement from each such person that they have received a copy of the order. Part IV requires the filing of compliance reports within one year after the order becomes final and within 14 days of any change in respondent that would affect compliance with the order. Part V requires respondent to maintain certain records, including records necessary to demonstrate compliance with the order. Part VI requires respondent to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview respondent’s personnel. Finally, Part VII provides that the order will terminate after twenty (20) years, with certain exceptions.

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 complaint and proposed order or to modify the proposed order’s terms in any way.

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS

IN THE MATTER OF

AMERICAN AIR LIQUIDE HOLDINGS, INC.

Docket No. C-4574. Order, August 31, 2016

Letter approving the divestiture of facilities for the production of various bulk gases as well as packaged gases retail locations to Matheson Tri-Gas, Inc.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Elaine Ewing, Esq.
Cleary Gottlieb Steen & Hamilton LLP

*Re: In the Matter of American Air Liquide Holdings, Inc., Docket
No. C-4574*

Dear Ms. Ewing:

This is in reference to the petition for the approval of the proposed divestiture of certain assets filed by American Air Liquide Holdings, Inc. (“Air Liquide”) and received on June 21, 2016 (“Petition”). Pursuant to the Decision and Order in Docket No. C-4574, Air Liquide requests prior Commission approval of its proposal to divest certain gases assets to Matheson Tri-Gas, Inc. (“Matheson”).

After consideration of Air Liquide’s Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In reaching this decision, the Commission has relied upon the information submitted and the representations made by Air Liquide and Matheson in connection with the Petition and has assumed them to be accurate and complete.

By direction of the Commission.