

## **Chemopharm Laboratories, Inc. d/b/a/ CP Industries**

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## **Chemopharm Laboratories, Inc. d/b/a/ CP Industries**

**Case:** Chemopharm Laboratories, Inc. d/b/a/ CP Industries (1994)

**Subject Category:** Federal agencies, FTC, Marketing

**Agency Involved:** Federal Trade Commission

**Complaint Synopsis:** Chemopharm Laboratories marketed "Superior Sno-N-Ice," an ice-melting product, as "environmentally safe" and "protects the whole environment" and "provides the environmental benefit of Calcium Magnesium Acetate." The FTC alleged that Superior Sno-N-Ice was 95% rock salt, which harms the environment, and Calcium Magnesium Acetate has not been shown to benefit the environment, and that Chemopharm Laboratories had engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.

**Consent Details:** Chemopharm Laboratories agreed to cease and desist from making representations that their products are environmentally safe unless such representations are true and based upon competent and reliable scientific evidence. Additionally, Chemopharm agreed to keep all evidence of any environmental claims they might make in the future for the FTC's inspection for five years.

**Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing:** Products that harm the environment, but do so less than the alternative should not be marketed as "environmentally beneficial."

**Chemopharm Laboratories, Inc. d/b/a/ CP Industries**, 59 Fed. Reg. 49245 Sept. 27 1994: Chemopharm Laboratories marketed "Superior Sno-N-Ice," an ice melting product, as "environmentally safe" and "protects the whole environment" and "provides the environmental benefit of Calcium Magnesium Acetate." The FTC alleged that Superior Sno-N-Ice was 95% rock salt, which harms the environment, and Calcium Magnesium Acetate has not been shown to benefit the environment, and that Chemopharm Laboratories had engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.

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[Federal Register: September 27, 1994]

FEDERAL TRADE COMMISSION [File No. 932 3135]

Chemopharm Laboratory Inc., d/b/a CP Industries; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Utah corporation that markets the ice melting product, Superior Sno-N-Ice, from making any environmental claim about any product unless it possesses and relies on competent and reliable scientific evidence to substantiate the claims. In addition, the respondent would be prohibited from misrepresenting the existence or contents of any test or study.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL. 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be

considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Chemopharm Laboratory Inc., d/b/a CP Industries, a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Chemopharm Laboratory Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Chemopharm Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah with its principal office or place of business at 503 North 400 West, Salt Lake City, Utah 84103.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
  - d. All claims under the Equal Access to Justice Act.
4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.
5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.
6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Sec. 2.34 of the Commission's Rules the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision

containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

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

1. The term "product" means any product that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the "Superior Sno-N-Ice Melter" band name or any other brand name of respondent, its successors and assigns; and also means any product sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

2. The term "competent and reliable scientific evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant areas, 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.

I

It is ordered that respondent, Chemopharm Laboratory Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that: A. Such product is "environmentally safe," "protects the total environment," or otherwise offers any environmental benefit; or B. Such product provides the environmental benefits of Calcium Magnesium Acetate, unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered that respondent, Chemopharm Laboratory Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying: A. All materials that were relied upon in disseminating such representations; and B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

#### 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 Chemopharm Laboratory, Inc., d/b/a CP Industries, an Utah corporation ("CP

Industries" or "respondent"). Upon this agreement, the respondent will cease and desist from claiming that any product is environmentally safe, protects the total environment, otherwise offers any environmental benefit, or provides the environmental benefits of Calcium Magnesium Acetate ("CMA"), unless such representation is true and, at the time of making such representation, it possesses adequate substantiation. The proposed consent agreement also prohibits CP Industries from misrepresenting the results of any test or study. The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns claims made for CP Industries' Superior Sno-N- Ice Melter product. The complaint accompanying the proposed consent order alleges, in part, that the respondent engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act. According to the complaint, the respondent represented that Superior Sno-N-Ice Melter does not harm or damage the environment; that Superior Sno-N-Ice Melter provides the environmental benefits of CMA; that scientific studies of CMA demonstrate that Superior Sno-N-Ice is beneficial to the environment; and that it had a reasonable basis for these claims. In fact, Superior Sno-N-Ice Melter contains about 95% sodium chloride (i.e., rock salt) which does harm or damage the environment. Therefore, Superior Sno-N-Ice does harm or damage the environment; Superior Sno-N-Ice Melter does not provide the environmental benefits of CMA; and scientific studies of CMA do not demonstrate that Superior Sno-N-Ice Melter is beneficial to the environment. The complaint therefore alleges that the claims are false and misleading and also alleges that CP Industries lacked a reasonable basis for making the claims. The consent order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Paragraph I of the proposed consent order requires CP Industries to cease representing that any product is "environmentally safe," "protects the total environment," or otherwise offers any environmental benefit; or that any product provides the environmental benefits of CMA, unless such representation is true and substantiated.

Paragraph II of the order prohibits CP Industries from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. The remaining parts of the proposed consent order require the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more compliance reports.

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

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-23878 Filed 9-26-94; 8:45 am]

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