

FTC v. Oak Hill Industries Corp. (1994)

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Case: FTC v. Oak Hill Industries Corp. (1994)

Subject Category: Federal agencies, FTC, Environmental claims

Agency Involved: Federal Trade Commission

Complaint Synopsis: Oak Hill produced a line of plastic plates, bowls and utensils made from non-foam polystyrene. The products were typically packaged in polypropylene film or low-density polyethylene film. Oak Hill marketed both the products and the packaging as recyclable. The FTC alleged that only a few recycling facilities nationwide would accept the materials Oak Hill was marketing as recyclable.

Consent Details: Under the settlement, Oak Hill could either cease advertising the materials as recyclable, or continue to market them as recyclable, but prominently disclose that the materials were only recyclable in those communities with the proper recycling facilities, and disclose the number or percentage of communities with such facilities.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: In order to market products as "recyclable," adequate recycling facilities must exist that accept the product for recycling. That the material is theoretically recyclable is insufficient. However, prominently disclosing that there are few recycling facilities that will accept the product may be sufficient.

FTC v. Oak Hill Industries Corp. (1994), 59 Fed. Reg. (May 6 1994): Oak Hill produced a line of plastic plates, bowls and utensils made from non-foam polystyrene. The products were typically packaged in polypropylene film or low-density polyethylene film. Oak Hill marketed both the products and the packaging as recyclable. The FTC alleged that only a few recycling facilities nationwide would accept the materials Oak Hill was marketing as recyclable.

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[Federal Register: May 6, 1994]

FEDERAL TRADE COMMISSION [File No. 922 3162]

Oak Hill Industries Corp., et al.; 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 New York manufacturer of plastic tableware from misrepresenting that any product or package is capable of being recycled, or the extent to which recycling collection programs are available for such products, and from making any unsubstantiated representation that any product or package it markets offers any environmental benefit.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Sec. 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 and copying at its principal office in accordance with Sec. 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 In the Matter of: Oak Hill Industries Corp., a corporation, and Malcolm Foster, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Oak Hill Industries Corp., a corporation, and Malcolm Foster, individually and as an officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are 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 Oak Hill Industries Corp., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Oak Hill Industries Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office or place of business at 330 East 59th Street, New York, NY 10022. Proposed respondent Malcolm Foster is an officer of said corporation. He formulates, directs, and controls the acts and practices of said corporation. His address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(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 respondents, 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 respondents 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 respondents, (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 respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they 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 respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they 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:

The term product or package means any product or package that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under the Oak Hill brand name or any other brand name of respondents, their successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

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.

I

A. It is ordered that respondents, Oak Hill Industries Corp., a corporation, its successors and assigns, and its officers, and Malcolm Foster, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package 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 extent to which:

(1) Any such product or package is capable of being recycled; or,

(2) Recycling collection programs for such product or package are available.

B. Provided, however, respondents will not be in violation of part I(A)(2) of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any non-foam polystyrene, polypropylene film, or low-density polyethylene film product or package, if they truthfully represent that such product or package is recyclable, provided that:

(1) Respondents disclose clearly, prominently, and in close proximity to such representation:

(a) In regard to any non-foam polystyrene product or package, that such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene; in regard to any polypropylene film product or package, that such product or package is recyclable in the few communities with recycling collection programs for polypropylene film; and in regard to any low-density polyethylene film product or package, that such product or package is recyclable in the few communities with recycling collection programs for low-density polyethylene film; or

(b) The approximate number of U.S. communities with recycling collection programs for such product or package; or

(c) The approximate percentage of U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and

(2) In addition, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

II

It is further ordered that respondents, Oak Hill Industries Corp., a corporation, its successors and assigns, and its officers, and Malcolm Foster, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any product or package 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 any such product or package offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their 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 representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their 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 corporate respondents shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, products, labels or other such sales materials covered by this Order. V It is further ordered that the individual respondent shall notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of any plastic product or package or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution, and/or manufacturing of any plastic product or package. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI

It is further ordered that respondents 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.

VII

It is further ordered that respondents shall, within sixty (6) days after service of this Order upon them, 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 they have complied with this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Oak Hill Industries Corp., a New York corporation, and Malcolm Foster, individually and as an officer of the corporate respondent. The proposed consent order has been placed on the public record for sixty (60) days for reception 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 agreement's proposed order.

This matter concerns the labeling and advertising of Oak Hill brand plastic plates, bowls and utensils. The Commission's complaint in this matter alleges that Oak Hill brand plastic plates, bowls and utensils are made from non-foam polystyrene; that they are packaged in thin plastic packaging which is sometimes made from polypropylene film and at other times from low-density polyethylene film; and that such plastic products and packaging do not identify the type(s) of plastic resin from which they are made. The complaint charges that Oak Hill falsely represented that the plastic plates, bowls and utensils and the plastic film packaging are recyclable. In fact, the complaint alleges, the plastic products and packaging are not recyclable, because there are only a few collection facilities nationwide that will accept non-foam polystyrene plates, bowls or utensils or the polypropylene film or low-density polyethylene film plastic packaging for recycling. The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the proposed order requires that respondents cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any product or package the extent to which it is capable of being recycled or to which recycling collection programs are available.

Part I also contains a proviso that allows the respondents to advertise non-foam polystyrene, polypropylene film or low-density polyethylene film products or packages as recyclable without violating Part I of the order. The respondents may do so if they truthfully represent that such products or packages are capable of being recycled; disclose clearly, prominently and in close proximity to such claim: (a) That such product or package is recyclable in the few communities with recycling collection programs for non-foam polystyrene, polypropylene film or low-density polyethylene film; or (b) the approximate number of U.S. communities with recycling collection programs for such product or package; or (c) the approximate percentage U.S. communities or the U.S. population to which recycling collection programs for such product or package are available; and in addition, such product or package itself bears a clear identification of the specific plastic resin(s) from which it is made.

Part II of the proposed order provides that if the respondents represent in advertising or labeling that any product or package offers any environmental benefit, they must have a reasonable basis consisting of competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claims. The proposed order also requires respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order 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 reports detailing compliance with the order. 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.

Donald S. Clark,

Secretary. [FR Doc. 94-10950 Filed 5-5-94; 8:45 am]

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