

Benckiser Consumer Products, Inc.

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Benckiser Consumer Products, Inc.

Case: Benckiser Consumer Products, Inc. (1996)

Subject Category: Federal agencies, FTC, Marketing

Agency Involved: Federal Trade Commission

Complaint Synopsis: The FTC alleged that Benckiser Consumer Products falsely represented that they donated a portion of the proceeds from its "EarthRite" cleaning products to environmental nonprofit organizations.

Consent Details: Benckiser agreed to stop making representations that it was donating a portion of its proceeds to non-profit environmental charities unless it actually did so, and printed the particulars immediately next to the claim. Benckiser agreed to keep records of any such donations available for the FTC to inspect for five years.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Claims that a portion of revenue is diverted to nonprofit organizations must be verifiable.

Benckiser Consumer Products, Inc., 61 Fed. Reg. 10347 (March 13, 1996): The FTC alleged that Benckiser Consumer Products falsely represented that they donated a portion of the proceeds from its "EarthRite" cleaning products to environmental nonprofit organizations.

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[Federal Register: March 13, 1996 (Volume 61, Number 50)] [Notices] [Page 10347-10349]

FEDERAL TRADE COMMISSION [File No. 932-3310]

Benckiser Consumer Products, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: 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 the Danbury, Connecticut-based company from making certain misleading claims for any of its household cleaning products. The consent agreement settles allegations that Benckiser made false and misleading "cause-related marketing" claims in advertising its "EarthRite" line of household cleaning products. Benckiser claimed that a portion of EarthRite's proceeds would be donated to non-profit environmental groups, when in fact, according to the FTC, the company has not donated any money to such groups since it began selling EarthRite products in 1992.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Thomas B. Carter, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. 214-767-5518. James R. Golder, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. 214-767-5508. Gary D. Kennedy, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. 214-767-5512

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)).

In the matter of Benckiser Consumer Products, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Benckiser Consumer Products, Inc., a corporation, and it now appearing that Benckiser Consumer Products, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

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

1. Proposed respondent Benckiser Consumer Products, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office or place of business at Corporate Centre I, 55 Federal Road, Danbury, Connecticut 06813-1991. [[Page 10348]]

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; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

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 complaint contemplated thereby, 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 of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

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 complaint and 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 proposed 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 that 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

I

It is ordered that respondent Benckiser Consumer Products, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any household cleaning 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 any portion of the revenues from the sale of such household cleaning product is donated to any organization; provided, however, respondent will not be in violation of this Part I if it truthfully represents that a portion of the revenues from the sale of such household cleaning product is donated to an organization and discloses, clearly, prominently, and in close proximity to such representation, the method of determining the amount of such donation. A disclosure shall be deemed to be "in close proximity" to a 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 advertisement or part of the package on which the representation appears.

II

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 representation; 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.

III

It is further ordered that respondent 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, product labels or other such sales materials covered by this Order.

IV

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.

V

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.

VI

It is further ordered that this Order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade 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 paragraph 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
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C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph. 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 paragraph as though the complaint was never 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.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Benckiser Consumer Products, Inc. ("Benckiser"). 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 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.

The Commission's complaint in this matter charges Benckiser with engaging in unfair or deceptive acts or practices in connection with the advertising and promotion of EarthRite household cleaning products. According to the complaint, Benckiser falsely represented that it donates some portion of the revenue from the sale of EarthRite products to non-profit environmental organizations. The complaint also alleges that Benckiser falsely represented that, at the times it made the donation claim, it relied upon a reasonable basis which substantiated the claim. The consent order contains provisions designed to remedy the violations charged and to prevent Benckiser from engaging in similar deceptive acts or practices in the future.

Part I of the order prohibits Benckiser from representing that any portion of the revenue from the sale of any Benckiser household cleaning product is donated to any organization unless Benckiser discloses, clearly, prominently, and in close proximity to such representation, the method of calculating the amount of such donation.

Part II of the order requires Benckiser to maintain copies of all materials relied upon in making any representation covered by the order.

Part III of the order requires Benckiser to distribute copies of the order to its operating divisions and to various officers, agents, representatives and employees of Benckiser.

Part IV of the order requires Benckiser to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order. 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 agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary. [FR Doc. 96-5980 Filed 3-12-96; 8:45 am]

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