

AJM Packaging Corporation, et al

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AJM Packaging Corporation, et al

Case: AJM Packaging Corporation, et al (1994)

Subject Category: Federal cases, FTC, Marketing

Agency Involved: Federal Trade Commission

Complaint Synopsis: AJM Packaging sold "Nature's Own Green Label" paper plates, and represented that the paper plates and packaging were recyclable and biodegradable. However there were no collection facilities in existence that could deal with the products and the claims of degradability were unsubstantiated.

Consent Details: AJM Packaging agreed to discontinue representing recycling and degradability unless they had possession of "competent and reliable" scientific evidence to back up their claims, and to cease misrepresenting the recyclability of their products. They could, however, deplete existing inventory of some products.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Products that are potentially recyclable cannot be represented as "recyclable" unless a method for recycling the product exists and is widely available.

AJM Packaging Corporation, et al, 59 Fed. Reg. 23718 (May 6 1994): AJM Packaging sold "Nature's Own Green Label" paper plates, and represented that the paper plates and packaging were recyclable and biodegradable. However there were no collection facilities in existence that could deal with the products and the claims of degradability were unsubstantiated.

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[Federal Register: May 6, 1994]

FEDERAL TRADE COMMISSION [File No. 922 3170]

AJM Packaging Corporation, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

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 Michigan seller of disposable paper plates and its president from representing that any product it sells offers any environmental benefit unless it can substantiate the claim, or from misrepresenting that any paper product or package is capable of being recycled, or the extent to which recycling collection programs for them are available.

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: Mary Engle, FTC/H-476, Washington, DC 20580. (202) 326-3161.

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 considered by the Commission and will be available for inspection 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)).

AJM Packaging Corporation, a Corporation, and Abram Epstein, Individually and as Officer of Said Corporation; Agreement Containing Consent Order To Cease and Desist [File No. 922 3170]

The Federal Trade Commission having initiated an investigation of certain acts and practices of AJM Packaging Corporation, a corporation, and Abram Epstein, individually and as 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 AJM Packaging Corporation, and Abram Epstein, by their duly authorized officer and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent AJM Packaging Corporation is a Michigan corporation with its office and principal place of business at 6910 Dix Avenue, Detroit, Michigan 48209. Proposed respondent Abram Epstein is the president of said corporation. In his capacity as president, he formulates, directs, and controls the acts and practices of said corporation, and his business address is the same as that of said corporation.
2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.
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 attached draft complaint, 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 the 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 attached draft complaint 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 that 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

Definition

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

"Product or package" means any product or package, including but not limited to bags and plates, that is offered for sale, sold, or distributed to the public by respondents, their successors and assigns, under the "Nature's Own Green Label" brand name or any other brand name of respondents, their successors and assigns; and also means any such product or package sold or distributed to the public by third parties under private labeling agreements with respondents, their successors and assigns.

I

It is ordered that respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper 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: (1) That any such product or package is degradable, biodegradable, or photodegradable; or, (2) Through the use of such terms as degradable, biodegradable, photodegradable, or any other substantially similar term or expression, that the degradability of any such product or package offers any environmental benefit when disposed of as trash that is ordinarily buried in a sanitary landfill, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, 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.

II

It is further ordered that respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' 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 paper 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 any such paper product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

III

It is further ordered that respondents AJM Packaging Corporation, a corporation, its successors and assigns, and its officers, and Abram Epstein, individually and as officer of said corporation, and respondents' 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 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.

IV

It is further ordered that respondents may continue to deplete their existing inventory of "Penthouse" brand paper plates product packaging in the normal course of business without violating this Order until October 31, 1993.

V

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 test 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.

VI

It is further ordered that respondent AJM Packaging Corporation shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of

its officers, agents, representatives, or employees engaged in the preparation of labeling and advertising and placement of newspaper, periodical, broadcast, and cable advertisements covered by this Order.

VII

It is further ordered that the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the service date of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the manufacture, sale, or distribution of paper products, or of his affiliation with a new business or employment in which his own duties and responsibilities relate to the manufacture, sale, or distribution of paper products. When so required under this paragraph, 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.

VIII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent 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. It is further ordered that respondents shall, within sixty (60) 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 AJM Packaging Corporation, a Michigan corporation, and Abram Epstein, an officer of said corporation. 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 package labeling of "Nature's Own Green Label" disposable paper plates. The Commission's complaint in this matter charges that respondents' labeling falsely represented that "Nature's Own Green Label" disposable paper plates are recyclable after ordinary use. In fact, the complaint alleges, while "Nature's Own Green Label" disposable paper plates are capable of being recycled, the vast majority of consumers cannot recycle the product because there are virtually no

collection facilities that accept used paper plates for recycling. The complaint further charges that the respondents' labeling contained unsubstantiated representations concerning the plates' alleged degradability and the environmental benefits that could be obtained when the bags were disposed of as trash that is subsequently buried in a sanitary landfill (customary disposal). The complaint alleges that the respondents represented that "Nature's Own Green Label" disposable paper plates offer a significant environmental benefit when consumers customarily disposed of them, and that "Nature's Own Green Label" disposable paper plates will completely break down, decompose and return to nature--i.e., decompose into elements found in nature--within a reasonably short period of time after customary disposal. 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 the respondents cease representing, in any manner, directly or by implication, that any of their paper products or packages are "degradable," "biodegradable," or "photodegradable," or through the use of such terms or similar terms, that any such product or package offers any environmental benefits when consumers dispose of them as trash that is buried in a sanitary landfill, unless the respondents have competent and reliable scientific evidence to substantiate the representations at the time they are made.

Part II of the proposed order requires that the respondents cease misrepresenting, in any manner, directly or by implication, the extent to which any paper product or package is capable of being recycled or the extent to which recycling collection programs are available.

Part III of the proposed order requires the respondents to cease representing that their products or packages offer any environmental benefit, unless at the time of making such a representation, the respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representations.

Part IV of the proposed order permitted the respondents to deplete their existing inventory of certain paper plate product packaging in the normal course of business without violating the order until October 31, 1993. The proposed order also requires the 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, to notify the Commission of any changes in the business or employment of the named individual respondent, 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.

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