

Amoco Chemical Company, et al

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Amoco Chemical Company, et al.

Case: Amoco Chemical Company, et al. (1994)

Subject Category: Federal agencies, FTC, Marketing

Agency Involved: Federal Trade Commission

Complaint Synopsis: Amoco Chemical produced polystyrene cups and plates and marketed them as recyclable. The FTC brought a complaint, alleging that the polystyrene products were not recyclable because there were only a few facilities in the nation that would accept them.

Consent Details: Amoco Chemical agreed to stop representing that their polystyrene products are recyclable, or that they offer any sort of environmental benefit without competent and reliable evidence.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: The potential recyclability of a product is insufficient to market it as "recyclable." To be recyclable, there must be facilities available that will accept the product in the target market.

Amoco Chemical Company, et al., 59 Fed. Reg. 27558 (May 27 1994): Amoco Chemical produced polystyrene cups and plates, and marketed them as recyclable. The FTC brought a complaint, alleging that the polystyrene products were not recyclable because there were only a few facilities in the nation that would accept them.

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[Federal Register: May 27, 1994]

FEDERAL TRADE COMMISSION [File No. 932 3053]

Amoco Chemical Company, 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, two Delaware corporations from misrepresenting the extent to which any polystyrene cup, plate, and other food service product of packaging material is capable of being recycled or the extent to which recycling collection programs are available, and from representing that such products offer any environmental benefit unless they possess competent and reliable scientific evidence that substantiates the claim.

DATES: Comments must be received on or before July 26, 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: Timothy Hughes, FTC/Chicago Regional Office, 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 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)).

Agreement Containing Consent Order To Cease and Desist In the Matter of: Amoco Chemical Company, and corporation, and Amoco Foam Products Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of proposed respondents Amoco Chemical Company, a corporation, and Amoco Foam Products Company, a corporation, 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 Amoco Chemical Company and Amoco Foam Products Company, by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondents Amoco Chemical Company and Amoco Foam Products Company are corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware. Amoco Chemical Company dominates and controls the acts and practices of its wholly-owned subsidiary, Amoco Foam Products Company. The proposed respondent Amoco Chemical Company has its principal offices or place of business at 200 East Randolph Drive, Chicago, Illinois 60680. The proposed respondent Amoco Foam Products Company has its principal offices or place of business at 400 Northridge Road, Atlanta, Georgia 30350.

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 competent and reliable scientific evidence means 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.

The term product or packaging material means any product or packaging material that is offered for sale, sold or distributed to the public by respondents, their successors and assigns, under any brand name of respondents, their successors and assigns; and also means any product or packaging material 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, Amoco Chemical Company, a corporation, and Amoco Foam Products Company, a corporation, their successors and assigns, and their 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 polystyrene food service product or polystyrene packaging material 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 packaging material is capable of being recycled; or, (2) Recycling collection programs for such product or packaging material are available.

II

It is further ordered that respondents, Amoco Chemical Company, a corporation, and Amoco Foam Products Company, a corporation, their successors and assigns, and their 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 plastic

food service product or plastic packaging material 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 packaging material 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 respondents shall distribute a copy of this Order to each of their operating divisions and to each of their 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.

V

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporations 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 corporations which may affect compliance obligations under this Order.

VI

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 Amoco Chemical Company and Amoco Foam Products Company, Delaware corporations. 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 Amoco polystyrene cups, plates and other food service products. The Commission's complaint in this matter alleges that Amoco falsely represented that the polystyrene cups, plates and other food service products are recyclable. In fact, the complaint alleges, the polystyrene food service products are not recyclable because there are only a few collection facilities nationwide that will accept them 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 polystyrene food service product or packaging material the extent to which it is capable of being recycled or to which recycling collection programs are available.

Part II of the proposed order provides that if the respondents represent in advertising or labeling that any plastic food service product or packaging material 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.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-13042 Filed 5-26-94; 8:45 am]

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