

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17366 Filed 7-1-97; 8:45 am]

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FEDERAL TRADE COMMISSION

[Dkt. C-3731]

The Administrative Company, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a Texas-based corporation and its officer from making certain false, misleading or unsubstantiated claims concerning the benefits and appropriateness of living trusts or any legal instrument or service they offer and requires the respondents to clearly and conspicuously disclose to consumers that such trusts may be legally challenged on similar grounds as wills, that living trusts may not be appropriate in all instances, and that the transfer of an individual's assets into a living trust is not included in the price of creating the trust.

DATES: Complaint and Order issued April 14, 1997.¹

FOR FURTHER INFORMATION CONTACT: Janice Charter, Federal Trade Commission, Denver Regional Office, 1961 Stout St., Suite 1523, Denver, CO. 80294. (303) 844-2272.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5413, a proposed consent agreement with analysis In the Matter of The Administrative Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth

in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17357 Filed 7-1-97; 8:45 am]

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FEDERAL TRADE COMMISSION

[Dkt. C-3739]

American Cyanamid Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based distributor of agricultural herbicides and insecticides from conditioning the payment of rebates or other incentives on the resale prices its dealers charge for their products, and from agreeing with its dealers to control or maintain resale prices. The consent order requires the respondent, for three years, to post clearly and conspicuously a statement, on any price list, advertising or catalogue that contains a suggested retail price, that dealers remain free to determine on their own the prices at which they sell the company's products. In addition, the respondent must mail a letter containing this statement to all current dealers, distributors, officers, management employees and sales representatives.

DATES: Complaint and Order issued May 12, 1997.¹

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/S-2627, Washington, DC 20580, (202) 326-2821.

SUPPLEMENTARY INFORMATION: On Tuesday, February 11, 1997, there was published in the **Federal Register**, 62 FR 6255, a proposed consent agreement with analysis In the Matter of American Cyanamid Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

¹ Copies of the Complaint, the Decision and Order, and statements by Chairman Pitofsky, and Commissioners Steiger, Varney, Azcuena and Starek are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdiction findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97-17358 Filed 7-1-97; 8:45 am]

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FEDERAL TRADE COMMISSION

[Docket No. 9281]

Exxon Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft amended complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 2, 1997.

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: Joel Winston, Federal Trade Commission, S-4002, 6th & Pennsylvania Ave., NW, Washington, DC 20580. (202) 326-3153. Michael Dershowitz, Federal Trade Commission, S-4002, 6th & Pennsylvania Ave., NW, 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 Section 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the above-captioned 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. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for June 24, 1997), on the World wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. 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 Rule of Practice (16 CFR 4.9(b)(6)(ii)).

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 Exxon Corporation ("Exxon"). Among other things, Exxon is engaged in the manufacture and sale of automobile gasolines.

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 or make final the agreement's proposed order.

This matter concerns allegedly deceptive advertising claims regarding the performance attributes of Exxon gasolines. On September 11, 1996, the Commission issued a complaint challenging as unsubstantiated Exxon's advertising claims that switching to Exxon 93 Supreme gasoline from other gasoline brands and from lower octane grades of Exxon gasoline will significantly reduce automobile maintenance costs for consumers generally. The complaint also challenged as unsubstantiated Exxon's claim that switching to Exxon gasolines from other brands will significantly reduce automobile maintenance costs for consumers generally. The case was withdrawn from litigation on April 25, 1997.

The proposed consent order contains both injunctive and consumer education provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making unsubstantiated representations concerning the engine cleaning ability

of any gasoline or the effect of any gasoline on automobile maintenance or maintenance costs.

Part I includes several "safe harbors" defining permissible substantiation for certain types of engine cleaning claims. First, it provides that any representation that a gasoline will keep clean or clean up fuel injector deposits to a level that engine performance is not adversely affected will be deemed to be substantiated if Exxon possesses competent and reliable testing demonstrating no more than 5 percent flow restriction in each injector over the accumulation of 10,000 miles. In addition, Part I provides that any representation that a gasoline will keep clean or clean up intake valve deposits to a level that engine performance is not adversely affected will be deemed to be substantiated by competent and reliable testing demonstrating intake valve deposit weight of less than 100 mg-per-valve on average over the accumulation of 10,000 miles. Finally, Part I of the proposed order also allows truthful representations regarding the numerical octane rating of any gasoline.

Part II and III of the proposed order contain a consumer education remedy designed to educate drivers about how to determine their car's octane needs. Part II requires Exxon to produce and disseminate a 15 second television message stating that most cars run properly on regular octane, and that drivers should check their owner's manual. The message must be broadcast in eighteen designated markets in two separate waves beginning in September 1997. The order establishes a performance standard that Exxon must meet in terms of the audience exposure achieved by the ad for each market and in each wave. Exxon must purchase sufficient air time so that the ad reaches 65% of the target audience (adults ages 18-49) an average of 2.7 times per person in the first wave, and 51% of the target audience an average of 2 times in the second wave. Exxon must monitor the actual exposure the ad achieves in each market, and should it fail to achieve at least 90 percent of the exposure levels specified in the order for each market, it must seek additional spots from the television stations to meet the specified targets.

Part III of the order requires Exxon to produce and disseminate a consumer brochure that is mentioned in the 15 second broadcast message required in Part II of the order. The brochure, which will be made available free of charge at Exxon service stations, informs consumers that most cars will not benefit from higher octane gasoline, and also explains that consumers may need

higher octane gasoline if their owner's manual recommends it or if their car engine consistently knocks or pings.

Parts IV, V, VI, and VII of the order require Exxon to maintain copies of all materials relied upon in making any representation covered by the order; to provide copies of the order to certain of the company's personnel; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Part VIII 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. 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.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Exxon Corporation, Docket No. 9281

Last year, the Commission issued a complaint against Exxon Corporation and, in accordance with its practice, a Notice of Contemplated Relief, the title of which is self-explanatory. The complaint alleged that Exxon had made certain deceptive claims concerning the need for its premium gasoline. Today the Commission accepts for public comment a settlement that provide less relief than the Commission contemplated when it issued the complaint and less relief than it ordered against other companies that previously have settled similar charges.¹ I agree that the core provision of the proposed order barring the allegedly deceptive claims is appropriate,² but I cannot agree to the omission of a broader provision barring Exxon from making unsubstantiated claims concerning "the relative or absolute attributes of any gasoline with respect to engine performance, power [or] * * * acceleration."

An injunctive provision covering not just the specific claims challenged in the complaint, but also, future deceptive claims of a similar nature is a common feature in Commission advertising

¹ See Sun Company, Inc., Docket C-3381 (consent order, May 6, 1992); Unocal Corporation, Inc., Docket C-3492 (consent order, April 24, 1994); Amoco Oil Company, Docket C-3655 (consent order, May 7, 1996).

² Order ¶§1.

orders. It provides an important deterrent, because any future advertising claims that do not comport with it are punishable by substantial civil penalties. The Commission previously has challenged similar advertising claims by three other gasoline companies, all of which, unlike Exxon, agreed to settlements without litigation, and all of which consented to inclusion of the broader injunctive relief omitted from this order.

Exxon's advertisements seem likely to have contributed to consumer misperceptions about the attributes of and the need for premium gasoline as much as gasoline advertisements run by the other companies. The more lenient injunctive coverage in Exxon's order will be less effective in deterring future deception and may create perverse incentives. In the future, companies may believe it is in their interest to decline negotiated settlement until after litigation has commenced if they think that the Commission will reward greater intransigence.

Narrowing the injunction might be worthwhile if some other effective remedy were added, and the proposed order adds a provision that requires Exxon to produce and disseminate a 15-second television commercial and distribute a certain number of copies of a brochure.³ Given the apparently entrenched consumer misperceptions allegedly created by Exxon's challenged claims about the need for and attributes of premium gasoline, a consumer education remedy is justified. The goal of the consumer education campaign, to correct apparently widespread and assuredly costly consumer misperceptions about the benefits of high octane gasoline, is laudable. Unfortunately, I do not believe that this particular campaign is likely to be effective. The Commission has extensive experience with advertising techniques, and that experience should tell us that there is a good deal more to creating a successful advertisement than first meets the eye.⁴ The commercial is uninspired at best, and we have no basis for concluding that it will be effective in conveying the desired message to consumers or in changing their misperceptions. The order does not provide a performance standard or other

means of assuring that this goal will be met.⁵

Although it may be argued that we similarly have no assurance of the effectiveness of the broader injunction that was included in the Notice of Contemplated Relief, we have, at least, the assurance that further deceptive claims covered by the order may result in substantial civil penalties and, therefore, that the company may think twice before running advertisements that might mislead reasonable consumers about the attributes of particular gasoline products. In addition, the injunctive relief would remain in place for 20 years, far longer than the likely effects of a single short-lived advertising campaign like the one proposed. On balance, I believe that the notice order is stronger. Perhaps the fact that Exxon was willing to sign this order rather than the notice order should tell us something.

To the extent that the proposed order is more narrow than the notice order, I respectfully dissent.

[FR Doc. 97-17280 Filed 7-1-97; 8:45 am]

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FEDERAL TRADE COMMISSION

[Dkt. C-3734]

Herb Gordon Auto World, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, the Maryland company and its seven dealerships from obscuring important cost information in fine or unreadable print, from advertising financed purchase or leasing terms that are not available to consumers, and from misrepresenting the terms of financing or leasing any vehicle, the existence of the amount of any balloon payment, or the existence, number or amount of payments for financed purchases. The consent order requires the respondents to make all the disclosures required by the Truth in Lending Act, Regulation Z, Consumer Leasing Act, and Regulation

M, and to ensure that the disclosures are noticeable, readable, and comprehensible to an ordinary customer.

DATES: Complaint and Order issued April 15, 1997.¹

FOR FURTHER INFORMATION CONTACT: David Medine or Carole Reynolds, FTC/S-4429, Washington, DC 20580. (202) 326-3224 or 326-3230.

SUPPLEMENTARY INFORMATION: On Wednesday, February 5, 1997, there was published in the **Federal Register**, 62 FR 5414, a proposed consent agreement with analysis in the Matter of Herb Gordon Auto World, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*; 15 U.S.C. 1667-1667e; 12 CFR 226)

Benjamin I. Berman,

Acting Secretary.

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FEDERAL TRADE COMMISSION

[Docket No. C-3732]

Huling Bros. Chevrolet, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the Seattle, Washington, automobile dealerships to correctly calculate the annual percentage rate (APR) for financed purchases in accordance with Regulation Z, and to include in a clear and conspicuous manner all the disclosures required by law when a triggering term is used in an advertisement. The consent order

³The text of the negotiated advertisement is:

Hi, I'm Sherri Stuewer. I run Exxon's Baytown Refinery. We offer three octane grades. Which is right for you? Most cars will run properly on regular octane, so check your owner's manual * * * and stop by Exxon for this helpful pamphlet.

⁴The advertisement required by the order has not been copytyped.

⁵The order could have specified survey methodology and required that the advertisement be revised as needed until the survey results showed that a minimum number or percentage of consumers actually took the intended educational message from the advertising spot. The Commission has taken this approach in the past. RJR Foods, Inc., 83 F.T.C. 7, 16-21 (consent order, July 13, 1973).

¹Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.