

cigar brand, respondents must display each of the five required warning statements randomly in as equal a number of times as possible, and must distribute the packages randomly in all parts of the U.S.A. in which they are marketed.

Part IX provides that, on most types of advertising, the five warning statements shall be rotated in an alternating sequence every three months. Part IX provides for equal simultaneous display of the warning statements on merchandisers, cigar boxes that can function as open package displays and utilitarian items. Parts VIII and IX of the proposed orders also require the companies to submit to the Commission for approval plans for the display of the warnings on cigar packages and advertisements, and to comply with the plans as approved.

Part X of the proposed orders states that the Commission will consider state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warning to be in conflict with the orders.

Part XI provides a safe harbor in the event the companies have taken reasonable steps to assure compliance; in the event of labels or advertisements that do not comply with the order, the proposed respondents will bear the burden of establishing that reasonable steps were taken to comply with the order. This same safe harbor provision is included in the Commission's smokeless tobacco regulations.

Part XII of the proposed orders states that the warning requirements shall become effective one hundred and eighty (180) days after issuance of the order.

Part XIII provides that in the event the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smokeless Tobacco Health Education Act or the Commission's Smokeless Tobacco Regulations are amended or modified to change the size or format of the warnings for cigarettes or smokeless tobacco, the cigar orders may be reopened to determine whether the size or format of the warnings for cigars should be modified to conform to such changes.

Parts XIV through XVI of the proposed orders contain standard recordkeeping, reporting and compliance requirements.

The proposed orders do not contain a sunset provision due to the importance of the health warnings required therein.

Objectives of the Proposed Orders

The Commission's intent in obtaining the proposed consent orders is to

provide a uniform national system of health warnings on cigar labeling and advertising. National health warnings that are clear and conspicuous benefit consumers. Here, the cigar warnings will prevent future deception and unfairness by providing important information with which consumers nationwide can make more informed choices.⁴

Each of the five warnings conveys a simple and specific message about health risks associated with cigar use. The orders' requirements for display of the warnings on packaging and advertising will provide sufficient repetition of each warning statement to contribute to long-term recall of each message, while decreasing the likelihood that any one message will become so familiar and overexposed that its effectiveness will "wear out." Together, the five warnings provide a comprehensive warning scheme that provides necessary and important information to consumers nationwide.

Because the proposed respondents' cigar packaging and advertising is disseminated in the national marketplace, a comprehensive national system of simple and direct warnings will provide the greatest benefits to consumers. Moreover, multiple, and potentially inconsistent, warnings on individual packages or advertisements could neutralize or negate those benefits. Such multiple warnings may be confusing to consumers and undercut the saliency of the warnings required by these consent orders. Further, they are likely to have the unintended effect of making it more difficult for consumers to process the warning messages required here. And, while diminished effectiveness could result when one state mandates additional warnings on packages or advertisements bearing the Commission warnings, the problem will be exacerbated if more than one state imposes requirements applicable to a single package or advertisement.

In light of the important benefits from a national warning system, Part X of the Commission's orders preempts state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warnings. At the same time, the Commission recognizes the critically important role that states play in consumer protection and tobacco control. The provision does not affect other state or local requirements. For example, required warnings for types of

⁴ Uniform national health warnings likewise benefit national competition. Multiple different warnings can raise costs and regulatory burdens for national marketers such as the proposed respondents.

advertising that are not covered by the proposed orders (such as shelf talkers under a certain size), or state or local restrictions on advertising placement or youth access to tobacco products are not affected. It is the Commission's intent that this provision apply only to state requirements for different health warnings by companies who have entered into the FTC consent orders, and only to packages and advertising required to contain the federally-mandated warnings.

The purpose of the 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 in any way the terms therein.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00-17221 Filed 7-6-00; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 992 3206]

Value America, Inc.; 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 complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES:

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/format.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. 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)).

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 Value America, Inc. ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) 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.

Respondent advertises, sells, and distributes personal electronic devices, computer software, personal computers, and other products through its Internet Web site (reached by <www.va.com> or <www.valueamerica.com>), and through toll-free telephone numbers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of various computer systems based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service. This matter also concerns alleged violations of the Mail or Tbers.

