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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Plaintiff, v. AJM PACKAGING CORPORATION, a corporation. Defendant.	Case No. 1:13-cv-1510 **STIPULATED ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTY JUDGMENT**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for Permanent Injunction, Civil Penalties, and Other Relief, pursuant to Sections 5(*l*) and 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(*l*) and 56(a)(1). Defendant, AJM Packaging Corporation ("Defendant"), has waived service of the summons and the Complaint. The parties, represented by the counsel identified below, have agreed to this settlement of the action without adjudication of any issue of fact or law.

THEREFORE, it is ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and all of the parties.
2. Venue is proper as to all parties in this District.
3. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5(*l*) and 16(a) of the FTC Act, 15 U.S.C. §§ 45(*l*) and 56(a).
4. Defendant's activities are "in or affecting commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. In its Complaint, the Commission charges that Defendant violated the FTC Decision and Order in FTC Docket No. C-3508 (1994) ("1994 FTC Order").

6. Defendant waives any claim that it may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorneys' fees.

7. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.

8. The parties waive all rights to appeal or otherwise challenge or contest the validity of this Order.

I. CIVIL PENALTY JUDGMENT

IT IS ORDERED that judgment in the amount of four hundred fifty thousand dollars ($450,000) is hereby entered against Defendant as a civil penalty pursuant to Section 5(*l*) of the FTC Act, 15 U.S.C. § 45(*l*).

A. Within seven (7) days of entry of this Order, Defendant shall transfer the civil penalty payment in the form of an electronic fund transfer in accordance with the procedures specified by a representative of the Commission.

B. In the event of any default in payment, the entire unpaid amount, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

C. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by, or on behalf of, the FTC to enforce its rights to any payment or money judgment pursuant to this Order.

II. PROHIBITION AGAINST VIOLATING NEW FTC ORDER

IT IS FURTHER ORDERED that Defendant, and its successors and assigns, and their officers, agents, representatives, and employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Order by personal service or otherwise, are hereby permanently enjoined from violating, directly or through any corporation, subsidiary, division, or other device, any provision of the new FTC Order issued pursuant to Section III.

III. NEW FTC ORDER

IT IS FURTHER ORDERED that Defendant, and its successors and assigns, shall consent to: (i) reopening of the proceeding in FTC Docket No. C-3508; (ii) waiver of its rights under the show cause procedures set forth in Section 3.72(b) of the FTC Rules of Practice, 16 C.F.R. § 3.72(b); (iii) vacating the 1994 FTC Order as to AJM Packaging Corporation; and (iv) issuing a new FTC Order providing as follows:

AJM Packaging Corporation having consented to vacating the order issued in Docket No. C-3508 in 1994 as to it and to issuing a new order as follows, the Commission hereby issues the following order:

ORDER

DEFINITIONS

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

1. "Clearly and prominently" means

   A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;

   B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

   C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.

2. "Close proximity" means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. "Competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.

5. "Customary disposal" means any disposal method whereby respondent's products ultimately will be disposed of in a landfill, in an incinerator, or in a recycling facility.

6. "Degradable" includes biodegradable, oxo-biodegradable, oxo-degradable, or photodegradable, or any variation thereof.

7. "Landfill" means a municipal solid waste landfill that receives household waste. "Landfill" does not include landfills that are operated as bioreactors or those that are actively managed to enhance decomposition.

8. "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 respondent and any such product or package sold or distributed to the public by third parties that is manufactured by respondent.

9. Unless otherwise specified, "respondent" means AJM Packaging Corporation, its successors and assigns and its officers, agents, representatives, and employees.

Part I.

IT IS ORDERED that respondent, 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, shall not represent, in any manner, expressly or by implication, that any such product or package is degradable, unless

A. the entire item will completely decompose into elements found in nature within one year after customary disposal; or

B. the representation is clearly and prominently and in close proximity qualified by: (1) the time to complete decomposition after customary disposal; or (2) the time to complete

decomposition after non-customary disposal, the type of non-customary disposal facility or method, and the availability of such facility or method to consumers where the item is marketed or sold,

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. Any technical protocol (or combination of protocols) must assure complete decomposition within one year or a stated time frame and must replicate, *i.e.*, simulate, the physical conditions found in the type of disposal facility stated in the representation (*e.g.*, in landfills, where most trash is disposed).

Part II.

IT IS FURTHER ORDERED that respondent, 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, shall not represent in any manner, expressly or by implication, that any such product or package is compostable, unless

A. all materials in the item will break down into, or become part of, usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner (*i.e.*, in the same time as the materials with which it is composted)

1. in a home composting pile or device;

2. in a municipal or institutional composting facility that is available to a substantial majority of consumers or communities where the item is sold and respondent discloses clearly and prominently and in close proximity to the representation that the item is only compostable in such a facility; or

3. in a municipal or institutional composting facility that is not available to a substantial majority of consumers or communities and respondent discloses clearly and prominently and in close proximity to the representation: (i) that the item is only compostable in such a facility and (ii) the limited availability of municipal or institutional composting facilities that compost the item, such as by disclosing the percentage of consumers or communities that have access to such facilities;

B. and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III.

IT IS FURTHER ORDERED that respondent, 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, shall not represent in any manner, expressly or by implication, that any such product or package is recyclable, unless

A. the entire item can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item;

B. recycling facilities that accept the item for recycling are available

1. to a substantial majority (at least sixty percent) of consumers or communities where the item is sold; or

2. to less than a substantial majority (at least sixty percent) of consumers or communities where the item is sold and respondent discloses clearly and prominently and in close proximity to the representation the limited availability of recycling for the item and the extent to which it is limited, such as by disclosing the percentage of consumers or communities that have access to facilities that recycle such item;

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product or package, in or affecting commerce shall not represent, in any manner, expressly or by implication, that any such product or package offers any environmental benefit, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

Part V.

This Order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the 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 Part 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

C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

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 Part as though the complaint had never been 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.

* * *

IV. ORDER ACKNOWLEDGMENTS

A. Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant must deliver a copy of this Order and the new FTC Order issued pursuant to Section III to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section

titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant delivered a copy of this Order or the new FTC Order issued pursuant to Section III, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order and the new FTC Order issued pursuant to Section III.

V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One hundred eighty (180) days after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury.

1. Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 20 years following entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; (b) the structure of any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. AJM Packaging Corporation, C-3508.

F. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with the Defendant.

VI. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant must maintain the following records:

A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each advertisement or other marketing material.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring compliance with this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The

Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 1st day of October, 2013.

Beryl A. Howell

UNITED STATES DISTRICT JUDGE
United States District Court

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

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