

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

FIRST BRANDS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3358. Complaint, Jan. 3, 1992 -- Decision, Jan. 3, 1992

This consent order prohibits, among other things, the Connecticut manufacturer of Glad plastic bags from representing that any of its plastic bags offer any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

Appearances

For the Commission: *Michael Dershowitz.*

For the respondent: *William Blumenthal and Michael L. Denger, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that First Brands Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent First Brands Corporation is a Delaware corporation with its office and principal place of business located at 83 Wooster Heights Road, Danbury, Connecticut.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed plastic trash bags to the public under such trade names as Glad Bags.

PAR. 3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Glad Bags, including, but not necessarily limited to, the attached Exhibits A, B, and C.

The aforesaid package labeling includes one or all of the following statements on the front of the package:

IMPROVED
DEGRADABLE
SAFE FOR THE ENVIRONMENT

The aforesaid package labeling includes the following statements on the bottom of the package:

SAFE FOR THE ENVIRONMENT
GLAD Bags are well suited for their role in the environment. ... And now GLAD Bags are more photodegradable than ever, thanks to a new additive that promotes degradation without sacrificing strength.

GLAD Bags are photodegradable thanks to an additive that promotes degradation without sacrificing strength.

Are degradable in the sunlight.

Act as a non-contaminating inert material in a landfill.

PAR. 5. Through the statements referred to in paragraph four and others in package labeling not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Compared to untreated plastic bags, Glad Bags offer a significant environmental benefit when consumers dispose of them as trash; and
2. Glad Bags will completely break down, decompose, and return to nature in a reasonably short period of time after consumers dispose of them as trash.

PAR. 6. Through the statements and representations referred to in paragraphs four and five, and others not specifically set forth herein, respondent has represented, directly or by implication, that at

the time it made such representations, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 7. In truth and in fact, at the time respondent made such representations, respondent did not possess and rely upon a reasonable basis for such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Yao not participating.

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Complaint

EXHIBIT B

EXHIBIT B

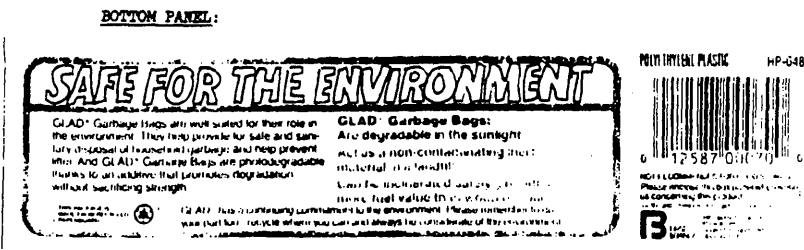
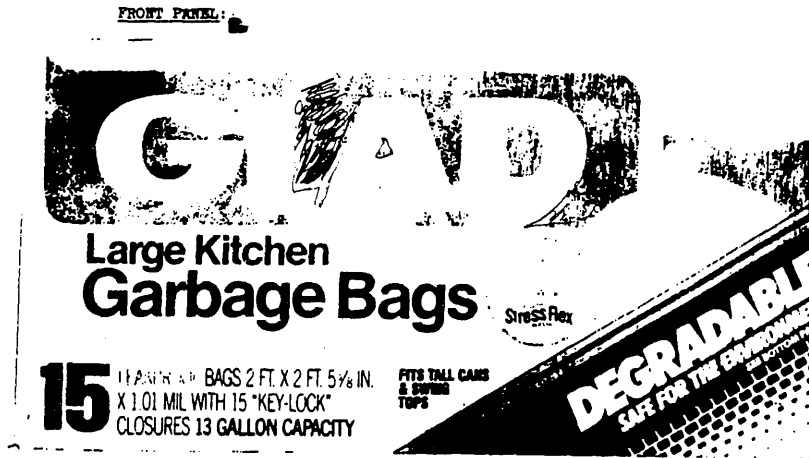
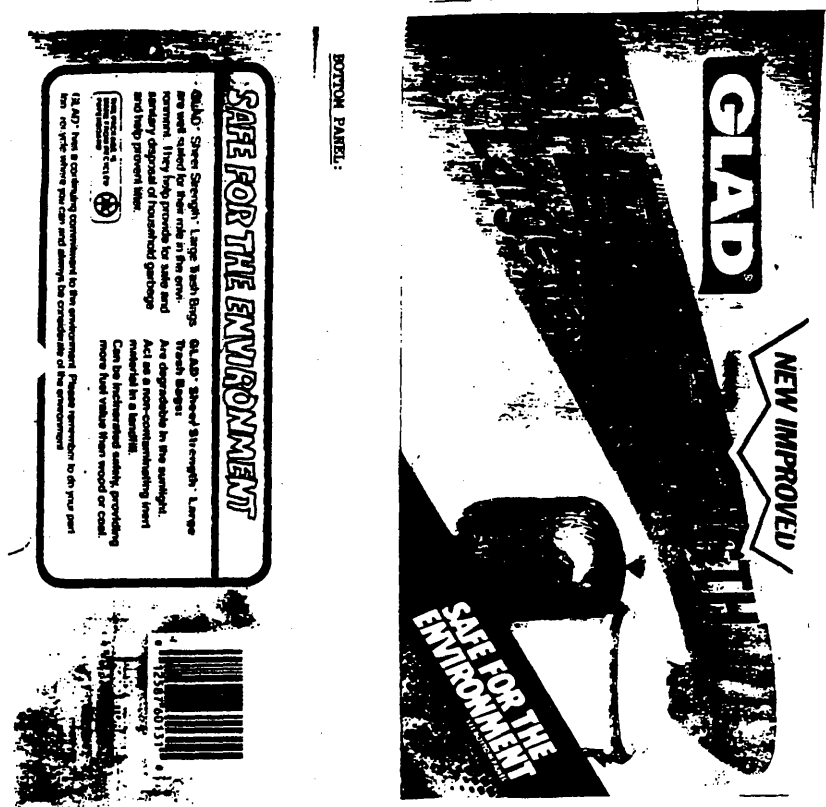


EXHIBIT C

EXHIBIT C



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the above caption, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent First Brands Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. First Brands has its offices and principal place of business at 83 Wooster Heights Road, Danbury, Connecticut.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

DEFINITION

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

"*First Brands plastic bag*" means any plastic grocery sack, or any plastic "disposer" bag, including but not limited to trash bags, lawn bags, and kitchen bags, that is offered for sale, sold, or distributed to the public by respondent, its successors and assigns, under the "Glad" bags brand name or any other brand name of respondent, its successors and assigns; and also means any such plastic bag sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

I.

A. *It is ordered*, That respondent First Brands Corporation, a corporation, its successors and assigns, and its officers, 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 First Brands plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any such plastic bag is "degradable," "biodegradable," or "photodegradable"; or,

(2) Through the use of "degradable," "biodegradable," "photodegradable," or any other substantially similar term or expression, that the degradability of any such plastic bag offers any environmental benefits when disposed of as trash in a sanitary landfill,

unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for such representation, consisting of competent and reliable scientific evidence that substan-

tiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however,* respondent will not be in violation of this order, in connection with the advertising, labeling, offering for sale, sale, or distribution of plastic bags, if it truthfully represents that its plastic bags are designed to degrade or break down, and become part of usable compost along with the bag's contents, when disposed of in programs that collect yard or other waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such bags and any advertising referring to the degradability of such bags discloses clearly, prominently, and in close proximity to such representation:

- (1)(a) That such bags are not designed to degrade in landfills, or
- (1)(b) In those states in which composting facilities are required for yard waste, that composting bags are only designed to degrade in such composting facilities; and further discloses
 - (2)(a) That yard waste composting programs may not be available in the consumer's area, or
 - (2)(b) The approximate percentage of the U.S. population having access to yard waste composting programs.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such representation if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package. If such representation appears in more than one place on a package, it shall be sufficient if

the above-required disclosures appear only on the principal display panel of the package, as "principal display panel" is defined in the Fair Packaging and Labeling Act, 15 U.S.C. 1459(f) (1988).

If the advertising and labeling of respondent's plastic bags otherwise complies with Subpart A of Part I of this order, respondent will not be in violation of this order if it does not make the disclosures in this proviso (Subpart B).

II.

It is further ordered, That respondent First Brands Corporation, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising or labeling of any First Brands plastic bag, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the terms "safe for the environment," "no harm to the environment," "no injury to the environment," "no risk to the environment," "friendly to the environment," or any rearrangement of such terms, *e.g.*, "environmentally safe," "environmentally harmless," "environmentally risk-free" or "environmentally friendly," unless: (1) respondent discloses clearly, prominently, and in close proximity thereto with reasonable specificity what is meant by such term, and (2) at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results. For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and

conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the package.

III.

Nothing in this order shall prevent respondent from using any of the terms cited in Parts I and II, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV.

It is further ordered, That respondent may continue to deplete its existing inventory of composting bag packaging in the normal course of business without violating this order.

V.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order; and

B. All test reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

VI.

It is further ordered, That respondent 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

