

## VI.

It is further ordered that respondent Amoco Oil Company shall, within sixty (60) days after service of this Order upon it, 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 it has complied with this Order.

## 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 Amoco Oil Company ("Amoco").

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 advertising claims regarding the performance attributes of Amoco Silver midgrade and Amoco Ultimate premium gasolines. The Commission's proposed complaint alleges that Amoco's advertising has made unsubstantiated claims that Amoco Ultimate provides superior performance and environmental benefits compared to all other premium brands, because it is refined more than such brands, and that Ultimate's clear color demonstrates its superiority. The complaint also challenges as unsubstantiated the claim that automobiles driven more than 15,000 miles generally suffer from lost engine power and acceleration, which Amoco Silver's higher octane will restore. Finally, the complaint challenges as unsubstantiated the claims that Silver and Ultimate will clean dirty fuel injectors in one tankful, and are superior to other brands in cleaning fuel injectors.

The proposed consent order contains 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 any of the unsubstantiated representations alleged in the complaint, or any other representation concerning the attributes of any Amoco gasoline with respect to environmental benefits or engine performance, power, acceleration or engine cleaning ability, unless it has competent and reliable scientific evidence that substantiates the representation, at the time it is made.

Part I of the proposed order also states that any claim by respondent that a gasoline will clean or clean up fuel injectors to a level that engine performance is not adversely affected will be deemed to be substantiated by competent and reliable testing showing that the flow rate of each injector was restored to at least 95% of its original value. Part I of the proposed order also allows truthful representations regarding the numerical octane rating of any gasoline.

Part II of the order requires Amoco to distribute copies of the order to its operating divisions and to various officers, agents and employees of Amoco.

Part III of the order requires Amoco to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires Amoco to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V 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.

Part VI of the order requires Amoco to file with the Commission 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.

Donald S. Clark,

*Secretary.*

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[File No. 942-3202]

### Nordic Track, Inc.; Consent Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** 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 bar the Chaska, Minnesota-based corporation from misrepresenting weight-loss study results and would require it to have competent and reliable evidence to back up weight loss, weight maintenance, and related claims for any exercise

equipment it sells. The Commission had alleged that Nordic Track made false and unsubstantiated weight loss and weight maintenance claims in advertising its cross-country ski exercise machine.

**DATES:** Comments must be received on or before April 29, 1996.

**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:** Jeffrey Klurfeld or Kerry O'Brien, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356-5270.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 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 Section 4.9(b)(6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of NordicTrack, Inc., a corporation. File No: 942-3202.

### Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of NordicTrack, Inc., a corporation, and it now appearing that NordicTrack, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between NordicTrack, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent NordicTrack, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 104 Peavey Road, in the City of Chaska, State of Minnesota.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become 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 complaint contemplated thereby, 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 the proposed respondent, 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 respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

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 Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) 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 (b) 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 complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may 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 the agreement

may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### ORDER

##### I.

It is ordered that respondent NordicTrack, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment 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:

A. The percentage of its customers who have successfully lost weight;

B. The percentage of its customers who have successfully maintained weight loss;

C. The number of pounds lost by its customers;

D. The percentage of weight loss maintained by its customers;

E. The rate or speed at which its customers have experienced weight loss;

F. The length of time its customers must use such product to achieve weight loss;

G. The comparative efficacy of any other weight loss method or methods; or

H. The benefits, efficacy, or performance of such product in promoting weight loss or weight loss maintenance; 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 the representation. For the purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have 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.

##### II.

It is further ordered that respondent NordicTrack, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any exercise equipment 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 implications, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or survey relating to weight loss, weight loss maintenance or comparisons with the efficacy of other weight loss methods.

##### III.

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its 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 its 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 respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

##### V.

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or who is in

communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order; and for a period of five (5) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

#### VI.

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade 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 paragraph in this Order that terminates in less than twenty 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 paragraph. 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 paragraph as though the complaint was never 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.

#### VII.

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, 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 it has complied with this Order.

#### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent NordicTrack, Inc., ("NordicTrack") a Minnesota corporation.

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.

NordicTrack manufacturers and distributes various exercise equipment to consumers, including its cross-country ski exercisers. The Commission's complaint charges that respondent's advertising contained false or unsubstantiated representations relating to the weight loss and weight maintenance experience of NordicTrack owners. Specifically, the complaint alleges that the respondent did not possess adequate substantiation for claims that: (1) seventy or eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight lost an average of seventeen pounds; (2) eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight and lost weight using it maintained all of their weight loss for at least a year; (3) eighty percent of those who purchased a NordicTrack cross-country ski exerciser to lose weight maintained all of their weight loss at least a year; and (4) consumers who use NordicTrack cross-country ski exercisers for twenty minutes a day, three times per week, lose an average of eighteen pounds in twelve weeks. In addition, the complaint alleges that the respondent falsely represented that it had competent and reliable research or studies which prove these claims.

The complaint alleges that respondent based its success rate claims on studies which suffered from various methodological flaws. For example, the results of the studies reflect the experiences of only a highly selected population of purchasers who were able to integrate the NordicTrack cross-country ski exerciser into their regular, weekly, exercise regime. One such study involved putting thirty-eight participants through a rigorous twelve-week exercise program. Respondent based weight-loss claims on the average weight loss experienced by the twenty participants (53 percent) able to complete the program. The studies also failed to take into account changes in the dietary habits of purchasers. Furthermore, the studies were based on self-reported body weights, unadjusted for bias, which may yield inaccurate results.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar

acts and practices in the future. Part I of the proposed order would prohibit the company from making any claim for any exercise equipment regarding: (1) the percentage of its customers who have successfully lost weight; (2) the percentage of its customers who have successfully maintained weight loss; (3) the number of pounds lost by its customers; (4) the percentage of weight loss maintained by its customers; (5) the rate or speed at which its customers have experienced weight loss; (6) the length of time its customers must use such product to achieve weight loss; (7) the comparative efficacy of any other weight loss method or methods; or (8) the benefits, efficacy, or performance of such product in promoting weight loss or weight loss maintenance, unless at the time of making them, they possess and rely upon competent and reliable evidence.

Part II of the proposed order prohibits the company from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study or survey relating to weight loss, weight loss maintenance or comparisons with the efficacy of other weight loss methods.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; 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.

Donald S. Clark,

Secretary.

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