

consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that a "free" emachines computer included a monitor at no additional cost. In fact, the monitor cost \$139.99 or \$199.99, depending on its size. The complaint also alleges that respondent falsely claimed that consumers could obtain the "free" emachines computer at no cost after rebates. In fact, in order to obtain the computer at no cost, consumers were required to subscribe to Prodigy Internet Service for three years at an additional cost of \$19.95 per month or a full payment of \$718.20. The complaint also alleges that in representing that consumers could obtain the "free" emachines computer at no cost after rebates respondent failed to disclose or failed to disclose adequately that: (a) Consumers were required to subscribe to Prodigy Internet service for three years at an additional cost of \$19.95 per month or a total cost of \$718.20; (b) consumers who cancel the Internet service within three years must repay the entire \$400 rebate and pay a \$50 cancellation fee; and (c) Prodigy does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

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 misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost

of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms "rebate" or "discount" without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in disseminating the representations.

Part V of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part VI of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VII of the proposed 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 the 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.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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## FEDERAL TRADE COMMISSION

[File Nos. 002-3199; 002-3200; 002-3201; 002-3202; 002-3203; 002-3204; and 002-3205]

**Swisher International, Inc.; Consolidated Cigar Corporation; Swedish Match North America, Inc.; General Cigar Holdings, Inc.; Lane Limited; Havatampa, Inc.; and John Middleton, Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** The consent agreements in these seven matters settle 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 complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

**DATES:** Comments must be received on or before July 26, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** C. Lee Peeler or Mamie Kresses, FTC/S-4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326-3090 or 326-2070.

**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 above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have 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 agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreements package can be obtained from the FTC Home Page (for June 26, 2000), on the World Wide Web, at "http://

www.ftc.gov/ftc/formal.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 Orders To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements containing consent orders from the following cigar manufacturers, importers or marketers: Swisher International, Inc. (Matter No. 002-3199); Consolidated Cigar Corporation (Matter No. 002-3200); Havatampa, Inc. (Matter No. 002-3204); General Cigar Holdings, Inc. (Matter No. 002-3202); John Middleton, Inc. (Matter No. 002-3205); Lane Limited (Matter No. 002-3203); and Swedish Match North America, Inc. (Matter No. 002-3201).

The proposed consent orders have been placed on the public record for thirty (30) days for the 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 agreements and comments received and will decide whether it should withdraw from the agreements and take appropriate action or make final the agreements' proposed orders.

#### Background

In July 1999, the Federal Trade Commission provided a Report to Congress, entitled *Cigar Sales and Advertising and Promotional Expenditures for Calendar Years 1996 and 1997* ("Commission Report"). The Commission Report recommended that, given the significant increase in cigar smoking prevalence in recent years and the serious health risks posed by cigar smoking,<sup>1</sup> cigars should be regulated in

a manner consistent with the current regulation of cigarettes and smokeless tobacco. See *Federal Cigarette Labeling and Advertising Act*, 15 U.S.C. 1331 *et seq.*; *Comprehensive Smokeless Tobacco Health Education Act of 1986*, 15 U.S.C. 4401 *et seq.* The Commission Report recommended that Congress either enact legislation to require federal health warnings on cigar labeling and advertising or direct the Commission to use its existing authority, under Section 5 of the Federal Trade Commission Act, to require cigar health warnings.

In November 1999, in the Joint Explanatory Note of the Conferees to H.R. 3421 Appropriations Bill, the Congressional Appropriations Committees responded to the Commission Report by directing the FTC to report back to the Committees on Commission plans to establish "uniform Federal health warning label[s]." <sup>2</sup>

After consideration of the National Cancer Institute's findings in its Cigar Monograph on the serious health risks of regular cigar use, and the failure of cigar advertising and labeling to disclose these health risks, the Commission negotiated consent agreements with the seven largest cigar companies to implement health warnings on cigar labeling and advertising nationwide.<sup>3</sup>

#### The Proposed Complaints and Orders

The proposed complaints each allege that the failure to disclose that regular cigar smoking can cause serious adverse health effects is both unfair and deceptive in violation of Section 5 of the FTC Act. Part I of the proposed orders requires the respondents to make a clear and conspicuous disclosure of the following warning statements on cigar labels and in advertising:

**SURGEON GENERAL WARNING:** Cigar Smoking Can Cause Cancers Of The Mouth And Throat, Even If You Do Not Inhale.

**SURGEON GENERAL WARNING:** Cigar Smoking Can Cause Lung Cancer And Heart Disease.

**SURGEON GENERAL WARNING:** Cigars Are Not A Safe Alternative To Cigarettes.

**SURGEON GENERAL WARNING:** Tobacco Use Increases The Risk Of Infertility, Stillbirth, And Low Birth Weight.

**SURGEON GENERAL WARNING:** Tobacco Smoke Increases The Risk

Of Lung Cancer And Heart Disease, Even In Nonsmokers.

Part II of the proposed orders sets out specific format requirements for the warnings, which are designed to ensure that the warnings are visible and readable. Part II also requires that the warning statements on labeling and advertising be printed in black print on a solid white background, and be capitalized and punctuated as set forth in Part I.

Part III specifies the location and size requirements for the disclosure of the health warnings on cigar labels. The orders require that the warning be displayed on the principal display panel of the package. For the majority of cigar boxes, the orders define the principal display panel to be the larger of the top or front panel of the package, thus ensuring that the warning is in the most noticeable location. The orders make an exception for boxes of premium (hand-rolled) cigars, providing that the warning can appear on the top or front of the box, depending upon which panel is more likely to be seen by consumers.

Part IV sets forth the specific format and size requirements for the disclosure of the health warnings on cigar advertising. The orders provide that the warning shall be in black print on a white background and be centered in a black ruled rectangular box. Part IV specifies how to calculate the size of the warning and where to place the warning in various types of advertising, including periodicals, merchandisers, functional items, catalogues and cigar packages that also function as point-of-sale displays.

Part V specifies how to make the required disclosures in audio and video advertisements, including radio, television, the Internet, tapes and films. The orders require that in interactive media, such as the Internet, the warnings must be displayed in an unavoidable manner on every Web page.

Part VI of the proposed orders addresses requirements for the disclosure of the warnings on utilitarian items. Utilitarian items are treated like other advertising, and the warning statements must appear in a rectangular box form, in a size based upon the item's total advertising display area.

Part VII provides that cooperative advertisements paid for in whole or in part by a respondent must include the warnings, with the exception of very small print advertisements containing only brand name and price information.

Part VIII sets forth the specific requirements for the rotation, display and distribution of the warning statements on cigar packages. For each

<sup>2</sup> 145 Cong. Rec. H12230-02 (daily ed. Nov. 17, 1999).

<sup>3</sup> Like all FTC consent orders, these orders are for settlement purposes only and do not constitute an admission by the cigar manufacturers of any law violation.

<sup>1</sup> See U.S. Department of Health and Human Services, National Cancer Institute, *Smoking and Tobacco Control Monograph No. 9 Cigars: Health Effects and Trends* (1998), NIH publication no. 98-4302 ("Cigar Monograph").

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.<sup>4</sup>

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

<sup>4</sup> 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]

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#### 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:** Comments must be received on or before July 31, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel Winston or Michael Dershowitz, FTC/S-4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580 (202) 326-3153 or 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 2.34 of the Commission's Rules of Practice (16 CFR 2.34), 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