

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch**

)	
In the Matter of)	
)	
KMART CORPORATION,)	
a corporation.)	DOCKET NO. C-4263
)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Kmart Corporation (“respondent”), has violated provisions of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Kmart Corporation is a Michigan corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179.
2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
3. Respondent advertises, labels, offers for sale, sells, and/or distributes goods under the brand name American Fare to the public throughout the United States, including American Fare paper plates. Respondent advertises and offers these goods for sale through print ads and in its Kmart retail outlets throughout the United States.
4. To induce consumers to purchase American Fare paper plates, respondent disseminates, has disseminated, or has caused to be disseminated advertisements, including product labeling and other promotional materials, including but not limited to the attached Exhibit A. In these advertisements, respondent prominently states or has stated that American Fare plates are “biodegradable.” Respondent does not define, describe, or qualify such biodegradability.
5. Approximately 91 percent of total municipal solid waste in the United States is disposed of in either landfills, incinerators, or recycling facilities. These disposal methods do not present conditions that would allow for American Fare paper plates to completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

FALSE OR MISLEADING REPRESENTATIONS

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that American Fare paper plates will completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time after customary disposal.

7. In truth and in fact, American Fare paper plates will not completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time after customary disposal because a substantial majority of total municipal solid waste is disposed of by methods that do not present conditions that would allow for American Fare paper plates to completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time.

8. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

UNSUBSTANTIATED REPRESENTATIONS

9. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made.

10. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 6 at the time the representation was made.

11. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

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

THEREFORE, the Federal Trade Commission, on this fifteenth day of July, 2009, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary