

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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| In the Matter of |) | |
| |) | |
| |) | |
| SPLITFIRE, INC., |) | FILE NO. 952-3029 |
| a corporation. |) | |
| |) | |
| |) | AGREEMENT CONTAINING |
| |) | CONSENT ORDER |
| |) | |

The Federal Trade Commission has conducted an investigation of certain acts and practices of SplitFire, Inc., a corporation ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between SplitFire, Inc., and counsel for the Federal Trade Commission that:

1. Proposed respondent SplitFire, Inc. is an Illinois corporation with its principal office or place of business at 4065 Commercial Avenue, Northbrook, Illinois, 60062-1851.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
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 complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify 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 that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order 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 of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules 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. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. Proposed respondent understands it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. "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.

2. Unless otherwise specified, "Respondent " shall mean SplitFire, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees. For purposes of this order, "successors" shall include, but not be limited to:

(a) any person who

(1) markets the SplitFire spark plug, any split-electrode spark plug, or any spark plug with more than two electrodes; and

(2) holds or has held an ownership interest in and/or serves or has served as an officer of respondent SplitFire, Inc.; and

(b) any entity that

(1) markets the SplitFire spark plug, any split-electrode spark plug, or any spark plug with more than two electrodes; and

(2) is owned or controlled, wholly or in part, by any person who holds or has held an ownership interest in respondent SplitFire, Inc. and/or serves or has served as an officer of respondent SplitFire, Inc.

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

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "SplitFire Spark Plug," or any other motor vehicle product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

- A. The effect of such product on a vehicle 's fuel economy;
- B. The effect of such product on a vehicle 's level of emissions;
- C. The effect of such product on a vehicle 's horsepower; or
- D. The comparative or absolute cost savings that such product will contribute to or achieve,

unless, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any motor vehicle product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any motor vehicle product, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that the experience

represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

- A. At the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; or
- B. Respondent discloses, clearly and prominently, and in close proximity to the endorsement or testimonial, either:
 - 1. What the generally expected results would be for users of the product, or
 - 2. The limited applicability of the endorser 's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

For purposes of this Part, "endorsement " shall mean as defined in 16 C.F.R. § 255.0(b).

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any motor vehicle product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondent SplitFire, Inc. and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent SplitFire, Inc. and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent SplitFire, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent SplitFire, Inc., and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) 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 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.

Signed this _____ day of _____, 199_.

SPLITFIRE, INC.

By:

FREDERIC M. SCHWEIGER
Vice President

EDWARD A. GELTMAN, ESQ.
Counsel for Respondent

LAURA FREMONT
Counsel for the Federal Trade Commission

MATTHEW D. GOLD
Counsel for the Federal Trade Commission

APPROVED:

JEFFREY KLURFELD

Regional Director
San Francisco Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
)
SPLITFIRE, INC.,)
 a corporation.) DOCKET NO.
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COMPLAINT

The Federal Trade Commission, having reason to believe that SplitFire, Inc., a corporation ("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:

1. Respondent SplitFire, Inc. is an Illinois corporation with its principal office or place of business at 4065 Commercial Avenue, Northbrook, Illinois, 60062-1851.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed automotive products to the public, including the "SplitFire Spark Plug," an internal combustion engine spark plug with one split or forked electrode.
3. 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.
4. Respondent has disseminated or has caused to be disseminated advertisements for SplitFire Spark Plugs, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

- A. "Good [Depiction of a conventional spark plug]
Conventional Plugs
. . .
Better [Depiction of a platinum-tipped spark
plug]
Platinum Plugs
. . .

BEST [Depiction of a SplitFire Spark Plug]
SplitFire Plugs

. . .

Experts say improved combustion of the fuel/air mixture results in:

MORE POWER · MORE MILEAGE · LOWER EMISSIONS

The SplitFire Advantage

'It Only Costs More Until You Use It!' TM

Equipped with conventional spark plugs, up to 15% of the combustion cycles in a modern engine end up in 'partial misfires.' SplitFire's larger flame kernel helps reduce partial misfires, and experts say it helps improve:

PERFORMANCE

· More horsepower
M.P.G.

. . .

ECONOMY

· More

. . .

EMISSIONS

· Lower emissions

. . .

Improved combustion efficiency means that a higher percentage of fuel is converted to power, not partially-burned exhaust. Higher efficiency means you get more out of every ounce of fuel, so you use less of it."

(Exhibit A, consumer brochure)

B. **"CONSUMER RESEARCH RESULTS**

SplitFire conducts continuous consumer surveys to constantly monitor 'real life' performance in all vehicle types, coast-to-coast.

. . .

Of all users (regardless of vehicle type, age, condition, and use) responding:

. . .

70% reported a gas mileage increase of from 1 to 6 more miles per gallon."

(Exhibit B, product catalog)

- C. Consumer Endorser: "Yeah, I went from probably 300 miles on a full tank to almost 400."

. . .

Consumer Endorser: "I probably was getting, I would say about 20 miles more per tankful, and that's a lot for me!"

. . .

Consumer Endorser: "And when you're driving a four-wheel drive vehicle, you need all the extra gas mileage you can get."

(Exhibit C, television ad)

- D. "SplitFire. At \$5.99, America knows it only costs more 'til you use it!

. . .

Consumer Endorser: 'I can say I 've saved at least \$3 - \$4 a week.'

. . .

Consumer Endorser: 'They'll pay for themselves, basically, in the first 6 months you own 'em.'"

(Exhibit D, television ad)

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- A. Use of SplitFire Spark Plugs will result in significantly better fuel economy than will use of either conventional spark plugs or platinum-tipped spark plugs.
- B. Use of SplitFire Spark Plugs will result in significantly lower emissions than will use of either conventional spark plugs or platinum-tipped spark plugs.

- C. Use of SplitFire Spark Plugs will result in significantly greater horsepower than will use of either conventional spark plugs or platinum-tipped spark plugs.
- D. Use of SplitFire Spark Plugs will result in significant cost savings over use of either conventional spark plugs or platinum-tipped spark plugs.
- E. The testimonials or endorsements from consumers appearing in advertisements and promotional materials for SplitFire Spark Plugs reflect the typical or ordinary experience of members of the public who use SplitFire Spark Plugs.
- F. 70% of SplitFire Spark Plug users achieve a gas mileage increase of from 1 to 6 more miles per gallon.

6. 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 representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that competent and reliable studies or surveys show that 70% of SplitFire users achieve a gas mileage increase of from 1 to 6 more miles per gallon.

9. In truth and in fact, competent and reliable studies or surveys do not show that 70% of SplitFire users achieve a gas mileage increase of from 1 to 6 more miles per gallon. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. 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.

THEREFORE, the Federal Trade Commission this day of
, , has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-D attached to paper copies of complaint, but not available in electronic form.]

Analysis of Proposed Consent Order
to Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from respondent SplitFire, Inc., an Illinois corporation that markets automotive products.

The proposed consent order has been placed on the public record for sixty (60) days for receipt 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 make final the agreement's proposed order, or withdraw from the agreement and take other appropriate action.

This matter concerns the advertising of SplitFire's "SplitFire" spark plug, which has one v-shaped, or "split" electrode. The Commission's complaint charges that SplitFire's advertising represented, without a reasonable basis, that use of SplitFire Spark Plugs results in significantly better fuel economy, significantly greater horsepower, and significantly lower emissions than use of either conventional (non split-electrode) spark plugs or platinum-tipped spark plugs. The Commission's complaint also charges that respondent represented, without a reasonable basis, that use of SplitFire Spark Plugs will result in significant cost savings over use of either conventional or platinum-tipped spark plugs.

In addition, the complaint alleges that the company lacked a reasonable basis for its claim that 70% of SplitFire Spark Plug users achieve a gas mileage increase of from 1 to 6 more miles per gallon. Furthermore, the complaint alleges as false SplitFire's claim that these figures were based on competent and reliable studies or surveys.

Lastly, the Commission's complaint charges that respondent represented, without a reasonable basis, that the testimonials or endorsements from consumers appearing in advertisements and promotional materials for its spark plugs reflect the typical or ordinary experience of members of the public who use SplitFire Spark Plugs.

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 prohibits SplitFire, Inc., from representing, without competent and reliable scientific evidence,

the effect of any motor vehicle product on a vehicle 's fuel economy, emissions, or horsepower. Part I also prohibits the company from representing, without competent and reliable scientific evidence, the comparative or absolute cost savings that any motor vehicle product will contribute to or achieve.

Part II of the proposed order prohibits respondent, when advertising any motor vehicle product, from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study, or research.

Part III of the proposed order addresses claims made through endorsements or testimonials. Under Part III, respondent may make such representations if respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representations; or respondent must disclose either what the generally expected results would be for users of the advertised product, or the limited applicability of the endorser 's experience to what consumers may generally expect to achieve. The proposed order 's treatment of testimonial claims is in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising, " 16 C.F.R. 255.2 (a).

Part IV of the proposed order requires respondent to possess adequate substantiation for any representation regarding the performance, benefits, or efficacy of any motor vehicle product.

The proposed order also requires respondent to maintain advertising materials and materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to certain personnel in the company; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

Under Part IX, the order terminates 20 years from the date of issuance, except under certain specified conditions.

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.