

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of )  
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American Cyanamid Company, ) DOCKET NO. C-3739  
a corporation. )  
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (15 U.S.C. § 41 et seq.), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American Cyanamid Company, a corporation (hereinafter “Am Cy” or “respondent”), has violated the provisions of Section 5 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, hereby issues this complaint, stating its charges as follows:

PARAGRAPH ONE: Respondent American Cyanamid Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business at One Campus Drive, Parsippany, New Jersey 07054. Respondent is a wholly-owned subsidiary of American Home Products Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Five Giralda Farms, Madison, New Jersey 07940.

PARAGRAPH TWO: Respondent is now, and for some time has been, engaged in the offering for sale, sale, and distribution of crop protection chemicals, such as herbicides and insecticides used in commercial agriculture, to over 2500 retail dealers located throughout the United States. In 1995, Am Cy sold at retail more than \$1 billion of its crop protection chemicals.

PARAGRAPH THREE: In 1995, Am Cy was the market share leader in three domestic crop protection chemical markets: soybean broadleaf herbicides, soybean grass herbicides, and corn soil insecticides. In addition, Am Cy had the second-largest share of the domestic cotton grass herbicide market.

PARAGRAPH FOUR: Respondent's acts and practices, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PARAGRAPH FIVE: For approximately five years beginning in 1989, Am Cy operated two rebate programs for its retail dealers. From 1989-1992, the plan was called the "Cash Reward on Performance" ("C.R.O.P.") program, and was renamed the "Award for Performance Excellence" ("A.P.E.X.") program in late 1992 through August 1995. Pursuant to the written agreements respondent entered into with its dealers under these programs, Am Cy offered to pay the dealers substantial rebates on each sale if the dealers sold Am Cy's crop protection chemicals at or above specified minimum resale prices. The specified minimum resale prices were equal to the wholesale prices paid by the dealers for the crop protection chemical products. Under the terms of the agreements, a dealer was not entitled to, and did not receive, any rebate on sales made below the specified minimum price; therefore, sales below Am Cy's specified minimum resale prices were made at a loss to the dealer. The dealers overwhelmingly accepted Am Cy's offer by selling at or above the specified minimum prices.

PARAGRAPH SIX: Am Cy also included certain nonprice performance criteria in its C.R.O.P. and A.P.E.X. programs that could increase the amount of the rebate, but compliance with those performance criteria was neither necessary nor, by itself, sufficient to obtain rebates. For example, if the dealer did not meet any of Am Cy's performance criteria, but sold the product at or above the specified minimum resale price, the dealer nonetheless received a rebate on that sale. On the other hand, if the dealer met all of the performance criteria, but sold the product below Am Cy's specified minimum resale price, the dealer received no rebate on that sale.

PARAGRAPH SEVEN: The purpose, effects, tendency, or capacity of the acts and practices described in PARAGRAPHS FIVE and SIX are and have been to restrain trade unreasonably and hinder competition in the provision of crop protection chemicals in the United States.

PARAGRAPH EIGHT: The aforesaid acts and practices of the respondent were and are to the prejudice and injury of the public. These acts and practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. These acts and practices may recur in the absence of the relief requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twelfth day of May, 1997, issues its complaint against said respondent.

By the Commission, Commissioner Starek dissenting.

Donald S. Clark  
Secretary

SEAL