

Analysis of Consent Order
to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Safe Brands Corporation, Warren Distribution, Inc., and ARCO Chemical Company.

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.

This matter concerns the labeling and advertising of Sierra Antifreeze-Coolant ("Sierra"), a propylene glycol-based automobile antifreeze marketed by Safe Brands Corporation and its parent company, Warren Distribution, Inc. The Commission's complaint in this matter alleges that ARCO Chemical Company sold the propylene glycol ("PG") used in the manufacture of Sierra and provided information for, participated in the preparation of, paid for, and reviewed and/or approved Sierra advertising and promotional materials. The complaint also alleges that ARCO Chemical itself disseminated advertisements under its own name for PG antifreeze generally.

The Commission's complaint charges that the respondents claimed in advertising and promotional materials that compared to conventional, ethylene glycol-based antifreeze ("EG antifreeze"), Sierra and other PG antifreezes are safer for the environment generally. According to the complaint, although respondents had a reasonable basis that Sierra and other PG antifreezes, compared to EG antifreeze, are less toxic, and therefore safer for that part of the environment that is composed of humans, pets, and wildlife that may accidentally ingest it, respondents did not substantiate their claim that Sierra and other PG antifreezes are safer for the environment generally (e.g., the air, water, soil, plants, or aquatic life). The complaint also alleges that respondents represented without adequate substantiation that Sierra and other PG antifreezes are absolutely safe for the environment after ordinary use and that because Sierra and other PG antifreezes are biodegradable, they are absolutely safe for the environment after ordinary use. The complaint states that one reason these claims are unsubstantiated is that used antifreeze, whether EG or PG-based, may contain lead and/or other substances that are hazardous to the environment.

Furthermore, the complaint charges that the respondents represented without adequate substantiation that Sierra and other PG antifreezes are absolutely safe for people and pets. The complaint also charges that respondents claimed without adequate

substantiation that because Sierra and other PG antifreezes contain PG -- an ingredient designated by the Food and Drug Administration as "generally recognized as safe" and which is found in foods, drugs, cosmetics, and pet foods -- they are absolutely safe for people and pets. According to the complaint, although respondents had a reasonable basis that Sierra and other PG antifreezes are safer than EG antifreeze, respondents lacked substantiation for the claim that they are absolutely safe.

In addition, the complaint alleges that the respondents made the unsubstantiated representation that compared to conventional, EG antifreeze, Sierra provides superior automotive protection from freezing temperatures, boil-overs, and corrosion.

Finally, the complaint charges that the respondents falsely and without adequate substantiation represented that Sierra antifreeze and its plastic container are recyclable. In fact, the complaint alleges, while both Sierra and its container are capable of being recycled, the vast majority of consumers cannot recycle either of them because there are few collection facilities nationwide that accept PG antifreeze or high-density polyethylene plastic antifreeze containers for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondents to cease and desist from representing that any antifreeze, coolant, or deicer product will not harm the environment, is less harmful to the environment than other products, or offers any environmental benefit, unless the respondents possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part II of the proposed order requires the respondents to cease and desist from making any representation about the safety or relative safety for humans or animals of any antifreeze, coolant, or deicer product, unless they possess competent and reliable scientific evidence that substantiates the representation.

Part III of the proposed order requires that the respondents print the following two statements on the back of containers of all PG antifreeze or coolant products: "**CAUTIONARY INFORMATION:** This Product MAY BE HARMFUL IF SWALLOWED. STORE SAFELY AWAY FROM CHILDREN AND PETS. Do not store in open or unlabeled containers" and "Clean up any leaks or spills." On the front of all such containers the following must be disclosed: "See Back Panel for **CAUTIONARY INFORMATION.**" Part III also specifies the manner in which these disclosures must be made.

Part IV of the proposed order requires the respondents to cease and desist from making any representation about the level of vehicular engine protection provided by any antifreeze, coolant, or deicer product, unless the respondents possess competent and reliable scientific evidence that substantiates the representation.

Part V of the proposed order requires that the respondents cease and desist from misrepresenting the extent to which any antifreeze, coolant, or deicer product or its package is capable of being recycled or the extent to which recycling collection programs are available.

Part VI of the proposed order provides that, for up to 100 days after service of the order, respondents may continue to ship products from existing stock in containers with nonconforming labeling.

The proposed order also requires the respondents to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, 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 order also contains a provision stating that it will terminate after twenty (20) years absent the filing of a complaint against respondents alleging a 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.