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10 UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

11	_____)	
12	FEDERAL TRADE COMMISSION,)	
13	Plaintiff,)	CIVIL ACTION
14	v.)	NO.
15)	
16	SPEEDWAY MOTORSPORTS, INC., and)	COMPLAINT FOR
17	OIL-CHEM RESEARCH CORP.,)	PERMANENT INJUNCTION
18	Defendants.)	AND OTHER
19	_____)	EQUITABLE RELIEF

20 Plaintiff, the Federal Trade Commission ("FTC" or
21 "Commission"), by its undersigned attorneys, allege:

22 1. The FTC brings this action under Section 13(b) of the
23 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to
24 secure a permanent injunction and other equitable relief against
25 defendants for their deceptive acts or practices in violation of
26 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
27

1 principal place of business is 6800 W. 73rd Street, Bedford Park,
2 Illinois 60638. Oil-Chem manufactures zMax brand motor vehicle
3 lubricant or fluid additive and, together with Speedway, markets
4 and sells it. Oil-Chem transacts business in the Middle District
5 of North Carolina.

6
7 **COMMERCE**

8 6. At all times material to this complaint, Defendants'
9 course of business, including the acts and practices alleged
10 herein, has been and is in or affecting commerce, as "commerce" is
11 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
12

13 **DEFENDANTS' COURSE OF CONDUCT**

14 7. Since at least May 1999, and continuing thereafter,
15 Defendants have maintained a substantial course of trade in the
16 offer and sale of the zMax Power System ("zMax") -- a package of
17 three clear, beaker-shaped bottles of zMax brand aftermarket motor
18 vehicle lubricant labeled "Oil Formula," "Fuel Formula," and
19 "Transmission Formula." The liquid in each bottle is itself clear
20 but tinged a different color for each "formula." Each of the
21 three "formulas" consists of 100% mineral oil with no active
22 chemical additives.
23

24 8. Since May of 1999, Defendants have marketed zMax
25 through a program-length television advertisement ("infomercial")
26 broadcast on cable and local television stations nationwide at
27

1 least 13,000 times. zMax has also been marketed through Speedway
2 and Oil-Chem's Internet website <www.gozmax.com> and through
3 various printed promotional materials.
4

5 9. The zMax infomercial features a host/narrator and
6 numerous consumer endorsers, as well as expert and racing
7 endorsers. Accompanying this complaint is a separately-bound set
8 of four exhibits. Exhibit 1 is a copy of a videotape of the zMax
9 infomercial and Exhibit 2 is a transcript of the infomercial. The
10 infomercial includes, among others, the following statements or
11 depictions:

- 12 a. "[CAPTION: 27% INCREASE IN GAS MILEAGE!]
13 [CAPTION: YOUR RESULTS WILL VARY]
14 UNIDENTIFIED MALE: I was averaging about 22
15 miles to the gallon on the highway. I installed
16 the Z-MAX, and so I jumped right up to about 28
17 miles per gallon." Exh. 2 at 3.
- 18 b. "[CAPTION: 29% INCREASE IN GAS MILEAGE!]
19 UNIDENTIFIED MALE: It paid for itself ten times
20 over for me." Exh. 2 at 3.
- 21 c. "[CAPTION: 23% INCREASE IN GAS MILEAGE!]
22 UNIDENTIFIED FEMALE: Z-MAX saved me a whole lot
23 of money." Exh. 2 at 4.
- 24 d. "[CAPTION: YOUR RESULTS WILL VARY]
25 [CAPTION: 29% INCREASE IN GAS MILEAGE!]
26 JORDAN ADAMS BOSTON, MA: I was really excited
27 when I put the Z-MAX in my fuel tank because I
keep meticulous records about my mileage. Over
the last three years, I've had my Legend and I've
consistently come in somewhere between 16 miles
and 18 miles per gallon. After I put the Z-MAX
in, in the city, I was getting 22 miles per
gallon. That made me very happy." Exh. 2 at 7.
- e. "[CAPTION: 34% INCREASE CITY!]
[CAPTION: 35% INCREASE HWY!]
RON NICOLAL SECAUCUS, NJ: I'm very meticulous
about how I maintain my vehicle . . . and I kept

1 very accurate records about the mileage. And
2 there was such a dramatic increase with the use of
3 the Z-MAX, that I went from 13 to 17-1/2 miles per
4 gallon in the city and 17 highway to 23 highway.
5 That was just astounding." Exh. 2 at 8.

6 f. "NARRATOR: Those folks know Z-MAX works. I know
7 Z-MAX works. But here's the indisputable,
8 independent laboratory test that proves Z-MAX
9 works. These are CRC L38 test results. Now, this
10 test is accepted by the entire automotive industry
11 as gospel.

12 LEE HOLMAN HOLMAN MOODY RACING LEGENDARY ENGINE
13 BUILDERS: The L38 test, the way they run it, is
14 done with a standard engine. And it measures not
15 only the horsepower and the fuel efficiency and
16 the use of fuel and the amount of oil and blow-by
17 that you get on the engine, but it also allows you
18 to check very accurately the wear on the valves,
19 the wear on the piston rings, as well as the
20 carbon buildup. And that's what impressed me on
21 the L38 test. With this product, you find that it
22 makes a difference. [BAR CHART DEPICTS Z-MAX
23 INCREASING 'PERFORMANCE' AND 'FUEL EFFICIENCY,'
24 DECREASING 'WEAR'] This engine ran better, will
25 run longer, has less wear; its astounding what the
26 report says it will do.

27 NARRATOR: Z-MAX with LinKite had the
scientific CRC L38 proof; it takes your car to the
max." Exh. 2 at 8-9.

g. "NARRATOR: And Z-MAX guarantees a minimum of 10
percent gas mileage increase." Exh. 2 at 1.

h. "NARRATOR: Now, don't forget, your 10 percent
increase in gas mileage is guaranteed minimum.
Lots of cars do even better. With the 10 percent
fuel mileage increase alone, Z-MAX is an
incredible deal." Exh. 2 at 11.

i. "DAVE BARBEE PRECISION TUNE AUTO CARE: When you
use Z-MAX in the engine, you can see reduced wear
in the valve guide area, less carbon deposit,
which is going to result in a better, cleaner
running engine, more performance, more power, and
a longer engine life as the result of less deposit
buildup." Exh. 2 at 19.

j. "ANNOUNCER: [Z-MAX] Micro lubrication reduces
friction giving you increased gas mileage.
[CAPTION: INCREASE GAS MILEAGE!] Z-MAX lowers
engine temperature so your car runs cooler.

1 [CAPTION: COOLER ENGINE! LASTS LONGER!] And Z-
2 MAX keeps the metal wet and protected virtually
3 eliminating dry start-up damage even in cold
4 weather. [CAPTION: ELIMINATE DRY START DAMAGE!]"
5 Exh. 2 at 20-21, 30-31.

6 10. Exhibit 3 is a copy of Defendants' Internet website
7 <www.gozmax.com.> from approximately May 2000. This Internet
8 website includes, among others, the following statements:

9 zMAX with LinKite has the scientific, CRC L38
10 proof it takes your car to the MAX!

11

12 Smaller zMax molecules soak into the pores of
13 the metal where they clean out carbon,
14 varnish and other deposits that make your
15 engine run hotter. zMax dissolves carbon and
16 tunes your combustion chamber. You get
17 improved gas mileage, reduced emissions, and
18 more power.

19

20 The benefits were enormous -- increased
21 horsepower, decreased fuel consumption, lower
22 operating temperatures, less wear, improved
23 compression and it drastically reduced
24 corrosion and rusting.

25

26 [zMax] Micro-lubricating molecules give you a
27 cleaner, more powerful engine, 10% improved
fuel mileage, and fewer repair bills.

.

zMAX provides peace of mind for you by
helping to take care of important things in
your engine that you can't see. Some of
these items include:

- Damaging rust and corrosion
- Dry-Start damage
- High temperatures, carbon build-up and premature failures.

1 11. Exhibit 4 is a copy of a zMax promotional flyer
2 published by the Defendants. This flyer includes, among others,
3 the following statements:

4 **Why zMAX Works**

5 Cuts carbon build-up on valve stems 66%
6 Lowers wear on valve stems 66%
7 Lowers wear on piston skirts 60%
8 Reduces blow-by leakage 17.7%
9 Increases combustion efficiency 9.25%
10 Lowers fuel consumption 8.5%
11 Results of an independent CRC L-38 test.

12 12. The infomercial and <www.gozmax.com> website offer zMax
13 for \$39.95 plus \$7.95 in shipping and handling charges. zMax is
14 also sold nationally at discount and automotive specialty stores
15 at a suggested retail price of \$39.95.

16 13. The CRC L38 test protocol, referenced in zMax
17 advertisements, including, but not limited to, Exhibits 1 through
18 4, is a laboratory engine test protocol that has been accepted as
19 an automotive industry standard only for purposes of measuring the
20 bearing corrosion performance of motor oils. In February/March
21 1997, an independent laboratory performed two modified CRC L38
22 tests on behalf of Defendants -- one test on motor oil alone and
23 the other on the same motor oil treated with zMax. In these
24 tests, motor oil treated with zMax produced more than twice as
25 much bearing corrosion than the motor oil alone (185.7 milligrams
26 of bearing weight loss for the treated oil versus 74.1 milligrams
27 for the untreated oil).

1
2 16. Defendants did not possess and rely upon a reasonable
3 basis that substantiated the representations set forth in
4 Paragraph 15 above, at the time the representations were made.
5

6 17. Therefore, the representations set forth in Paragraph
7 15 above were, and are, a deceptive act or practice in violation
8 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
9

10 **COUNT TWO**

11 18. Through the use of representations, testimonials, and
12 statements contained in zMax advertisements, including, but not
13 limited to, Exhibits 1 through 4, Defendants have represented,
14 expressly or by implication, that the results of an industry-
15 standard CRC L38 test conducted on zMax prove that zMax:

- 16 a. increases gas mileage;
17 b. reduces engine wear;
18 c. extends engine life;
19
20 d. lowers fuel consumption by 8.5%;
21 e. lowers wear on valve stems by 66%;
22 f. lowers wear on piston skirts by 60%; and
23 g. cuts carbon build-up on valve stems by 66%.
24

25 19. In truth and in fact, the results of an industry-
26 standard CRC L38 test conducted on zMax do not prove that zMax:
27

- 1 a. increases gas mileage;
- 2 b. reduces engine wear;
- 3 c. extends engine life;
- 4 d. lowers fuel consumption by 8.5%;
- 5 e. lowers wear on valve stems by 66%;
- 6 f. lowers wear on piston skirts by 60%; and
- 7 g. cuts carbon build-up on valve stems by 66%.

8
9 20. Therefore, the representations set forth in Paragraph
10 18 above were, and are, false and misleading and constitute a
11 deceptive act or practice in violation of Section 5(a) of the FTC
12 Act, 15 U.S.C. § 45(a).

13
14 **COUNT THREE**

15 21. Through the use of representations, testimonials, and
16 statements contained in zMax advertisements, including, but not
17 limited to, Exhibits 1 through 4, Defendants have represented,
18 expressly or by implication, that testimonials or endorsements
19 from consumers appearing in the zMax advertisements reflect:

- 20 a. the actual and current opinions, findings, beliefs,
21 and/or experiences of those consumers; and
- 22 b. the typical or ordinary experience of members of the
23 public who use the product.

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