

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

))

)	
In the Matter of)	DOCKET NO. 9281
)	
EXXON CORPORATION,)	AGREEMENT CONTAINING
a corporation.)	CONSENT ORDER
)	
)	
)	

))

THIS AGREEMENT, by and between Exxon Corporation, hereinafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission’s Rule governing consent order procedures. The parties hereby agree that:

1. Respondent Exxon Corporation is a New Jersey corporation, with its offices and principal place of business located at 225 E. John W. Carpenter Freeway, Irving, Texas 75062.
2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of Section 5 (a) of the Federal Trade Commission Act, and has filed an answer to the complaint.
3. Respondent admits all the jurisdictional facts set forth in the complaint.
4. 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;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
 - d. Any claim under the Equal Access to Justice Act.
5. This agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it

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 the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25 (f) of the Commission's Rules, the Commission may, without further notice to the respondent, (1) issue 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 decision and order to respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. 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.

8. Respondent has read the complaint and the order contemplated hereby. It understands that 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 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 has 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 Exxon Corporation, its successors and assigns, and its officers, agents, representatives and employees.
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 Exxon Supreme 93 octane gasoline, Exxon Plus 89 octane gasoline, Exxon Regular 87 octane gasoline or any other gasoline of any grade or octane rating in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, concerning the engine cleaning ability of any gasoline (including a constituent ingredient, octane rating or grade thereof); or the effect of any gasoline (including a constituent ingredient, octane rating or grade thereof) on automobile maintenance or automobile maintenance costs, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

For purposes of this Part, any representation, directly or by implication, that any gasoline will keep clean fuel injector deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating no more than 5 percent flow restriction in each injector over the accumulation of 10,000 miles, in accordance with the test procedures and performance standards for port fuel injector deposit control set forth by the United States Environmental Protection Agency at 40 C.F.R. §§ 80.161-80.173 (1996). If this regulation is formally superseded or amended by the EPA, then compliance with the superseding or amended regulation shall be deemed substantiation for such representation.

For purposes of this Part, any representation, directly or by implication, that any gasoline will clean up fuel injector deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent

and reliable testing demonstrating that the flow rate in each injector is restored to no more than 5 percent flow restriction over the accumulation of 10,000 miles.

For purposes of this Part, any representation, directly or by implication, that a gasoline will keep clean intake valve deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating intake valve deposit weight of less than 100 mg-per-valve on average over the accumulation of 10,000 miles, in accordance with the test procedures and performance standards for intake valve deposit control set forth by the United States Environmental Protection Agency at 40 C.F.R. §§ 80.161-80.173 (1996). If this regulation is formally superseded or amended by the EPA, then compliance with the superseding or amended regulation shall be deemed substantiation for such representation.

For purposes of this Part, any representation, directly or by implication, that a gasoline will clean up intake valve deposits to a level that engine performance is not adversely affected by such deposits is deemed to be substantiated if respondent possesses and relies upon competent and reliable testing demonstrating that the intake valve deposit weight is restored to less than 100 mg-per-valve on average over the accumulation of 10,000 miles.

Provided, however, that nothing in this order shall prohibit respondent from truthfully representing the numerical octane rating of any gasoline.

II.

IT IS FURTHER ORDERED that respondent shall produce and disseminate an educational television message as set forth below:

- A. The message shall be fifteen (15) seconds in length and shall contain the audio and video elements set forth in Appendix A to this order. The message shall not contain any audio or visual element or technique that materially alters, obscures or detracts from the communication of the statements contained therein. Respondent shall submit a videotape of the message to Commission staff at least twenty (20) days prior to the first scheduled broadcast of the message.
- B. The message shall be broadcast in the eighteen markets in the United States set forth in Appendix B to this order.
- C. The message shall be broadcast during two different periods of time: (1) the last three weeks of September 1997 and (2) beginning no less than thirty (30) days after the termination of the first period, but completed no later than November 21, 1997. For each period of time, the message shall be broadcast over the course of not less than two weeks.

- D. For the September 1997 period in which the message is broadcast, 178 "Target Rating Points (TRPs)" shall be purchased by respondent to achieve a "percentage reach" of the "target audience" of sixty-five percent (65%) plus or minus five tenths of one percent ($\pm .5\%$) and an "average frequency of exposure" of 2.70 plus or minus five one hundredths ($\pm .05$) for each market in which the message is broadcast. For the October/November 1997 period in which the message is broadcast, 104 "Target Rating Points (TRPs)" shall be purchased by respondent to achieve a "percentage reach" of the "target audience" of fifty-one percent (51%) plus or minus five tenths of one percent ($\pm .5\%$) and an "average frequency of exposure" of 2.00 plus or minus five one hundredths ($\pm .05$) for each market in which the message is broadcast. For purposes of this part, "percentage reach" shall mean the percentage of different persons of the target audience that view the message at least once in each period of time the message is broadcast as determined by an established audience rating service; "target audience" shall mean the 18-49 year old component of the viewing audience; "average frequency of exposure" shall mean the average number of different times the members of the target audience view the message as determined by an established audience rating service; and "Target Rating Points (TRPs)" shall mean the mathematical product of the percentage reach and the average frequency of exposure.
- E. Respondent shall monitor the purchase of each dissemination schedule and shall provide to Commission staff a written report indicating the purchase of the required Target Rating Points in each market for each time period in which the message is to be broadcast. Respondent shall submit this purchase report at least fifteen (15) days prior to the start of the first broadcast of the message in September 1997 and at least fifteen (15) days prior to the start of the first broadcast of the message in October/November 1997.
- F. For each of the two time periods during which the message is broadcast, as set forth above, respondent shall submit to Commission staff a written report detailing the TRPs achieved by the message in each of the markets in which it was broadcast. The report shall be based on ratings provided by an established audience ratings service. Each report shall be submitted within one hundred twenty (120) days after the last day of the calendar quarter in which the message was broadcast, but in any event no later than thirty (30) days after respondent's receipt of said ratings. In any market where the message fails to achieve ninety percent (90%) of the total TRPs purchased for each dissemination period, as set forth above, respondent shall use its best efforts to obtain compensatory (or additional) time to rebroadcast the message to achieve the TRPs purchased in each market within sixty (60) days following the presentation to Commission staff of each written report. Respondent shall monitor any compensatory broadcasts of the message and provide to Commission staff a final written report detailing the TRPs achieved by the message in each of the markets in which it was rebroadcast.

III.

IT IS FURTHER ORDERED, that respondent shall produce, print and distribute to Exxon service stations a color brochure entitled “Answering Your Questions About Octane,” as set forth below:

- A. The brochure shall be in the form and content set forth in Appendix C to this order. Respondent shall submit a production-ready copy of the brochure to Commission staff at least twenty (20) days prior to the first scheduled distribution of the brochure to Exxon service stations.
- B. Respondent shall distribute the brochure, in quantities sufficient to meet reasonably anticipated demand, to every Exxon service station in the United States, within sixty (60) days after the date of service of this order. With respect to Exxon-operated service stations, respondent shall instruct the stations to make the brochures available in a prominent and readily accessible location at the station, such as at the gasoline pump islands. With respect to independently-operated Exxon service stations, respondent shall use its best efforts to encourage the stations to make the brochures available in a prominent and readily accessible location.
- C. Respondent shall distribute the brochures to Exxon service stations at no cost to the stations or the public.
- D. Respondent shall monitor the demand for and supply of brochures at Exxon service stations, and shall continue to produce and distribute the brochures as necessary to meet reasonably anticipated demand for a period of at least two (2) years after the date of service of this order.
- E. Respondent shall provide to Commission staff written reports detailing the total number of brochures printed and distributed to Exxon service stations, including any additional distributions of brochures to stations subsequent to the initial distribution. Respondent shall submit such reports every six (6) months, beginning six (6) months after the initial distribution of brochures to Exxon service stations, and continuing for two (2) years thereafter.

IV.

IT IS FURTHER ORDERED that respondent Exxon Corporation, and its successors and assigns, shall, for three (3) 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.

V.

IT IS FURTHER ORDERED that respondent Exxon Corporation, and its successors and assigns, shall within thirty (30) days after the date of service of this order distribute a copy of this order to all operating divisions, subsidiaries, and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or promotional sales materials covered by this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order.

VI.

IT IS FURTHER ORDERED that respondent Exxon Corporation, 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.

VII.

IT IS FURTHER ORDERED that respondent Exxon Corporation shall, within sixty (60) days after service of this order upon it, and at such other times as the 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.

VIII.

This order will terminate twenty years from the date of its issuance, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

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 paragraph as though the complaint was never 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 _____, 1997

EXXON CORPORATION,
a corporation

By: _____
Joe T. McMillan, Vice President
Exxon Corporation

By: _____
Robert B. Wallis, Esq.
Counsel, Exxon Corporation

Theodore H. Hoppock

Michael Dershowitz

Beth M. Grossman

Sydney M. Knight

Peder Magee

Counsel for the Federal Trade Commission

APPROVED:

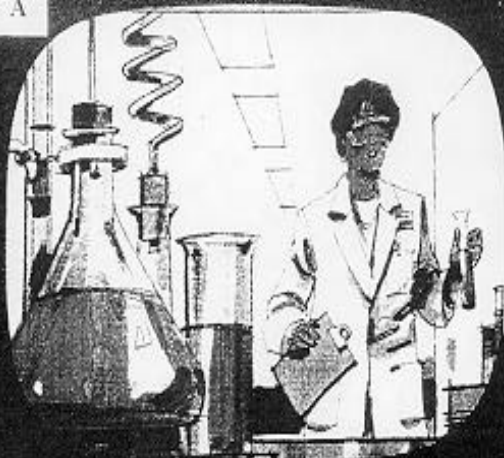
C. Lee Peeler
Associate Director
Division of Advertising Practices

Joan Z. Bernstein
Director
Bureau of Consumer Protection

APPENDIX A



Hi, I'm Sherri Stuewer. I run Exxon's Baytown Refinery.



We offer three octane grades. Which is right for you?



Most cars will run properly on regular octane, so check your owner's manual...



and stop by Exxon for this helpful pamphlet.

APPENDIX B

1997 EXXON GASOLINE

Stand-alone :15's for September, November flights

---:15 in 18 Markets---

	<u>Target Impr</u> <u>(000)</u>	<u>TRPs</u>	<u>Gross Impr</u> <u>(000)</u>	<u>GRPS</u>
Baltimore	3,666	282	4,651	470
Baton Rouge	1,010	282	1,270	470
Dallas	7,104	282	8,688	470
Houston	6,373	282	7,498	470
New York	25,544	282	31,544	470
Norfolk	2,374	282	2,969	470
Philadelphia	9,526	282	12,474	470
Richmond	1,760	282	2,166	470
San Antonio	2,391	282	3,016	470
Washington, DC	<u>7,591</u>	<u>282</u>	<u>8,970</u>	<u>470</u>
	67,339	282	83,246	470
Austin	1,605	282	2,050	470
Boston	7,992	282	10,106	470
Charleston -- Huntington	1,610	282	2,269	470
Corpus Christi	592	282	847	470
Nashville	2,685	282	3,680	470
Orlando	3,243	282	4,803	470
Pittsburgh	3,658	282	5,400	470
Tampa	<u>3,830</u>	<u>282</u>	<u>6,634</u>	<u>470</u>
	25,214	282	35,788	470
18 Mkt Total	92,552	282	119,034	470

---Adults 18-49---

Schedule Analysis:	<u>% Rch</u> <u>1+</u>	<u>Avg</u> <u>Freq</u>	<u>TRPS</u>
September	65	2.7	178
November	51	2.0	104
Combined	75	3.7	282

APPENDIX C

Answering Your Questions About Octane

Q. What are Octane Ratings?

A. Octane ratings are a measure of a gasoline's ability to resist engine knock or pinging. The higher the octane rating, the greater the gasoline's resistance to knock. Knock is a sharp, metallic-sounding, or pinging noise that results from uncontrolled combustion.

Q. What octane levels are available at Exxon stations?

A. Exxon offers three grades of unleaded gasoline at our service stations: 87 octane (Exxon Regular), 89 octane (Exxon Plus), and 93 octane (Exxon Supreme). In high altitude areas, such as the Rocky Mountains, the equivalent octane levels typically available are 85, 86 and 91. All three grades contain the same amount of our engine cleaning additive.

Q. What octane level is right for my car?

A. To find out what octane your engine needs, first check your owner's manual. The recommended level is often unleaded regular (87 octane). Some models have high compression engines which are designed to utilize the octane level in Exxon Plus or Supreme.

Ordinarily, your car will not benefit from using a higher octane than is recommended in the owner's manual. But if your engine knocks or pings at the recommended octane level, you may need a higher octane gasoline to prevent the knock. Knocking may occur under certain conditions. A small percentage of cars may knock because of variations in engines of the same model due to manufacturing tolerances, or because of an unusual build-up of engine deposits during the first 15,000 miles of driving. Other factors such as extremely hot weather, changes in altitude or hard driving conditions (like towing a heavy load) may also cause knocking.

Many modern cars are equipped with an electronic device that detects and eliminates light knocking before you hear it. The devices suppress knock by retarding the spark. Exxon believes that some of these cars may experience some deterioration of acceleration performance, without knocking, when operating under high engine demand conditions.

Q. Is knocking serious? What should I do if my car is knocking or pinging?

A. Occasional light knocking is not harmful to the engine, but heavy knocking or continuous operation with audible knock can cause loss of power and even engine damage. If your engine is knocking, switching to a higher octane gasoline may solve the problem. If the knocking or pinging continues after one or two fill-ups, have your engine checked by a qualified mechanic to make sure it is calibrated correctly and has no mechanical or electrical problems. You may need a tune-up or some repair work.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Exxon Corporation ("Exxon"). Among other things, Exxon is engaged in the manufacture and sale of automobile gasolines.

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 or make final the agreement's proposed order.

This matter concerns allegedly deceptive advertising claims regarding the performance attributes of Exxon gasolines. On September 11, 1996, the Commission issued a complaint challenging as unsubstantiated Exxon's advertising claims that switching to Exxon 93 Supreme gasoline from other gasoline brands and from lower octane grades of Exxon gasoline will significantly reduce automobile maintenance costs for consumers generally. The complaint also challenged as unsubstantiated Exxon's claim that switching to Exxon gasolines from other brands will significantly reduce automobile maintenance costs for consumers generally. The case was withdrawn from litigation on April 25, 1997.

The proposed consent order contains both injunctive and consumer education provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making unsubstantiated representations concerning the engine cleaning ability of any gasoline or the effect of any gasoline on automobile maintenance or maintenance costs.

Part I includes several "safe harbors" defining permissible substantiation for certain types of engine cleaning claims. First, it provides that any representation that a gasoline will keep clean or clean up fuel injector deposits to a level that engine performance is not adversely affected will be deemed to be substantiated if Exxon possesses competent and reliable testing demonstrating no more than 5 percent flow restriction in each injector over the accumulation of 10,000 miles. In addition, Part I provides that any representation that a gasoline will keep clean or clean up intake valve deposits to a level that engine performance is not adversely affected will be deemed to be substantiated by competent and reliable testing demonstrating intake valve deposit weight of less than 100 mg-per-valve on average over the accumulation of 10,000 miles. Finally, Part I of the proposed order also allows truthful representations regarding the numerical octane rating of any gasoline.

Parts II and III of the proposed order contain a consumer education remedy designed to educate drivers about how to determine their car's octane needs. Part II requires Exxon to produce and disseminate a 15 second television message stating that most cars run properly on

regular octane, and that drivers should check their owner's manual. The message must be broadcast in eighteen designated markets in two separate waves beginning in September 1997. The order establishes a performance standard that Exxon must meet in terms of the audience exposure achieved by the ad for each market and in each wave. Exxon must purchase sufficient air time so that the ad reaches 65% of the target audience (adults ages 18 - 49) an average of 2.7 times per person in the first wave, and 51% of the target audience an average of 2 times in the second wave. Exxon must monitor the actual exposure the ad achieves in each market, and should it fail to achieve at least 90 percent of the exposure levels specified in the order for each market, it must seek additional spots from the television stations to meet the specified targets.

Part III of the order requires Exxon to produce and disseminate a consumer brochure that is mentioned in the 15 second broadcast message required in Part II of the order. The brochure, which will be made available free of charge at Exxon service stations, informs consumers that most cars will not benefit from higher octane gasoline, and also explains that consumers may need higher octane gasoline if their owner's manual recommends it or if their car engine consistently knocks or pings.

Parts IV, V, VI, and VII of the order require Exxon to maintain copies of all materials relied upon in making any representation covered by the order; to provide copies of the order to certain of the company's personnel; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Part VIII of the order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any 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.

**Statement of Commissioner Mary L. Azcuenaga
Concurring in Part and Dissenting in Part
in Exxon Corporation , Docket No. 9281**

Last year, the Commission issued a complaint against Exxon Corporation and, in accordance with its practice, a Notice of Contemplated Relief, the title of which is self-explanatory. The complaint alleged that Exxon had made certain deceptive claims concerning the need for its premium gasoline. Today the Commission accepts for public comment a settlement that provides less relief than the Commission contemplated when it issued the complaint and less relief than it ordered against other companies that previously have settled similar charges. ¹ I agree that the core provision of the proposed order barring the allegedly deceptive claims is appropriate, ² but I cannot agree to the omission of a broader provision barring Exxon from making unsubstantiated claims concerning "the relative or absolute attributes of any gasoline with respect to engine performance, power [or] . . . acceleration."

An injunctive provision covering not just the specific claims challenged in the complaint, but also, future deceptive claims of a similar nature is a common feature in Commission advertising orders. It provides an important deterrent, because any future advertising claims that do not comport with it are punishable by substantial civil penalties. The Commission previously has challenged similar advertising claims by three other gasoline companies, all of which, unlike Exxon, agreed to settlements without litigation, and all of which consented to inclusion of the broader injunctive relief omitted from this order.

Exxon's advertisements seem likely to have contributed to consumer misperceptions about the attributes of and the need for

¹ See Sun Company, Inc., Docket C-3381 (consent order, May 6, 1992); Unocal Corporation, Inc., Docket C-3493 (consent order, April 24, 1994); Amoco Oil Company, Docket C-3655 (consent order, May 7, 1996).

² Order ¶ I.

premium gasoline as much as gasoline advertisements run by the other companies. The more lenient injunctive coverage in Exxon's order will be less effective in deterring future deception and may create perverse incentives. In the future, companies may believe it is in their interest to decline negotiated settlement until after litigation has commenced if they think that the Commission will reward greater intransigence.

Narrowing the injunction might be worthwhile if some other effective remedy were added, and the proposed order adds a provision that requires Exxon to produce and disseminate a 15-second television commercial and distribute a certain number of copies of a brochure.³ Given the apparently entrenched consumer misperceptions allegedly created by Exxon's challenged claims about the need for and attributes of premium gasoline, a consumer education remedy is justified. The goal of the consumer education campaign, to correct apparently widespread and assuredly costly consumer misperceptions about the benefits of high octane gasoline, is laudable. Unfortunately, I do not believe that this particular campaign is likely to be effective. The Commission has extensive experience with advertising techniques, and that experience should tell us that there is a good deal more to creating a successful advertisement than first meets the eye.⁴ The commercial is uninspired at best, and we have no basis for concluding that it will be effective in conveying the desired message to consumers or in changing their

³ The text of the negotiated advertisement is:

Hi, I'm Sherri Stuewer. I run Exxon's Baytown Refinery. We offer three octane grades. Which is right for you? Most cars will run properly on regular octane, so check your owner's manual...and stop by Exxon for this helpful pamphlet.

⁴ The advertisement required by the order has not been copytested.

misperceptions. The order does not provide a performance standard or other means of assuring that this goal will be met.

5

Although it may be argued that we similarly have no assurance of the effectiveness of the broader injunction that was included in the Notice of Contemplated Relief, we have, at least, the assurance that further deceptive claims covered by the order may result in substantial civil penalties and, therefore, that the company may think twice before running advertisements that might mislead reasonable consumers about the attributes of particular gasoline products. In addition, the injunctive relief would remain in place for 20 years, far longer than the likely effects of a single short-lived advertising campaign like the one proposed. On balance, I believe that the notice order is stronger. Perhaps the fact that Exxon was willing to sign this order rather than the notice order should tell us something.

To the extent that the proposed order is more narrow than the notice order, I respectfully dissent.

⁵ The order could have specified survey methodology and required that the advertisement be revised as needed until the survey results showed that a minimum number or percentage of consumers actually took the intended educational message from the advertising spot. The Commission has taken this approach in the past. *RJR Foods, Inc.*, 83 F.T.C. 7, 16-21 (consent order, July 13, 1973).