

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Edith Ramirez, Chairwoman**  
                                 **Julie Brill**  
                                 **Maureen K. Ohlhausen**  
                                 **Joshua D. Wright**

**In the Matter of**

**TBWA WORLDWIDE, INC.,  
a corporation.**

**FILE NO. 122 3010**

**AGREEMENT CONTAINING  
CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of TBWA Worldwide, 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 TBWA Worldwide, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent TBWA Worldwide, Inc., is a Delaware corporation with its principal office or place of business at 488 Madison Avenue, New York, New York 10022.
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 thirty (30) 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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1)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's address as stated in this agreement by any means specified in Section 4.4(a) 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.

6. Proposed respondent has read the draft complaint and consent order. 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.

7. Proposed respondent neither admits nor denies the allegations in the draft complaint, except as specifically stated in this order. Only for the purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.

## **ORDER**

### **DEFINITIONS**

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

1. Unless otherwise specified, "respondent" shall mean TBWA Worldwide, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees, but shall not include any corporation, subsidiary, or division that does not operate under the name TBWA/Chiat/Day, Chiat/Day, or any substantially similar name.
2. "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, advertising, promotion, offering for sale, sale, or distribution of any pick-up truck in or affecting commerce, shall not

misrepresent, in the context of the advertisement as a whole, any material quality or feature of the advertised pick-up truck through the depiction of a test, experiment, or demonstration.

Provided, however, that nothing in this order shall be deemed to preclude the use of any production techniques that do not misrepresent a material quality or feature of the advertised truck.

Provided, further, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the test, experiment, or demonstration misrepresented a material quality or feature of the advertised truck.

## II.

**IT IS FURTHER ORDERED** that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. Any and all video, in complete and unedited form, and any and all still images taken during the production of any advertisement depicting a demonstration, experiment, or test; and
- C. Any and all affidavits or certifications submitted by an employee, agent, or representative of respondent to a television network or to any other individual or entity, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

## III.

**IT IS FURTHER ORDERED** that respondent shall deliver a copy of this order to all current and, for the next five (5) years, all future account directors and creative directors having direct and supervisory or managerial responsibilities with respect to the subject matter of this order ("Personnel"), 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.

IV.

**IT IS FURTHER ORDERED** that TBWA Worldwide, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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 TBWA Worldwide, Inc., learns less than thirty (30) days prior to the date such action is to take place, TBWA Worldwide, Inc., shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In the Matter of TBWA Worldwide, Inc., FTC File Number 122-3010.

V.

**IT IS FURTHER ORDERED** that TBWA Worldwide, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

VI.

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.

TBWA WORLDWIDE, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

ELAINE F. STEIN  
General Counsel and Secretary

Date: \_\_\_\_\_

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RONALD R. URBACH  
STUART LEE FRIEDEL  
DOMINICK R. CROMARTIE  
DAVIS & GILBERT LLP  
Attorneys for TBWA Worldwide, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
MATTHEW D. GOLD  
EVAN ROSE  
Counsel for the Federal Trade Commission

APPROVED:

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THOMAS N. DAHDOUH  
Director  
Western Region

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JESSICA L. RICH  
Director  
Bureau of Consumer Protection