

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU
ENVIRONMENTAL PROTECTION BUREAU

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In the Matter of

MONSANTO COMPANY,

Respondent.

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

Pursuant to the provisions of Executive Law § 63(12) and General Business Law § 350, DENNIS C. VACCO, Attorney General of the State of New York, has investigated certain advertising practices of Monsanto Company ("Monsanto"), and based upon such inquiry, the Attorney General finds:

A. Monsanto is a foreign corporation engaged, inter alia, in the manufacture, formulation, distribution and sale of pesticide products. Monsanto's principal place of business is 800 N. Lindbergh Boulevard, St. Louis, Missouri 63167.

B. Monsanto advertises and sells its pesticide products throughout the United States, including New York State.

Advertising Practices

C. Monsanto advertises its pesticide products in broadcast and print media, including television, radio, magazines, brochures, and at point-of-purchase displays.

D. On or around November 7, 1996, Monsanto entered into an Assurance of Discontinuance with the State of New York, wherein Monsanto voluntarily agreed to

cease and desist from making certain advertising claims about the safety of its pesticide products which New York found were false and misleading.

E. Since November 7, 1996, Monsanto has produced and/or broadcast two (2) television advertisements for its Roundup pesticide products ("Roundup") that feature Cary Sharp, a horticulturist for the San Diego Zoo, who is seen amidst aquatic plants and vegetation while discussing the benefits of using Roundup to kill weeds. The scripts for these television advertisements by Monsanto are attached as Exhibits A and B.

F. One of these Monsanto television advertisements presents video images of the horticulturist walking through knee-deep water, examining plants, while the accompanying narrative claims that Roundup can be used "[j]ust about anywhere weeds are a problem." See Exhibit A.

G. The other Monsanto television advertisement presents similar video images of the horticulturist walking through marshy land, plant-life in hand, while the accompanying narrative claims that the San Diego Zoo uses Roundup to kill weeds. See Exhibit B.

H. Monsanto asserts that it intended these television advertisements to be aimed at consumers who would be purchasing Roundup lawn and garden products for home use.

I. Based on his investigation, the Attorney General believes that Monsanto's advertising represents, directly and by implication, that any Roundup product, including formulations for lawn and garden, agricultural or industrial applications, can be used to kill weeds in and around water and/or aquatic environments.

J. The labels for Roundup lawn and garden products, however, contain the following precaution with respect to the use of Roundup lawn and garden products in and around water and/or aquatic environments:

ENVIRONMENTAL HAZARDS

Do not apply directly to water. Do not contaminate water when disposing of equipment washwaters.

K. The labels for Roundup agricultural, commercial, industrial, turf and ornamental products contain the following precaution:

ENVIRONMENTAL HAZARDS

Do not apply directly to water, to areas where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters.

L. Additionally, all Roundup labels further state, under "Directions for Use", that "It is a violation of Federal law to use this product in any manner inconsistent with its labeling."

M. Based on the foregoing, the Attorney General finds that the representations set forth in paragraphs F -I above constitute false and misleading advertising.

Violations of State Law

N. General Business Law (GBL) § 350 prohibits false and misleading advertising in New York State.

O. The Attorney General finds that by reason of the foregoing, Monsanto has engaged in false and misleading advertising in violation of GBL § 350.

P. The Attorney General finds that the foregoing constitutes repeated and persistent illegal conduct within the meaning of Executive Law § 63(12).

IT NOW appears that Monsanto is willing to enter into this Assurance of Discontinuance. Monsanto does not agree with the Attorney General's findings of fact or legal conclusions and does not admit that it has violated any federal, state or local law, code or regulation. Monsanto is willing to execute this Assurance for settlement purposes only. The Attorney General is now willing to accept this Assurance of Discontinuance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

RELIEF

IT IS HEREBY AGREED by Monsanto, its subsidiaries, its agents,¹ assigns, successors (including purchasers of product lines), employees, officers and any other individuals or entities through whom it may act (collectively referred to as "Monsanto") that:

1. Monsanto will immediately cease and desist from publishing or broadcasting any advertisements that represent, directly or by implication, that:

- a. Roundup can be used, for any purpose, in or around water and/or aquatic environments, unless such use is provided for on Roundup labels.
- b. Roundup can be used "just about anywhere weeds are a problem," unless limitations on use are specifically set out.
- c. Roundup can be used in any manner inconsistent with its labelling.

¹For purposes of this Agreement "agents" does not include independent distributors or independent retailers.

2. Within 60 days from the date of execution of this Assurance, Monsanto will file an affidavit with the Attorney General of New York detailing its compliance with the terms of this Assurance.

3. Monsanto agrees to maintain each advertisement disseminated in New York for Roundup for two years after the last date of dissemination, publication, or broadcast of the advertisements in New York and to provide copies of all such advertisements to the Attorney General following receipt of a written request. In addition, Monsanto agrees to provide substantiation for any claims that are the subject of the relief section herein and that are contained in any of its advertisements disseminated in New York and which the Attorney General requests in writing. Such substantiation shall be presented to the Attorney General following receipt of a written request. This paragraph in no way precludes the Attorney General from asserting any rights he may otherwise have under the law.

4. Upon the execution of this Assurance of Discontinuance, Monsanto shall pay to the Attorney General \$75,000.00 in costs.

5. The acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of Monsanto's pesticide advertising or business practices, and Monsanto shall not make any representations to the contrary.

6. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

WHEREFORE, the following signatures are affixed hereto as of the _____ day of _____, 1998.

DENNIS C. VACCO
Attorney General of the
State of New York

MONSANTO COMPANY
By:

CONSUMER FRAUDS
AND PROTECTION BUREAU
By:

ENVIRONMENTAL PROTECTION
BUREAU
By:

SHIRLEY F. SARNA
Assistant Attorney General
In Charge

WILLIAM S. HELMER
Assistant Attorney General
In Charge