

Complaint

52 F. T. C.

IN THE MATTER OF
THE BEST FOODS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6380. Complaint, June 29, 1955—Decision, Nov. 8, 1955

Consent order requiring a corporation doing a nation-wide business, with main office in New York City, to cease representing its "Nucoa" oleomargarine falsely in advertising as a dairy product and as richer in milk properties than butter, in violation of the Oleomargarine Amendment to the Federal Trade Commission Act.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Morton Nesmith for the Commission.
Davis & Gilbert, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Best Foods, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Best Foods, Inc., is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 1 East 43rd Street, New York, New York, and factories located in Bayonne, New Jersey, Chicago, Illinois, San Francisco, California, and Dallas, Texas.

PAR. 2. Respondent The Best Foods, Inc., is now and for more than one year last past has been engaged, among other things, in the manufacture, sale, and distribution of oleomargarine, a food, using the trade name "Nucoa" for its product which it sells other distributors for resale and delivery to consumers. Respondent causes its said oleomargarine, when sold, to be transported from its factories located in the States of New Jersey, Illinois, California, and Texas to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning its said product, Nucoa oleomargarine, by the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements in newspapers, magazines, and periodicals having a general interstate commerce circulation, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said product; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of advertisements concerning its said product, by the aforesaid means, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set forth, are the following:

Oh, those youngsters of yours will get LOTS of natural goodness out of new enriched Nucoa * * * Sweet skim milk—pasteurized not once but TWICE * * *
 Yes, Nucoa's natural goodness comes from sweet skim milk.
 Everything in Nucoa is good for you—Nucoa is rich in sweet skim milk * * *
 Nucoa contains more milk minerals than the most expensive spread.
 Richer in milk—minerals, too, than the most expensive spread * * *

PAR. 4. Such expressions as "sweet skim milk—pasteurized not once but TWICE * * *," "Its richer in milk—minerals, too, than the most expensive spread," and other expressions of the same import have long been used in connection with dairy products and have become firmly associated in the minds of many members of the purchasing public with dairy products.

Moreover, respondent in its advertisements to the effect that Nucoa is richer in milk minerals than the most expensive spread suggests that its product Nucoa is richer in milk properties than a principal dairy product, namely, butter.

PAR. 5. The advertisements containing the various expressions set out in Paragraph 3 are misleading in material respects and constitute false advertisements, as such term is defined in Section 15 (a) (2) of the Federal Trade Commission Act in that they serve as representations or suggestions that respondent's product is a dairy product, which is contrary to the fact.

PAR. 6. The use by the respondent of the foregoing practices has had and now has the capacity and tendency to mislead and deceive

a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that respondent's oleomargarine is a dairy product and into the purchase thereof in reliance upon such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 29, 1955, charging it with having violated the Federal Trade Commission Act by the use of unfair and deceptive acts and practices in commerce in the sale of oleomargarine. In lieu of submitting answer to said complaint, respondent entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Respondent in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It was further provided that said agreement, together with the complaint shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; and that said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an

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appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement the hearing examiner makes the following jurisdictional findings and order:

1. The respondent corporation, The Best Foods, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1 East 43rd Street, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondent hereinabove named; the complaint herein states a cause of action against said respondent under the provisions of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent The Best Foods, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine, do forthwith cease and desist from, directly or indirectly,

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any statement, word, grade designation, design, device, symbol, sound or any combination thereof which represents or suggests that said product is a dairy product;

Provided, however, That nothing contained in this order shall prevent the use in advertisements of a truthful, accurate and full statement of all of the ingredients contained in said product, or of a truthful statement that said product contains skim milk, milk-minerals or any other dairy product provided the percentage thereof contained is clearly and conspicuously set forth.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act of said product any advertisement which contains any of the representations prohibited in paragraph one of this order.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of November, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Complaint

IN THE MATTER OF

DIAMOND CAP COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket 6377. Complaint, June 28, 1955—Decision, Nov. 9, 1955

Consent order requiring a manufacturer in Philadelphia, Pa., to cease labeling as "100% Wool" caps which contained a large percentage of reprocessed or reused wool, and to tag other wool products with the information required by the Wool Products Labeling Act.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. R. D. Young, Jr. for the Commission.

Mr. Samuel R. Wurtman, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Diamond Cap Company, Inc., a corporation, and Crisfield Cap Company, a corporation, and Louis Goldenberg and Harry Faerman, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Diamond Cap Company, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, being engaged in the manufacture, sale, and distribution of men's, women's, and children's caps. The office and principal place of business of said corporate respondent is located at 3330 North 3rd Street, Philadelphia, Pennsylvania.

The respondent Crisfield Cap Company, a wholly owned subsidiary of respondent Diamond Cap Company, Inc., is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, being engaged in the manufacture of caps for respondent Diamond Cap Company, Inc. The office and principal place of business of Crisfield Cap Company is located at 116 Locust Street, Crisfield, Maryland.