

Complaint

IN THE MATTER OF

MARS, INCORPORATED

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

Docket C-1812. Complaint, Oct. 22, 1970—Decision, Oct. 22, 1970

Consent order requiring a Hackettstown, N.J., candy manufacturer to cease using any advertisement which misrepresents that its "Milky Way" milk chocolate bar will have a nutritional value equivalent to that of the ingredients used in its preparation or that said candy bar can or should be substituted for milk or milk products.

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 Mars, Incorporated, 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 Mars, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at High Street, Hackettstown, New Jersey.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of a candy designated "Milky Way" milk chocolate bar which comes within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 3. Respondent causes the said product, when sold, to be transported from its place of business in one State of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertise-

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ments concerning the said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in magazines and other advertising media, and by means of television broadcasts transmitted by television stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and has disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the representations contained in said advertisements disseminated as hereinabove set forth is a fanciful visual representation of a glass of milk "magically" changing into a "Milky Way" milk chocolate bar.

PAR. 6. Through the use of said advertisements respondent has represented directly and by implication that said candy has a nutritional value equivalent to a glass of milk; that said candy can or should be substituted for milk or milk products in the diet by reason of the use of milk or milk products as ingredients in said candy; that said candy has a nutritional value equivalent to that of the ingredients used in its preparation.

PAR. 7. In truth and in fact "Milky Way" milk chocolate bar does not have a nutritional value equivalent to a glass of milk; said candy cannot and should not be substituted for milk or milk products in the diet by reason of the use of milk or milk products as ingredients in said candy; said candy does not have a nutritional value equivalent to that of the ingredients used in its preparation.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted, and now constitutes, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitute, unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days a comment having been received which has been duly considered by the Commission, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mars, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at High Street, Hackettstown, New Jersey.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Mars, Incorporated, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other devise, in connection with the offering for sale, sale or distribution of "Milky Way" milk chocolate bar, or any other candy preparation of similar composition or possessing

substantially similar properties, do forthwith cease and desist from directly or indirectly:

I. Disseminating, or causing the dissemination or any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

1. Represents directly or by implication:

(a) That the said candy, at the time it is consumed, will have a nutritional value equivalent to that of the ingredients used in its preparation, or that the specific nutritional value of any ingredient remains available in the candy at the time it is consumed.

(b) That the said candy can or should be substituted for milk or milk products in the diet by reason of the use of milk or milk products as ingredients in said candy.

2. Misrepresents:

(a) The quantity or quality of whole milk or milk products used as an ingredient in said candy;

(b) The nutritional value of said candy in any manner whatsoever.

II. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondent's preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations or misrepresentations prohibited in Paragraph I hereof.

III. It is understood by Mars, Incorporated, that truthful and nondeceptive statements of the actual nutritive value when consumed of the "Milky Way" milk chocolate bar, or any other candy preparation of similar composition or possessing substantially similar properties, would not be prohibited by this agreement.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall within sixty

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(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 this order.