

IN THE MATTER OF

BORDEN, INC.

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

Docket C-1904. Complaint, Apr. 21, 1971—Decision, Apr. 21, 1971

Consent order requiring a New York City seller and distributor of an instant coffee designated "Kava Instant Coffee" to cease misrepresenting that its depictions or demonstrations of any food product are actual proof of the quality of that product, or using such misrepresentation to induce the purchase of such product.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Borden, 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 Borden, Inc., is a corporation, organized, existing and doing business, under and by virtue of the laws of the State of New Jersey, with its principal office and place of

business located at 350 Madison Avenue, in the city of New York, State of New York.

PAR. 2. Respondent Borden, Inc., is now, and for some time last past has been, engaged in the manufacture, advertising and offering for sale, sale and distribution of an instant coffee designated "Kava Instant Coffee" and other food products to distributors and to retailers for resale to the public, which products come within the classification of food as the term "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its business, respondent Borden, Inc., now causes, and for some time last past has caused, the said "Kava Instant Coffee," when sold, to be shipped from its factories and plants in the various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, and at all times mentioned herein, respondent Borden, Inc., has been, and is now, in substantial competition in commerce, with other corporations in the sale of coffee of the same general kind and nature as that sold by said respondent.

PAR. 5. In the further course and conduct of its business, as aforesaid, respondent has disseminated and caused the dissemination of, certain advertisements concerning the said food product by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, and by means of television broadcasts transmitted by television and radio 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 instant coffee, and have disseminated, and caused the dissemination of, advertisements concerning said food 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 instant coffee in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondent, by means of advertisements disseminated, as aforesaid, depicting a pH meter in operation measuring the acidity

of "Kava Instant Coffee" as compared to the acidity of other unnamed brands of coffee, represents, and has represented directly or by implication, that when measuring the acidity of "Kava Instant Coffee" the needle of the pH meter face swings to the extreme right of center; and that when measuring the other brands of coffee, the needle on the pH meter face swings to the extreme left of center.

PAR. 7. In truth and in fact, the aforementioned advertisements depict a so-called "expanded scale" of the pH meter, that is, a 2 pH unit segment of the standard pH meter scale face is expanded to cover the entire 14 unit pH scale face, which exaggerates or misrepresents the disparity between the acidity of Kava Instant Coffee and the acidity of competing unnamed brands of coffee.

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

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive representation, and the dissemination by the respondents of the false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's, competitors and 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 the draft of complaint which the Bureau of Consumer Protection propose 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 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, now in further conformity with the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Borden, Inc., is a corporation organized, existing, and doing business, under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 350 Madison Avenue, in the city of New York, State of New York.

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 Borden, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Kava coffee or any other coffee product or non-dairy food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or causing the dissemination of 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 represents directly or by implication:

That tests, experiments or demonstrations, presented either alone or accompanied by oral or written statements, purport to be actual proof of the product's quality or merits, when in fact such tests, experiments or demonstrations contain distortions or exaggerations and do not constitute actual proof thereof.

2. 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 hereof.

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

It is further ordered, That the respondent shall within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with the order.

Complaint

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IN THE MATTER OF

MR. TONY, INC., ET AL.

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

Docket C-1905. Complaint, Apr. 22, 1971—Decision, Apr. 22, 1971

Consent order requiring a New York City manufacturer and seller of men's suits to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 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 Mr. Tony, Inc., a corporation, formerly trading under its own name and as Mr. Tony of Park Avenue, Inc., Mr. Tony Contracting, Inc., Mr. Tony of Madison Avenue, Inc., Mr. Tony of Third Avenue, Inc., Mr. Tony of Second Avenue, Inc., Mr. Tony of Fifth Avenue, Inc., and Mr. Tony of First Avenue, Inc., and Irving Lieberman, David Leboni and Richard W. Baker, individually and as officers of the said corporation, and Ann Lieberman, individually and as a former officer of the aforesaid 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. Respondent Mr. Tony Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 130 Fifth Avenue, New York, New York.

Corporate respondent, Mr. Tony, Inc., is a successor corporation to several corporations, namely Mr. Tony of Park Avenue, Inc., Mr. Tony Contracting, Inc., Mr. Tony of Madison Avenue, Inc., Mr. Tony of Third Avenue, Inc., Mr. Tony of Second Avenue, Inc., Mr. Tony of Fifth Avenue, Inc., and Mr. Tony of First Avenue, Inc.

Individual respondents Irving Lieberman, Richard W. Baker and David Leboni are officers of the corporate respondent. Richard W. Baker, David Leboni and Ann Lieberman were officers of the predecessor corporations and Irving Lieberman was the general manager