

Complaint

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IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2015. Complaint, Aug. 17, 1971—Decision, Aug. 17, 1971*

Consent order requiring a baking company with headquarters in Rye, N.Y., and its advertising agency with headquarters in New York City to cease disseminating any advertisement of its bread which implies that its consumption will reduce body weight, misrepresenting that such bread is lower in calories if the slices are thinner than ordinary, and misrepresenting the role of such product in controlling body weight; respondents are also required in advertising its "Profile" bread to devote 25 percent of the expenditures in each market area for a period of one year to stating affirmatively that "Profile" bread is not effective in weight reduction.

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 ITT Continental Baking Company, Inc., a corporation, and Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondents, have 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 ITT Continental Baking Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Halstead Avenue, Rye, New York.

PAR. 2. Respondent Ted Bates & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 666 Fifth Avenue, New York, New York.

PAR. 3. Respondent ITT Continental Baking Company, Inc., is now, and for some time last past has been, engaged in the manufacture, sale and distribution of a certain bakery product designated "Profile" bread which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Ted Bates & Company, Inc., is now, and for some time last past has been, an advertising agency of ITT Con-

tinental Baking Company, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the bakery product of ITT Continental Baking Company, Inc., including "Profile" bread, which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its aforesaid business respondent ITT Continental Baking Company, Inc., causes the said bakery products, when sold, to be transported from its places of business located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent ITT Continental Baking Company, Inc., 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. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said businesses, respondents ITT Continental Baking Company, Inc., and Ted Bates & Company, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning the said bakery products 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 newspapers, and by means of television and radio 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 are likely to induce, directly or indirectly, the purchase of said products, and have disseminated, and caused the dissemination of, advertisements concerning said bakery products 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 bakery products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical of the statements and representations regarding said Profile Bread in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

(a) Three television commercials depict various scenes of young, slender women. In one such commercial the woman is pictured walking on a beach, disrobing to her bathing suit and strolling along to display a profile of a trim and youthful figure. Superimposed on her

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figure are two slices of Profile and then a picture of her eating a slice of Profile. In the final scene the young woman is shown with a man leaning over her teaching her to play a guitar. Another of these commercials intersperses shots of the physique of a slender young woman shown in her makeup mirror and a full length mirror, with pictures of slices of Profile bread, a loaf of Profile bread and scenes of the young woman with a young man and picking out a bicycle in a store with a little boy. A third such commercial intersperses scenes of a slender young woman in a ballet class, walking through the city, and in formal attire on an apartment balcony with shots of slices of Profile bread and loaves of Profile bread. During all these commercials the audio portion is as follows:

How do some women stay so slender and young looking? Many follow the Profile Bread Plan. Thirty minutes before lunch and dinner eat two slices of Profile bread toasted or plain. Like any good protein-carbohydrate food, Profile helps curb your appetite * * * helps prolong your slender years. Profile—tender, oven-fresh slices with golden sesame seeds. Remember you don't have to be on a diet to love Profile bread.

(b) Two television commercials open with a profile of a young, slender woman and the overprinted language "What's 'The Profile'?" Next the young woman is shown surrounded by young men followed by the overprinted language "How can you keep 'The Profile'?" Then a loaf of Profile bread is pictured next to the Profile bread menu planner leaflet, followed by a picture of a young woman eating a slice of Profile with her meal. The final frames show the young woman in a romantic scene with a young man. The commercial ends with a picture of two loaves of Profile bread. In one such commercial the audio portion is as follows:

What's "The Profile"? "The Profile" is a look that really gets looked at. When you have "The Profile," you've got a lot going for you. How can you keep "The Profile"? By following the Profile Bread Menu Planner available at your grocers. The Profile Plan can help you keep slender. And delicious Profile has no artificial sweeteners. What have you got to lose * * * except tomorrow's weight.

(c) A newspaper advertisement pictures a profile of a young, slender woman with the following copy:

What's "The Profile"? It's a look that really gets looked at. How can you keep "The Profile"? Follow the Profile Bread Menu Planner available at your grocer's. Help yourself keep "The Profile" with the Profile Bread Menu Planner and fresh delicious Profile Bread. What have you got to lose except tomorrow's weight.

PAR. 8. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

- (a) Said Profile bread is lower in calories than ordinary bread.
- (b) Changing the usual diet by consuming two slices of Profile bread before lunch and dinner will result in a loss of body weight without rigorous adherence to a reduced calorie diet.
- (c) Said Profile bread is of special and significant value for use in weight control diets.

PAR. 9. In truth and in fact:

- (a) Said Profile Bread is not lower in calories than ordinary bread.
- (b) Changing the usual diet by consuming two slices of Profile Bread before lunch and dinner will not result in a loss of body weight without rigorous adherence to a reduced caloric diet. A guide to low calorie menu planning made available by respondent ITT Continental Baking Company, Inc., to consumers who request it from their grocers specifically states that the basic principle of reducing body weight by diet is to provide all needed nutrients—protein, vitamins and minerals—in a diet which does not furnish enough calories to meet energy needs. This guide points out that such reduced calorie modification of a normal diet requires close adherence to reduced daily calorie allowances, sometimes requiring will power to resist exceeding these allowances.
- (c) Said Profile Bread is not of special and significant value for use in weight control diets. A guide to low calorie menu planning made available by respondent ITT Continental Baking Company, Inc., to consumers who request it from their grocers specifically points out that Profile Bread is included in the low calorie diets recommended simply because bread makes an important contribution to overall nutritional requirements, chiefly as a good source of the B-Vitamins. This guide also shows five other good sources of B-Vitamins with similar calorie values, one of which is enriched white bread, listed as containing 62.5 calories per slice. Although Profile Bread is purportedly thinly sliced for fewer calories, an average slice of Profile Bread provides 58 calories, only 4.5 calories less per slice than a slice of enriched white bread listed in this guide.

Therefore, the advertisements referred to in Paragraph Seven 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 and the statements and representations set forth in Paragraphs Seven and Eight were, and are, false, misleading and deceptive.

PAR. 10. In the course and conduct of its aforesaid business respondent ITT Continental Baking Company, Inc., had certain surveys of consumer attitudes conducted on its behalf. Typical and illustrative

of the findings from these consumer surveys reported to respondent ITT Continental Baking Company, Inc., but not all inclusive thereof, are the following: that one of the aforesaid television commercials for said Profile Bread had a strong impact on potential diet bread users by sharpening the focus of the product's "diet" bread image through teaching that said Profile Bread contains a lot fewer calories than regular white bread.

Therefore, respondent ITT Continental Baking Company, Inc., on the basis of these survey findings, and other facts and survey findings not specifically set out herein, knew or had reason to know or should have known that certain of the aforesaid advertisements constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. The continued dissemination of certain of the aforesaid advertisements which respondent ITT Continental Baking Company, Inc., knew or had reason to know or should have known were false advertisements constituted and now constitutes "unfair or deceptive acts or practices."

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive and unfair statements, representations, acts and practices and the dissemination of the aforesaid "false advertisements" has had and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said bakery products of respondent ITT Continental Baking Company, Inc., by reason of said erroneous and mistaken belief.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent ITT Continental Baking Company, Inc., has been and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of food products of the same general kind and nature as that sold by respondent.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ted Bates and Company, Inc., has been, and now is, in substantial competition, in commerce, with other advertising agencies.

PAR. 14. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair and deceptive acts and practices in commerce and unfair methods of competition 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 respondents named in the caption hereof, and the respondents having been served with notice of the Commission's determination to issue its complaint charging them with violation of Sections 5 and 12 of the Federal Trade Commission Act and with a copy of the complaint the Commission intended to issue, together with a form of order the Commission believed warranted in the circumstances; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 they had reason to believe that the respondents have violated the said Act, and that complaint should issue stating their 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 and having received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of their rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent ITT Continental Baking Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Halstead Avenue, in the city of Rye, State of New York.

Respondent Ted Bates & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 666 Fifth Avenue, New York, New York.

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

ORDER

I. *It is ordered*, That respondent ITT Continental Baking Company, Inc., a corporation, and respondent Ted Bates & Company, Inc., a corporation, either jointly or individually, and respondents' officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any bread product designated by the trade name "Profile," or any other bread product of respondent ITT Continental Baking Company, Inc., for which dietary claims for weight reduction are made, do forthwith cease and desist from directly or indirectly:

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:

a. That the consumption of any such product is in any way necessary or essential for, or provides substantial benefits toward reducing or controlling body weight or that any person can rely on the consumption of any such product for reducing or controlling body weight;

b. That any such product is lower in calories than ordinary bread if such calorie reduction is in any way attributable to the thinner slices of such bread;

c. That the use of any such product for appetite appeasement will cause a loss of body weight without adherence to a reduced calorie diet;

d. Any characteristic, property, quality, use or result of use of any such product which respondents know or have reason to know or should know by means of any marketing surveys, marketing reports, commercial attitudinal tests, commercial recall tests, or any other tests or surveys creates a misleading impression upon consumers or potential consumers of any such product.

2. 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 misrepresents in any manner the role of any such product in a diet for reducing or controlling body weight.

3. 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 any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations

prohibited in Paragraph 1 above or the misrepresentations prohibited in Paragraph 2 above.

II. *It is further ordered*, That respondents ITT Continental^a Baking Company, Inc., a corporation, and respondent Ted Bates & Company, Inc., a corporation, either jointly or individually, shall forthwith cease and desist for a period of one year from the date this order becomes final from 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, for any bread product designated by the trade name "Profile," unless not less than 25 percent of the expenditures (excluding production costs) for each media in each market be devoted to advertising in a manner approved by authorized representatives of the Federal Trade Commission that Profile is not effective for weight reduction, contrary to possible interpretations of prior advertising. In the case of radio and television advertising, such approved advertising is to be disseminated in the same time periods and during the same seasonal periods as other advertising of Profile bread; in the case of print advertising such advertising is to be disseminated in the same print media as other advertising of Profile Bread.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their 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 effect compliance obligations arising out of the order.

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

IN THE MATTER OF
AMERICAN BRANDS, INC.

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

Docket 8799. Complaint, Sept. 29, 1969—Decision, Aug. 20, 1971

Consent order requiring a major cigarette manufacturer with headquarters in New York City to cease advertising that its cigarettes are low in tar without