

Complaint

79 F.T.C.

IN THE MATTER OF

GENERAL FOODS CORPORATION, ET AL.

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

Docket C-2038. Complaint, Sept. 13, 1971—Decision, Sept. 13, 1971

Consent order requiring a major food corporation and its advertising agency with headquarters in White Plains, N.Y., to cease representing falsely in connection with selling or distributing "Toast'em Pop-Ups" or any other consumer food product, that such product is a nutritionally sound substitute for a regular meal, and disseminating such representation to induce the purchase of respondent's preparation.

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 General Foods Corporation, a corporation, and Benton & Bowles, 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 General Foods Corporation 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 250 North Street, White Plains, New York.

Respondent Benton & Bowles, 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 909 Third Avenue, city of New York, State of New York.

PAR. 2. Respondent General Foods Corporation is now, and for some time last past has been, engaged in the sale and distribution of toaster food designated "Toast'em Pop-Ups" which comes within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

Respondent Benton & Bowles, Inc., is now, and for some time last past, has prepared and caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of General Foods Corporation's "Toast'em Pop-Ups," which comes within the classification of "food" as said term is defined in the Federal Trade Commission Act.

PAR. 3. Respondent General Foods Corporation 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, respondents have disseminated, and caused the dissemination of, a certain advertisement concerning the said product by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including television broadcast 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 product; and have 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. Statements and representations used in connection with said advertising are contained in the following:

In the television commercial entitled "Gerard," a young child is shown mulling over a plate of two eggs, bacon and toast. The audio portion of the commercial states: "Gerard! You're not eating your breakfast * * *. No breakfast will do a kid any good * * * if he leaves it on his plate. So give him something good for him you know he enjoys eating."

The visual portion of the commercial then cuts from a picture of the breakfast plate of eggs, bacon and toast to a picture of two Toast'ems. The audio portion of the commercial then states: "2 hot Toast'ems provide 100 percent of the minimum daily requirement of vitamins and iron * * *. As long as you know that—let them think it's just a big cookie."

PAR. 6. Through the use of the said advertising, respondents have represented, directly or by implication, that:

(1) Two Toast'ems contain all the nutrients that are contained in a breakfast consisting of two eggs, two slices of bacon and toast and in the same or greater amounts.

Complaint

79 F.T.C.

(2) A dietary practice that consists of the consumption of two Toast'ems for breakfast in lieu of one consisting of eggs, bacon and toast is a good nutritional practice.

PAR. 7. In truth and in fact:

(1) Two Toast'ems contain substantially less nutrients than the amount of nutrients that are contained in a breakfast consisting of two eggs, two slices of bacon and toast.

(2) A dietary practice that consists of the consumption of two Toast'ems for breakfast in lieu of one consisting of eggs, bacon and toast is not a good nutritional practice.

Therefore, the advertisement referred to in Paragraph Five was and is misleading in material respects and constituted, and now constitutes, a "false advertisement" as that term is defined in the Federal Trade Commission Act and the representations set forth in Paragraph Six were, and are, false, misleading and deceptive.

PAR. 8. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent General Foods Corporation 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. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Benton & Bowles, Inc., has been, and now is, in substantial competition, in commerce with other advertising agencies.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive representations and the dissemination of the aforesaid "false advertisement" has had and now has the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondent General Foods Corporation's product by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents including the dissemination of a "false advertisement," 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

herein, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement, placed such agreement on the public record for a period of thirty (30) days, and received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent General Foods Corporation, 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 250 North Street, White Plains, New York.

Respondent Benton & Bowles, 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 909 Third Avenue, New York, New York.

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

ORDER

I

It is ordered, That respondent General Foods Corporation, a corporation, 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 "Toast'em Pop-Ups" or any other consumer food product, do forthwith cease and desist from directly or indirectly:

Decision and Order

79 F.T.C.

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 any such product is a nutritionally sound substitute for any meal consisting of identified foods unless such product in fact is a nutritionally sound substitute for said meal.

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

II

It is ordered, That respondent Benton & Bowles, Inc., a corporation, 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 "Toast'em Pop-Ups" or any other consumer food product of similar composition or possessing substantially similar properties, or any General Foods Corporation consumer food product, do forthwith cease and desist from directly or indirectly:

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 any such product is a nutritionally sound substitute for any meal consisting of identified foods unless such product in fact is a nutritionally sound substitute for said meal.

III

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 each corporate 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.

Complaint

IN THE MATTER OF

PARROTT & COMPANY DOING BUSINESS AS

SASKA-PARROTT SKI COMPANY

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

Docket C-2039. Complaint, Sept. 13, 1971—Decision, Sept. 13, 1971

Consent order requiring a San Francisco, Calif., seller and distributor of Kneissl skis and other merchandise to cease representing falsely that only Kneissl makes fiberglass skis, that any model is constructed entirely of fiberglass when it is not, and representing that no wood is used in such skis whenever such is not the case.

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 Parrott & Company, a corporation, dba Saska-Parrott Ski Company, hereafter 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 550 Montgomery Street, San Francisco, California.

PAR. 2. Respondent is now, and for some time has been, engaged in the business of advertising, offering for sale, sale and distribution of Kneissl skis and other articles of merchandise to the public.

PAR. 3. In the course and conduct of that business, respondent now causes, and for some time has caused, its products, when sold, to be shipped from its place of business in the State of California to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. By and through the use of periodicals, pamphlets, diagrams, cross sections, mock-ups, and other materials, in the course and conduct of its business, and for the purpose of inducing the purchase of Kneissl skis to the exclusion of others, respondent has made numerous statements and representations concerning various objectively determinable characteristics of its skis and competing skis.