

with the Commission a second report in writing setting forth in detail the manner and form in which it has complied with the terms of those paragraphs with respect to its services for the Reader's Digest Association, Inc.

IN THE MATTER OF
POPEIL BROTHERS INCORPORATED

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

Docket C-2061. Complaint, Oct. 13, 1971—Decision, Oct. 13, 1971

Consent order requiring a Chicago, Ill., seller and distributor of food cutters to cease misrepresenting the type of food its products will cut, making any guarantee for its products by broadcast or otherwise unless it furnishes such guarantee in writing, and misrepresenting that its products are made from surgical grade steel.

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 Popeil Brothers Incorporated, 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. Popeil Brothers 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 2323 West Pershing Road in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of the "Veg-O-Matic" variable food cutter, "Hi Temp Frozen Food & Slicer Knife" and other products to distributors and to retailers for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondent now causes, and for some time last past has caused, its said

products, when sold, to be shipped from its place of business in the State of Illinois 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its product "Veg-O-Matic," the respondent has made, and is now making, numerous statements and representations in television advertisements with respect to the operational capacity of said product.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

A television commercial demonstrates the use of the product to slice and dice onions and celery, to slice a potato into french fries, and to slice a tomato. First, the demonstrator uses the product to slice a potato, then to slice and dice an onion and celery. Next carrots are shown being diced, although the necessary prior slicing and stacking of the sliced segments on the instrument's blades are not shown. Then the demonstrator cuts a tomato into slices with the product. Finally, the slices of the previously sliced potato are cut into strips for french fries by the instrument.

During this visual demonstration of the product the audio portion of the commercial is as follows:

Here's why women love Veg-O-Matic. It slices a whole potato in one stroke. Turns whole onions into zesty, thin slices for hamburgers. Now turn the dial and slices are automatically thicker. Dial from slice to dice and sliced onions become diced by the panful. Dice carrots the same way. Prepare celery for soups and stews this easily. Over five million Veg-O-Matics now in use. They must be good. And it's yours for just seven-seventy-seven. Imagine, Veg-O-Matic can slice a whole firm tomato like this in one stroke or make everybody's favorite, golden french fries, hundreds in one minute. Veg-O-Matic, just seven-seventy-seven, the perfect Christmas gift. Another great product from P.B.I.

PAR. 5. By and through the use of the above statements and representations, and others of similar import and meaning but not expressly set out herein, respondent has represented, and is now representing, directly or by implication that the Veg-O-Matic variable food cutter will cut and slice raw carrots, ripe tomatoes and other such vegetables and foods.

PAR. 6. The instruction booklet packaged with said product contains the following statements:

(a) **IMPORTANT.** Improper use can damage your VEG-O-MATIC. The manufacturer will only assume responsibility as war-

ranted on page 8. PLEASE ADHERE TO THE FOLLOWING...
DON'T—Slice raw carrots, raw beets, lemons, oranges, ripe or over ripe tomatoes. VEG-O-MATIC is NOT intended to slice these foods.

(b) VEG-O-MATIC was NOT intended for slicing ripe or over-ripe tomatoes.

PAR. 7. The statements and representations set forth and referred to in Paragraphs Four and Five hereof and others similar thereto not specifically set forth herein are inconsistent with, negate and contradict the statements regarding the operational capacity of said product in the instruction booklet packaged with respondent's product as set forth in Paragraph Six hereof, which inconsistency, negation and contradiction have the tendency and capacity to mislead and confuse purchasers of said product as to the operational capacity of said product for cutting and slicing carrots, tomatoes and other vegetables and foods.

Therefore, the acts and practices of respondent as set forth in Paragraphs Four and Five hereof were and are unfair and deceptive.

PAR. 8. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its product "Veg-O-Matic" the respondent has caused its product to be offered for sale to consumers with a money back guarantee in case of user dissatisfaction, which guarantee is contradicted by a guarantee packaged with the product purporting to limit warranty of the product to freedom from defects in materials and workmanship and including the underscored words, "*Please don't return the broken cutting ring or the appliance.*" Packaging with the product such a specific, limited guarantee represents, directly or by implication, that the said specific, limited guarantee is the only outstanding guarantee of the product or the controlling guarantee of the product, whereas, in truth and in fact, the product is also subject to a money back guarantee conditioned only on consumer dissatisfaction. Therefore, said representations were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its product "Hi Temp Frozen Food & Slicer Knife" and its product "Hi Temp Fork Tipped Carver Knife," the respondent has made, and is now making, numerous statements and representations in television advertisements with respect to the quality and operational capacity of said products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

A television commercial demonstrates the use of the "Hi Temp Frozen Food & Slicer Knife" to cut certain items. During this visual

demonstration of the use of the product the audio portion of the commercial is as follows:

Hi Temp, the surgical steel Wonder Knife. Tired of hacking food with dull knives? This will never happen with Hi Temp. Watch how this solid bronze nail is cut through by this tough stainless blade. It still stays so sharp it can slice through frozen food quickly and easily. Imagine, slice onions paper thin or cheese without crumbling. Even slice a whole watermelon in one stroke, then quarter it just as easily. Hi Temp sells for only \$2.98. Get one today and receive free this fabulous fork tip carver. Now you can carve roasts just like a professional. Use Hi Temp for ten days. Be completely satisfied or the store will refund your money.

PAR. 10. By and through the use of the above statements and representations and others of similar import and meaning but not expressly set out herein, respondent has represented, directly or by implication, that:

(a) The "Hi Temp Frozen Food & Slicer Knife" is made from such high quality stainless steel that its blade will never become dull.

(b) The "Hi Temp Frozen Food & Slicer Knife" is made from surgical steel of the same grade and quality used for surgical cutting instruments.

(c) The "Hi Temp Fork Tipped Carver Knife" will be given "free," as a gift or gratuity to the purchaser of the "Hi Temp Frozen Food & Slicer Knife" at the usual and customary retail price of the latter knife.

PAR. 11. In truth and in fact:

(a) The "Hi Temp Frozen Food & Slicer Knife" is not made from such high quality stainless steel that its blade will never become dull.

(b) The "Hi Temp Frozen Food & Slicer Knife" is not made from surgical steel of the same grade and quality used for surgical cutting instruments.

(c) The "Hi Temp Fork Tipped Carver Knife" was not, and is not now, given without cost to the retail purchaser since the purchaser must pay the advertised price which was, and is now, the usual and regular retail selling price for the two knives.

Therefore, the statements and representations set forth in Paragraphs Nine and Ten above were and are false, misleading and deceptive.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of food cutting devices and other products.

PAR. 13. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and

now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 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 Consumer Protection 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 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 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, 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 Popeil Brothers 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 2323 West Pershing Road in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Popeil Brothers Incorporated, 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 any food cutter, or any other similar product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, the type or form of food such product will cut, in a manner which is inconsistent with, negates or contradicts any statements set forth in any instructions accompanying any such product or which limits, qualifies or detracts from any statement set forth in any such instructions.

2. Representing, directly or by implication, that any such product is subject to a limited warranty or guarantee when any other warranty or guarantee is outstanding for the product; *Provided however*, That such a representation of a limited warranty or guarantee may be made if the basic terms of any other outstanding warranty or guarantee are clearly disclosed in immediate conjunction therewith and, as conspicuously as the limited guarantee or warranty.

3. Representing, directly or indirectly, in any broadcast advertising any guarantee for any such product without making available, to purchasers or prospective purchasers, at the point of purchase or point of prospective purchase, said guarantee in written form completely consistent with the broadcast representations.

4. Representing, directly or by implication, that any such product is made from surgical steel if such steel is not the same grade and quality as that used for surgical cutting instruments.

5. Representing, directly or by implication, that the cutting edge of any such product will never become dull.

6. Representing, directly or by implication, that any such product is being given free or as a gift, or without cost or charge, when such is not the fact.

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 (60) days 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.
