

with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THE PROCTER & GAMBLE COMPANY

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

Docket C-2148. Complaint, Feb. 14, 1972—Decision, Feb. 14, 1972

Consent order requiring a Cincinnati, Ohio, corporation selling and distributing an edible oil designated "Crisco Oil" to cease misrepresenting in its advertising that foods fried in its product absorb less grease than foods fried in other oils, that its product is lower in calories, and using any expression which implies that respondent's oil is unique.

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 the Procter & Gamble Company, 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 the Procter & Gamble Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 301 East Sixth Street, Cincinnati, Ohio.

Complaint

80 F.T.C.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, sale and distribution of an edible oil designated Crisco Oil 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 the State of Ohio 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 advertisements 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 product; 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 statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

1. Several different video demonstrations depict four pieces of chicken frying in one cup of Crisco Oil. Typical of the accompanying audio is the following: Take an exact cup of Crisco Oil, pour it in here. Now, fry four pieces of chicken 'till they're done and then pour the oil back. And look at that—it all comes back. Well, except one tablespoon. Only one tablespoon of Crisco Oil will go into all this chicken, so don't worry about fried foods being greasy again—you try it. Fry practically grease free in Crisco Oil. Oh, * * * it's high in polyunsaturates, too, you know.

2. I worry about too much fried food. All that grease. But Crisco Oil fries practically grease free.

3. *Mother*: Hey, fellas! What do you want for dinner?

Family: Fried chicken.

181

Complaint

Mother: Oh no, not again. They could live on fried chicken. Greasy food's such a worry. Peggy, help. You fry a lot * * * don't you worry about greasy foods?

Neighbor: Uh uh—I'm using Crisco Oil. Fries practically grease free!

Mother: Practically grease free?? Oh, come on.

Neighbor: Crisco Oil really does. Look. Take an exact cup of Crisco Oil * * * pour it in the pan * * * and fry four pieces of chicken till they're done * * * then re-measure to see how much Crisco Oil comes back!

Mother: Almost a cup's left.

Neighbor: Yup! Only one tablespoon of Crisco Oil went into all this chicken! The oil that's here * * * (pointing to frying pan) can't be here, right? (pointing to the chicken.)

Mother: Mmm. It isn't greasy. Now my family can have fried chicken 'till comes out of their ears!

Announcer: Fry practically grease free with Crisco Oil * * * the lightest leading oil. High in polyunsaturates, too.

4. The video portion of this advertisement depicts a pregnant woman with her mother. The accompanying audio is as follows:

Mother: Oh dear, not fried chicken.

Woman: Yes, let me eat.

Mother: Greasy food in your delicate condition.

Woman: Mother, this isn't greasy. It's crisp and crunchy.

Mother: Fried food is greasy.

Woman: No mother, come here. I fry practically grease free with Crisco Oil. Look, after I fried these four pieces of chicken in one cup of Crisco Oil. Watch. All the oil comes back, except one tablespoon.

Mother: Hmm, it isn't greasy.

Announcer: Get Crisco Oil. It fries practically grease free.

5. A television advertisement depicts a man frying french fried potatoes in Crisco Oil. The audio states What other oil says it can fry this grease-free, right?

PAR. 6. Through the use of said advertisements and others similar thereto not specifically set out herein, respondent has represented and is now representing directly and by implication:

1. That foods fried in Crisco Oil absorb less of the frying medium than foods fried in other edible oils;

2. That Crisco Oil has unique properties that produce a less greasy food than other edible oils;

3. That foods fried in Crisco Oil are lower in calories than foods fried in other edible oils;

4. That foods fried in Crisco Oil have less adverse health effects in a diet than foods fried in other edible oils;

5. That the remaining oil in the pan after frying chicken consists solely of Crisco Oil.

PAR. 7. In truth and in fact:

1. Foods fried in Crisco Oil do not absorb less of the frying medium than foods fried in other edible oils;

2. Crisco Oil does not possess unique properties that produce a less greasy food than other edible oils;

3. Foods fried in Crisco Oil are not lower in calories than foods fried in other edible oils;

4. Foods fried in Crisco Oil do not have less adverse health effects in a diet than foods fried in other edible oils;

5. The remaining substance in the pan after frying chicken is not solely Crisco Oil but is a combination of Crisco Oil and chicken fat.

Therefore, the statements and representations set forth in Paragraphs Five and Six were and are false, misleading and deceptive and the advertisements referred to in Paragraph Five 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. 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 edible oils of the same general kind and nature as that sold by respondent.

PAR. 9. 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 product by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, including the dissemination by respondent of the "false advertisements," 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 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 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

181.

Decision and Order

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, 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 Procter & Gamble Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at 301 East Sixty Street, Cincinnati, Ohio.

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

PART I

It is ordered, That respondent the Procter & Gamble Company, a corporation, and 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 Crisco Oil or any other edible salad oil sold for household consumption and having similar composition or possessing substantially similar properties 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 foods fried in any such product absorb less of the frying medium than foods fried in other edible oils;

(b) That any such product has unique properties that produce a less greasy food than other edible oils;

Decision and Order

80 F.T.C.

(c) That the oil remaining in the pan after frying chicken consists solely of any such product; unless such representation is based on tests, studies, documentation or other data in possession of respondent prior to the time such representation was made which substantiates such representation and unless the results thereof are maintained in writing and available for inspection.

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 One hereof.

PART II

It is further ordered, That respondent the Procter & Gamble Company, a corporation, and 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 Crisco Oil, or any other food product sold for household consumption, 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 which represents that respondent's product is lower in calories than, or has less adverse health effects in the diet than, any other product, unless such representation is based on tests, studies, documentation or other data in possession of respondent prior to the time such representation was made which substantiates such representation and unless the results thereof are maintained in writing and available for inspection.

2. Dissemination, 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 One of Part II of this order, unless the affirmative requirements of said paragraph have been complied with.

PART III

A statement as to the qualities or attributes of a product can amount to an implied uniqueness claim if it is made in a context

181

Complaint

which conveys an impression of uniqueness for the product. However, statements as to the qualities or attributes of products covered by the order will not constitute a violation of this order for the sole reason that such statements could also be made with respect to similar products.

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 a dissolution, assignment or sale resulting in the emergence of a successor corporation, creation or dissolution of subsidiaries or other change in the corporation which may affect compliance obligations arising out of this order.

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