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Complaint

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

IN THE MATTER OF

OCEAN SPRAY CRANBERRIES, INC., ET AL.

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

Docket 8840. Complaint, April 22, 1971—Decision, June 23, 1972

Consent order requiring a Hanson, Mass., manufacturer, seller and distributor of a cranberry juice drink and respondent's New York City advertising agency to cease disseminating any advertisement which represents that any product made by respondent contains as many or a greater variety of nutrients than orange or tomato juice or any other beverage, unless it is true; has more "food energy" than any other beverage, unless clear disclosure is made that the term refers to calories only; or that their product is a "juice" unless it consists entirely of natural or reconstituted single strength fruit juice with no water added. Respondent is further ordered, for a period of one year, to devote at least one out of every four advertisements for their product—or, alternatively, 25 percent of media expenditures (excluding production costs)—to a prepared statement clarifying any alleged misleading advertisements.

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 Ocean Spray Cranberries, 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 Ocean Spray Cranberries, Inc., 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 Hanson, Massachusetts.

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 office and principal place of business located at 666 Fifth Avenue, New York, New York.

PAR. 3. Respondent Ocean Spray Cranberries, Inc., is now, and for some time last past has been, engaged in the manufacture, sale and

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distribution of a juice drink designated "Ocean Spray Cranberry Juice Cocktail" which comes within the classification of a "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 Ocean Spray Cranberries, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising referred to herein, to promote the sale of Ocean Spray Cranberries, Inc.'s "Ocean Spray Cranberry Juice Cocktail" juice drink, which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent Ocean Spray Cranberries, Inc., causes the said product, when sold, to be transported from its place of business in one State of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent Ocean Spray Cranberries, Inc., 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. 6. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said juice drink 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 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 juice drink in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

A) A series of television commercials presents live action dramatizations of people in healthy, wholesome family situations and in

informal get-togethers. They are at the breakfast table, at a winter-time party, watching a football game on television, and on a houseboat. These advertisements are used to demonstrate the versatility of Ocean Spray Cranberry Juice Cocktail. Ocean Spray is represented in both the audio and visual portions of these commercials as "the start of something big." The theme song for this series of commercials is the popular tune "This Could Be The Start of Something Big." A large part of the audio message is sung to that tune. Children and the young married couple play the central roles in these advertisements. Audio and/or video representations of Ocean Spray Cranberry Juice Cocktail as having "more food energy than orange juice" appear in all, but one, of this group of commercials and there are frequent representations of the drink as "good for you" and as a "juice."

(1) One such television commercial features a sleepy husband served by his wife at the breakfast table. She sings as she serves him the cranberry juice cocktail and praises it as a "great new way" to start the day, instead of orange or tomato juice. As the husband drinks, he awakens and his face lights up. The announcer states: "Cranberry *juice* is good for you. Has even more food energy than orange or tomato juice." The words "more food energy than orange or tomato juice" appear in the video portion. The wife mixes the Ocean Spray Cranberry Juice Cocktail with pineapple juice, saying "Right now I'm mixing cranberry *juice* and pineapple juice." She fixes a drink for her little boy—"Ocean Spray Cranberry *Juice* mixed with ginger ale." The boy and an older woman, presumably his grandmother, drink and smile as a woman sings, ending her song with "Ocean Spray's the start of something big." (Emphasis added)

(2) One such commercial message pictures a winter holiday as guests visit. The hostess cheerfully fixes drinks with Ocean Spray Cranberry Juice Cocktail as voices sing: "You reach for the Ocean Spray. Cranberry *juice* makes the day." As the drinks are served, the announcer speaks of the product's virtues in entertaining, referring to it as "funberry *juice*." The commercial closes with "Ocean Spray's the start of something big." (Emphasis added)

(3) Another such television commercial shows an informal gathering with men watching football on television. After the guests are greeted, the hostess goes to the refrigerator and takes out a bottle of Ocean Spray Cranberry Juice Cocktail, while men and women sing "You reach for the Ocean Spray. Cranberry *juice* makes the day. Ocean Spray's the start of something big," and "the start of something big" appears on the video portion. As the drinks are poured, the announcer refers to this drink twice as "the extra-use

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juice." Audio and video messages stress that this product "has even more food energy than orange or tomato juice." While the guests drink, singing women characterize the juice cocktail as "so-good-for-you *juice* you drink in so many ways." Before the commercial closes with the message "Ocean Spray's the start of something big," the host refers to the drink: "Cranberry *juice* very nice." (Emphasis added)

(4) Yet another commercial message of this series depicts a family on a houseboat sailing down a river. The mother serves Ocean Spray as a snack beverage. As the children drink, the audio message describes the drink as "funberry *juice*," and "good for you," and the video message shows the words "more food energy than orange or tomato juice." Again, this commercial ends with the audio-visual message "Ocean Spray's the start of something big." (Emphasis added)

(5) Also in this series is a television commercial depicting a family musical combo playing together at home. The mother brings the group Ocean Spray and the announcer extols the product as "so good for you" while the message "More food energy than orange juice" appears on the video portion. The commercial ends with the audio message "Ocean Spray's the start of something big."

B) A group of two television commercials is based on the theme "Cranberry *juice* for breakfast." These commercials feature quick scene changes to focus on different situations. Both of these commercials begin with the showing of a man's face having a startled expression with the words "cranberry juice for breakfast" flashing across his face while the announcer's voice echoes that phrase. They each end with the announcer saying "Ocean Spray Cranberry Juice Cocktail, the other breakfast *juice*." Meanwhile, the video portion focuses on an Ocean Spray bottle with the words "the other breakfast *juice*" standing next to the bottle. (Emphasis added)

(1) One such commercial depicts a "cultured" young woman at her breakfast table sipping Ocean Spray, saying "Cranberry *juice*, great for breakfast. Tingly. mmm." Then a man, looking through the sun-roof of a foreign car, states "Cranberry *juice* gives me more food energy than orange juice." A grocery store clerk then relates that his customers "start every day with Ocean Spray." The announcer gives the message "Ocean Spray Cranberry Juice Cocktail has more food energy than orange juice," while a message to that effect is shown. Following this, a woman pours Ocean Spray Cranberry Juice Cocktail for her family, saying "Orange juice? We like cranberry *juice* better. (Emphasis added)

(2) A second such commercial depicts a woman, who says she is tired of orange juice every day, at a grocery checkout counter purchasing Ocean Spray, which, in her words, "tastes better and has more food energy than orange juice." As a mother serves her son and husband, she states: "Jim likes his cranberry *juice* straight. Jimmy mixes his with orange juice." Next the announcer speaks of Ocean Spray as having "more food energy than orange juice" while those words appear on the video portion in a prominent manner. (Emphasis added)

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 drink is the beverage that is more nutritious than orange or tomato juices and, thus, should be substituted for those beverages at breakfast.

B. Said drink has more "food energy" than orange or tomato juices and, thus, contains nutrients that are greater in variety and quantity than those nutrients found in orange or tomato juices.

C. Said drink is a juice and, as such, contains cranberry juice entirely.

PAR. 9. In truth and in fact:

A. Said drink is not a beverage that is more nutritious than orange or tomato juices. In fact, orange or tomato juices are nutritionally and economically more suitable for use at breakfast.

B. Said drink does not contain nutrients that are greater in variety and quantity than those found in orange or tomato juice. In fact, it contains a substantially smaller variety and quantity of such nutrients. Said drink, only, has a higher carbohydrate content and hence more calories (food energy measurement) than orange or tomato juice, but it contains a substantially lower vitamin and mineral nutrient content than orange or tomato juices. Each six fluid ounce serving contains 124 calories, primarily derived from sugar and other added sweeteners.

C. Said drink is not a juice and is diluted with water so that the predominant ingredient is added water.

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.

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PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ocean Spray Cranberries, 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 respondents.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Ted Bates & Company, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations 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 respondent Ocean Spray Cranberries, Inc.'s product, which is more expensive than equivalent amounts of orange or tomato juice, by reason of said erroneous and mistaken belief.

PAR. 13. 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 Commission having issued its complaint on April 22, 1971, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion duly certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provisions of Section 2.34(d) of its rules, that the consent order procedure shall not be available after issuance of complaint; and

Respondents and counsel for the complaint having thereafter executed an agreement containing a consent order, an admission by respondent of all jurisdictional facts set forth in Paragraph Six of the complaint, a statement that the signing of the agreement by

respondents is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having thereupon placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter, now, in further conformity with the procedure prescribed in its rules, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered;

1. Respondent Ocean Spray Cranberries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its general office and place of business located at Hanson, Massachusetts.

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 1515 Broadway, New York, New York.

3. 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

It is ordered, That respondent Ocean Spray Cranberries, Inc., a corporation, and respondent Ted Bates & Company, Inc., a corporation, and their 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 beverage product of Ocean Spray Cranberries, Inc., or any beverage product which is represented in advertising as a product made with cranberries, 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:

(a) Any such product contains nutrients of equivalent or greater variety or in greater quantity than those nutrients found in orange juice, tomato juice or any other beverage, unless such product does in fact contain such an equivalence or excess of variety or quantity of such nutrients; *Provided, however*, That nothing contained herein shall be deemed to

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prohibit representations which merely propose using any such product in place of orange juice, tomato juice or any other beverage without assigning any nutritional reason therefor.

(b) Any such product has more "food energy" than orange juice, tomato juice or any other beverage unless it is clearly and conspicuously disclosed, and in close connection with said term, that "food energy" is a reference to calories.

(c) Any such product is a "juice," unless it consists of not less than 100 percent natural or reconstituted single strength fruit juice with no additional water added thereto; *Provided, however*, nothing contained herein shall prohibit the addition of any ingredient to sweeten, flavor, preserve, fortify with vitamins, minerals or other nutrients, or color, or the like, such fruit juice; and *Further provided, however*, nothing contained herein shall prohibit respondents from designating or describing any such product as "juice cocktail," "juice drink" or by any other name connoting a diluted or modified single strength juice; or by any name approved by any federal agency having appropriate jurisdiction.

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 any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations, acts or practices prohibited in subparagraph 1 above.

It is further ordered, That respondent Ocean Spray Cranberries, Inc., shall forthwith cease and desist for a period of one (1) year, commencing no later than 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 other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for its product Ocean Spray Cranberry Juice Cocktail, unless at least one (1) out of every four (4) advertisements of equal time or space for each medium in each market, or, in the alternative, not less than twenty-five percent (25%) of the media expenditures (excluding production costs) for each medium in each market, be devoted to advertising as set forth in Exhibit A annexed hereto. In the case of radio and television advertising, such advertising is to be disseminated in the same time periods and during the same seasonal periods

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as other advertising of Ocean Spray Cranberry Juice Cocktail; in the case of print advertising, such advertising is to be disseminated in the same print media as other advertising of Ocean Spray Cranberry Juice Cocktail.

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 respondents notify the Commission at least thirty (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.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

EXHIBIT A

If you've wondered what some of our earlier advertising meant when we said Ocean Spray Cranberry Juice Cocktail has more food energy than orange juice or tomato juice, let us make it clear: we didn't mean vitamins and minerals. Food energy means calories. Nothing more.

Food energy is important at breakfast since many of us may not get enough calories, or food energy, to get off to a good start. Ocean Spray Cranberry Juice Cocktail helps because it contains more food energy than most other breakfast drinks.

And Ocean Spray Cranberry Juice Cocktail gives you and your family Vitamin C plus a great wake-up taste. It's * * * the other breakfast drink.

(If this text is used for a broadcast advertisement, such advertisement will be prepared in a manner consistent with normal technical and artistic standards of production.)

