

Complaint

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IN THE MATTER OF

PAKISTAN ARTS AND CRAFTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2328. Complaint, Dec. 6, 1972—Decision, Dec. 6, 1972

Consent order requiring a New York City importer and manufacturer of wearing apparel, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Pakistan Arts and Crafts, Inc., a corporation, and Jamil Akhter, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Pakistan Arts and Crafts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 35 West 30th Street, New York, New York.

Respondent Jamil Akhter is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are engaged in the importation, manufacture and sale of wearing apparel and accessories, including, but not limited to, ponchos.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, the sale and offering for sale, in commerce, and the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce," and "product" are defined in the Flammable Fabrics Act, as amended, which

fail to conform to an applicable standard or regulation in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were ponchos.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning 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 furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Flammable Fabrics Act and the Federal Trade Commission Act; and

Respondents 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 it had reason to believe that the respondents have 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 Pakistan Arts and Crafts, 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 35 West 30th Street, New York, New York.

Respondent Jamil Akhter is president of said corporation. He formulates, directs and controls the acts, practices and policies of said corporation and his principal office and place of business is located at the above stated address.

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

It is ordered, That the respondents Pakistan Arts and Crafts, Inc., a corporation, its successors and assigns, and its officers, and Jamil Akhter, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the ponchos which gave rise to the complaint, of the flammable nature of said ponchos and effect the recall of said ponchos from such customers.

It is further ordered, That the respondents herein either process the ponchos which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said ponchos.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the ponchos which gave rise to the complaint, (2) the number of said ponchos in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flam-

mability of said ponchos and effect the recall of said ponchos from customers, and of the results thereof, (4) any disposition of said ponchos since November 6, 1970, and (5) any action taken or proposed to be taken to bring said ponchos into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said ponchos, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents 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 this order.

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 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 the order to cease and desist contained herein.

IN THE MATTER OF

WILLIAM FREIHOFFER BAKING CO., INC.

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

Docket C-2329. Complaint, Dec. 7, 1972—Decision, Dec. 7, 1972.

Consent order requiring an Allentown, Pennsylvania, producer of bakery goods, among other things to cease misrepresenting the nutritional value of its bread.

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 William Freihofer

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Baking Company, Inc., 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. The proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1701 Union Boulevard, Allentown, Pa.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, sale and distribution of a bakery product, specifically a bread 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 Pennsylvania to purchasers thereof located in various other States of the United States. 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 in newspapers, point of purchase advertisements, and by means of radio broadcasts transmitted by radio stations with 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) A flyer attached to packages of said product which bears a picture of two muscular children, above which is written:

The Inside story of Freihofer's Double Double Enriched Bread

2) A statement in said flyer that:

We at Freihofer have been concerned over the alarming reports of poor nutrition in America today. Because of improper diet and empty calories, many, many thousands of people in our cities are *nutritionally* starving. That's why our research staff has devoted much of their efforts to the development of a High-Nutrition White Bread.

Our Now Double Enriched White Bread contains almost twice the nutrition including, for the first time, NATURAL WHEAT GERM (for good circulation and youthful vigor). Each new loaf contains the same natural wheat germ found in 100% Whole Wheat Bread. This also increases the protein content for a slightly firmer, better tasting loaf.

Our new Double Enriched Bread is truly twice as nutritious * * *

3) A statement in a radio commercial to the effect that:

Ladies and Gentlemen, it's here at last. A nutritional bread-through. It's Freihofer's new double enriched bread. Freihofer's new double-enriched bread is now double nutritious with almost twice the vitamins and iron. Plus, for the first time, natural wheat germ. Wheat germ, the life-giving part of the wheat kernel, is nature's great wonder worker for good circulation and youthful vigor. And now double-enriched Freihofer's bread contains the same natural wheat germ found in 100% whole wheat bread, plus 80% more vitamins, more iron and more protein. Starting today, give your family better nutrition and better health with Freihofer's. Freihofer's, now fortified with natural wheat germ, plus more vitamins, iron and protein. So, whose got the new double-enriched bread? Freihofer's—that's who.

4) A statement in another radio advertisement for said product to the effect that:

Ladies and Gentlemen, it's here at last. A great nutritional bread-through. It's Freihofer's new (ECHO) Double-Enriched Bread. Honey, this toast tastes terrific. Yes, I switched to Freihofer's new bread, look at the wrapper. It says double-enriched. Right, Freihofer's new double-enriched with vitamins and iron. Double enriched, hey, that is great. Yea, and fortified with natural wheat germ. Wheat germ gives us good circulation you know. Sure, keeps us young and healthy, we have been adding extra wheat germ to our food for years. Well, not any more, because Freihofer's now contains the same natural wheat germ as 100% whole wheat bread. And all those extra vitamins and iron. Boy, double-enriched Freihofer's is some high power bread. It's double nutritious, dear. Yea, double delicious too. Freihofer's now fortified with natural wheat germ, plus more vitamins, iron and protein. So whose got the new double-enriched bread? Freihofer's, that's who.

5) A newspaper advertisement which states almost exactly what the flyer described in (1) above states, but above which, in large type is written

NOW FREIHOFFER'S DOUBLE ENRICHED BREAD HAS ALMOST TWICE THE NUTRITION * * * NATURAL WHEAT GERM PLUS 80% MORE VITAMINS—55% MORE IRON—MORE PROTEIN.

Below that writing, in a circular background is the phrase

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NOW FORTIFIED WITH NATURAL WHEAT GERM. It contains the same natural wheat germ found in 100% whole wheat bread.

6) A shelf-hanger which describes said bread as "twice as nutritious."

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

1) that Freihofer's bread represents a nutritional breakthrough, and is of extraordinary nutritional value, especially in maintaining good circulation and youthful vigor;

2) that Freihofer's bread has the same quantity of wheat germ as is contained in a loaf of whole wheat bread;

3) that Freihofer's bread has twice the nutritional value of
a) either any other bread, or
b) the previous model of Freihofer's bread.

PAR. 7. In truth and in fact

1) Freihofer's bread is well within the range of nutritional quality of large selling enriched breads in the United States and in no sense represents a nutritional breakthrough, particularly in terms of maintaining good nutrition and youthful vigor;

2) Freihofer's bread does not have even approximately as much wheat germ as is contained in whole wheat bread and in fact has far less;

3) Freihofer's bread has neither twice the nutrition of many widely sold breads, nor twice the nutrition Freihofer's bread had before reformulation.

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 bread 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;

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:

I

1) The proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and its principal place of business located at 1701 Union Boulevard, Allentown, Pa.

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.

II

It is ordered, That respondent William Frehofer Baking Company, a corporation, their successors and assigns, and their agents, officers, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any bread or baked product, 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 contains the following:

(a) any representation, orally, visually, or by any other means, that Frehofer's Bread is "double enriched," has "almost twice the nutrition," is "double nutrition," or has "almost twice the vitamins and iron," as ordinary enriched bread,

(b) any representation, or implication, orally, visually, or by any other means, that the wheat germ content of Frehofer's Bread is equivalent to that of whole wheat bread, such as by saying "*** Frehofer's now contains the same natural wheat germ as 100% whole wheat bread,"

(c) any representation, orally, visually, or by any other means that Frehofer's Bread represents a "nutritional bread through" or break-through, or any other representation to that effect;

It is provided, however, That should respondent reformulate its bread so as to make any of the above-proscribed representations true, that the above-proscribed representations may be made.

It is further ordered, That respondent 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 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 this order.