

MCP FOODS, INC., ET AL.

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

Docket C-2379. Complaint, April 11, 1973--Decision, April 11, 1973.

Consent order requiring an Anaheim, California, manufacturer, seller and distributor of imitation orange juice, among other things, to cease disseminating any advertisements which misrepresent the composition or nutrient value of its products; failing to disclose that (1) its product contains artificial and nutritive sweeteners and (2) that its product is a frozen concentrate for imitation fruit juice.

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 MCP Foods, Inc., a corporation, the Mayne Agency, Inc., a corporation and Laurence W. Pendleton, individually and as an officer of the Mayne Agency, Inc., 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 it complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent MCP Foods, 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 424 South Atchison Street, Anaheim, California.

Respondent the Mayne Agency, Inc., 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 431 North Brand Boulevard, Glendale, California.

Respondent Laurence W. Pendleton is an officer of the Mayne Agency, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

PAR. 2. Respondent MCP Foods, Inc., is now, and for some time last past has been, engaged in the manufacture, sale, and distribution of a frozen concentrate for imitation orange juice with artificial and nutritive sweeteners added, designated "Orange C," which comes within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 3. Respondent the Mayne Agency, Inc., is now, and for some time last past has been, an advertising agency of MCP Foods, Inc., and respondents the Mayne Agency, Inc., and Laurence W. Pendleton now, and for some time last past, have, directly or through intermediaries, prepared and placed for publication and caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of the hereinabove mentioned "Orange C" frozen concentrate.

PAR. 4. Respondent MCP Foods, 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. Respondent MCP Foods, Inc., main-

tains, 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. 5. In the course and conduct of their said businesses, respondents have 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 newspapers and other advertising media 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. 6. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

a) Point of purchase advertising which states:

- 1) drink the NEW break-thru * * *
- 2) from Orange County California
- 3) Breakfast Energizer with Vitamin C plus Vitamin A
- 4) * * * nutritious way to start the day!
- 5) at breakfast or anytime Gives you extra Vitamins A and C
- 6) Provides isotonic salts for quick energy.

b) Newspaper advertisements which state:

- 1) a break-thru at breakfast and thru-out the day
- 2) A convenient frozen concentrate from fresh California oranges.
- 3) Gives you extra Vitamins A and C.
- 4) Provides isotonic salts for quick energy.
- 5) Costs less than orange juice.

c) The product name, variously stated in advertising and on cans containing the product as "Orange C," "Orange C Breakfast Energizer," and "Orange C Frozen Concentrate Breakfast Energizer."

PAR. 7. 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 product is frozen concentrated orange juice or a product containing substantially more than fifty percent orange juice in its reconstituted form.

b) isotonic salts contained in said product are a source of quick energy.

c) said product is a breakthrough in the breakfast beverage field.

d) said product contains proportionately more Vitamin C than frozen concentrated orange juice.

e) said product is other than a frozen concentrate for imitation orange juice with artificial and nutritive sweeteners added.

f) said product, as consumed, is as nutritious as, or more nutritious than, frozen concentrated orange juice, as consumed.

g) said product, as consumed, is a less expensive source of Vitamin C than frozen concentrated orange juice, as consumed.

h) said product is not one to which artificial sweetener has been added.

PAR. 8. In truth and in fact:

a) said product is not frozen concentrated orange juice nor is it a product containing substantially more than fifty percent orange juice in its reconstituted form.

b) isotonic salts contained in said product are not a source of quick energy.

c) said product is not a breakthrough in the breakfast beverage field. The only innovation involved is the addition of isotonic salts, which is of little or no significance to the ordinary consumer.

d) said product contains proportionately less Vitamin C than frozen concentrated orange juice.

e) said product is a frozen concentrate for imitation orange juice with artificial and nutritive sweeteners added.

f) said product, as consumed, is less nutritious than frozen concentrated orange juice, as consumed, as to all major nutrients except Vitamin A, and is essentially orange juice which has been diluted, colored, artificially and nutritively sweetened, and to which inorganic salts have been added.

g) said product, as consumed, is a more expensive source of Vitamin C than frozen concentrated orange juice, as consumed.

h) said product is one to which artificial sweetner has been added.

Therefore, the advertisements referred to in paragraph Six 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 state-

ments and representations set forth in Paragraph Six and Seven were, and are, false, misleading and deceptive.

PAR. 9. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent MCP Foods, Inc., has been, and now is, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporation, firms, and individuals in the sale of food products of the same general kind and nature as that sold by said respondents.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents the Mayne Agency, Inc., and Laurence W. Pendleton have been, and now are, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with other advertising agencies and persons engaged in the advertising agency business.

PAR. 11. 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 MCP Foods, Inc.'s product by reason of said erroneous and mistaken belief.

PAR. 12. 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 an 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 hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Los Angeles 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 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 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 MCP Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 424 South Atchison Street, Anaheim, California.

Respondent the Mayne Agency, Inc., 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 431 North Brand Boulevard, Glendale, California.

Respondent Laurence W. Pendleton is an officer of the Mayne Agency, Inc. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

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 MCP Foods, Inc., a corporation, its successors and assigns, and respondent the Mayne Agency, Inc., a corporation, its successors and assigns, and their officers, and respondent Laurence W. Pendleton, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any fruit flavored beverage, by whomsoever manu-

factured, other than single strength fruit juices, do 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) Isotonic salts contained in any such product are in any way nutritionally significant or that the product itself is "isotonic;"

(b) Any such product is a breakthrough in the breakfast beverage field;

(c) Any such product is a source of "energy," other than food energy, provided that it shall be clearly and conspicuously disclosed, in close connection with the term "food energy," that the said term is a reference to calories;

(d) Any such product is as nutritious as, or more nutritious than, the single strength fruit juice or juices from which its flavor is derived; Provided, however, That it shall be a defense hereunder for respondents to show that the said product actually has, in the form consumed, a greater content of each significant nutrient than the said fruit juice or juices;

(e) Any such product is a less expensive source of Vitamin C than the single strength fruit juice or juices from which its flavor is derived: *Provided, however,* That it shall be a defense hereunder for respondents to show that the average retail cost of a quantity of the said product, in the form consumed, containing a given quantity of Vitamin C is less than the average retail cost of a quantity of the said fruit juice or juices containing the said quantity of Vitamin C;

2. 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, in which the words "Orange C" or words of similar import or meaning are used to describe any such food which, in its reconstituted or prepared form, contains less Vitamin C per unit weight or per unit volume than orange juice.

3. 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 misrepresents, in any manner, directly or by implication:

- (a) the amount or percentage of natural fruit or natural fruit juice contained in any such product, or
- (b) the vitamin content or nutrient value of any such product, or
- (c) the similarity of any such product to the single strength fruit juice or juices from which its flavor is derived.

4. 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 prohibited in Paragraphs 1 or 2 or the misrepresentations prohibited in Paragraph 3, above.

II. *It is further ordered*, That respondent MCP Foods, Inc., a corporation, its successors and assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any 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, that any product contains a concentration of Vitamin C, or any other nutrient, equal to or greater than the concentration of said nutrient found in single strength fruit juices, unless such product contains nutrients of equivalent or greater variety and in greater concentration than those found in significant amounts in the single strength fruit juice or juices with which it is directly or by implication compared.
- 2. Failing to disclose, clearly and conspicuously, that any such product contains artificial and nutritive sweeteners.
- 3. Failing, where any such product is a frozen concentrate for imitation fruit juice, clearly and conspicuously so to identify the product, *Provided, however*, That it shall be a defense hereunder if the product is advertised and labeled in accordance with any Federal law or regulation which may hereafter be promulgated.

III. *It is further ordered*, That respondents 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 respondents' business such as dissolution, assignment or sale resulting in the emergence of a successor business or corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this order.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing signed by said respondents setting