

Consent order requiring a Chicago, Illinois, promoter of milk and milk products,
among other things to cease disseminating advertising which represents milk

as "fat free," misrepresents the dietary effects of its products, misrepresents the fat content and nutritional value of milk and milk products.

Appearances

For the Commission: *Theodore J. Garrish.*

For the respondents: *Rufus E. Wilson*, of *McKean, Whitehead & Wilson*, Washington, D.C. for American Dairy Association; *Ronald L. Engel*, of *Kirkland & Ellis*, Chicago, Illinois for Leo Burnett Company, Inc.

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 American Dairy Association, a not-for-profit corporation, and Leo Burnett Company, Inc., a corporation, hereinafter sometimes 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 American Dairy Association is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 20 North Wacker Drive, Chicago, Illinois.

PAR. 2. Respondent Leo Burnett Company, 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 Prudential Plaza, Chicago, Illinois.

PAR. 3. Respondent American Dairy Association is now, and has been for some time last past, engaged in promoting the sale of milk and milk products. Milk and milk products are food products as "food" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Leo Burnett Company, Inc., is now, and for some time last past has been, an advertising agency for American Dairy Association and now prepares and places for publication, and for some time last past has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein, to promote the sale of milk and milk products.

PAR. 5. As a result of the advertising of milk prepared and placed for publication by Leo Burnett Company, Inc., on behalf of American

Dairy Association, milk has been sold and shipped from farms and facilities located in various states to purchasers thereof located in various other States of the United States in the District of Columbia, and at all times mentioned herein a course of trade in milk has been maintained in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in said commerce has been and is substantial.

PAR. 6. In the course and conduct of their business, respondents have disseminated, or caused the dissemination of, certain advertisements of milk by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to radio broadcasts transmitted by radio 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 milk, and have disseminated, or caused the dissemination of, advertisements of milk by various means, including but not limited to the aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of milk in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Among and typical of the statements and representations contained in said advertisements disseminated as herein above set forth are the following:

* * * if there was a little less of you, She'd love you a whole lot more. That, my friend, is why I'm tell'n you, to get some milk and give it a pour. Ninety-six per cent fat free. Build yourself a whole new you * * * Take it from the American Dairy Association, milk can help you to be a new you.

* * * And if there was a little less of you, She'd love you a whole lot more 'Cause there's a new you coming, The Grade A Way.

PAR. 8. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, without a disclosure in said advertisements of the caloric content of whole milk or the caloric content of the fat in whole milk, respondents have represented directly or by implication:

1. That the number of calories in whole milk is not substantial or significant to a person on a calorie-restricted diet or a weight-reducing diet.

2. That consumption of whole milk will significantly benefit or assist a person in establishing and/or maintaining a calorie-restricted or a weight-reducing diet.

3. That the amount of fat in whole milk is not substantial or significant to a person on a fat-restricted diet or a low-fat diet.

4. That consumption of whole milk will significantly benefit or assist a person in establishing and/or maintaining a fat-restricted diet or a low-fat diet.

PAR. 9. In truth and in fact:

1. The number of calories in whole milk is substantial or significant to a person on a calorie-restricted diet or a weight-reducing diet.

2. In many cases it is not desirable for a person on a calorie-restricted diet or a weight-reducing diet to drink a substantial amount of whole milk.

3. The amount of fat in whole milk is substantial or significant to a person on a fat-restricted or low-fat diet.

4. In many cases it is not desirable for a person on a fat-restricted diet or a low-fat diet to drink a substantial amount of whole milk.

Therefore, the advertisements referred to in Paragraph Seven hereof were and are false and misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 10. The aforesaid advertisements also were and are misleading in material respects because they failed to reveal the caloric content of whole milk or the caloric content of the fat in whole milk, or the amount of fat in whole milk, facts which are material in the light of the representations made, and with respect to the consequences that may result from the consumption of whole milk by persons on calorie-restricted diets, weight-reducing diets, fat-restricted diets or low-fat diets.

PAR. 11. The dissemination or the causing to be disseminated by the respondents of false advertisements as aforesaid, constituted, and now constitutes, unfair or deceptive acts or 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;

Decision and Order

83 F.T.C.

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 respondent American Dairy Association is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 20 North Wacker Drive, Chicago, Illinois.

2. The respondent Leo Burnett, 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 Prudential Plaza, Chicago, Illinois.

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

II

It is ordered, That respondents American Dairy Association, a not-for-profit corporation, and Leo Burnett Company, Inc., a corporation, and their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of the products identified below, do forthwith cease and desist from, directly or indirectly:

Decision and Order

I. Disseminating, or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement that:

a. Uses the phrase "96 percent fat free" to describe whole milk (that is, milk containing not less than 8.0 percent milkfat), low-fat milk (that is, milk from which sufficient milkfat has been removed to reduce its milkfat content to not less than 0.5 percent and not more than 2.0 percent milkfat) or any dairy product containing whole milk or low-fat milk, or represents in any other manner that any such product, or any specific percentage of such product, is "fat free."

b. Represents, directly or by implication, that whole milk, low-fat milk, or any dairy product containing whole milk or product containing such product will save on calories, or that such consuming such product will have no effect or an insignificant effect on increasing weight, or reducing weight, or that consuming such product will have no effect or an insignificant effect on increasing weight, unless a clear and conspicuous disclosure is made in immediate connection therewith of the number of calories in a cup or other common measure of such product.

c. Represents, directly or by implication, that whole milk, low-fat milk, or any dairy product containing whole milk or product containing such product will have no effect or an insignificant effect on increasing weight, unless a clear and conspicuous disclosure is made in immediate connection therewith of the number of calories of fat in a cup or other common measure of such product.

d. Represents that it is desirable for any person on a calorie restricted diet, or a weight-reducing diet to consume whole milk, low-fat milk or any dairy product containing whole milk or low-fat milk unless a clear and conspicuous disclosure is made in immediate connection therewith of the number of calories in a cup or other common measure of such product.

e. Represents that it is desirable for any person on a fat-restricted diet or a low-fat diet to consume whole milk, low-fat milk or any product made from whole milk or low-fat milk unless a clear and conspicuous statement is made in immediate connection therewith of the number of calories of fat in a cup or other common measure of such product.

diate connection therewith of the number of grams of fat in a cup or other common measure of such product.

Provided, however, That subparagraphs (a), (b), (c), (d), and (e), of Paragraph I shall not be applicable to:

(i) truthful statements limited to a recitation of the percentage, range of percentages, average of percentages, or maximum percentage of the fat in whole milk, low-fat milk, or any dairy product containing whole milk or low-fat milk in terms of percentage by weight (such as by use of the statements:

- (1) "contains — % fat";
- (2) "contains — to — % fat";
- (3) "contains — % fat average";
- (4) "contains — % fat maximum"; or
- (5) "Contains about [or approximately] % fat";

(ii) The use of the name "low-fat milk," for low-fat milk (as above-defined); or

(iii) any product other than whole milk, low-fat milk, or any dairy product containing whole milk or low-fat milk.

f. Misrepresents, directly or by implication, the nutritional value of any dairy product in connection with dieting undertaken for the purpose of weight reduction, prevention of weight gain, or regulation of fat intake; *Provided, however,* That this subparagraph (f) shall not be applicable to those statements and names listed in parts (i) and (ii) of the provision which follows subparagraph (e) above.

II. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of products subject to this order, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in, or which fails to comply with the affirmative disclosure requirements of, Paragraph I hereof.

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 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries,

518

Complaint

or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein 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.

IN THE MATTER OF