

Complaint

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IN THE MATTER OF

CARNATION COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2522. Complaint, July 15, 1974—Decision, July 15, 1974*

Consent order requiring a Los Angeles, Calif., seller and distributor of Carnation Instant Chocolate Flavored Nonfat Dry Milk and its Los Angeles, Calif., advertising agency, among other things to cease misrepresenting and falsely advertising that its product is the nutritional equivalent of milk or reconstituted nonfat dry milk. Further, respondents are required for a one-year period to clearly disclose in all advertising for such a product that is not equivalent nutritionally to milk or reconstituted nonfat dry milk.

Appearances

For the Commission: *Kermit C. Morrison, Jr.* and *Edward F. Downs.*

For the respondents: *Ms. Robin Robinson* for Carnation Company, Los Angeles, Calif. *Mr. Harry L. Schnideman*, Covington & Burling, Wash., D.C. for Erwin Wasey, 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 corporate respondents Carnation Company and Erwin Wasey, Inc. 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. Carnation Company 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 5045 Wilshire Boulevard, in the city of Los Angeles, State of California.

PAR. 2. Erwin Wasey, 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 5455 Wilshire Boulevard, in the city of Los Angeles, State of California.

PAR. 3. Carnation Company is now, and has been for more than six months last past, engaged in the advertising, offering for sale and sale of Carnation Instant Chocolate Flavored Nonfat Dry Milk, a food product, as "food" is defined in the Federal Trade Commission Act.

PAR. 4. Erwin Wasey, Inc., is the advertising agency for Carnation Company and has been placing for publication and causing the dissemination of advertising material, including but not limited to the advertising referred to herein to promote the sale of certain of Carnation Company's products, which come within the classification of "food" as said term is defined in the Federal Trade Commission Act.

PAR. 5. Carnation Company causes the said product, when sold, to be transported from its place of business in the State of California 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. 6. In the course and conduct of their business, 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, 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 product 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 hereinabove set forth are the following:

Here's something new from Carnation-Carnation Instant Chocolate Flavored Nonfat Dry Milk. With protein and calcium and fortified with vitamins A and D.

No * * * they're not all mine * * * but it seems like it at snack time. I give them Carnation Instant Nonfat Dry Milk * * * because, well, I'm sort of a health nut. You see, its nonfat dry milk with protein, calcium and B-vitamins. Frankly, I think its one of our best buys today. And now-there's chocolate flavor too * * * New Carnation Chocolate Flavored Nonfat Dry Milk.

PAR. 8. Through the use of the aforesaid advertisements, and others similar thereto not specifically set out herein, and through the use of the

name "Carnation Instant Chocolate Flavored Nonfat Dry Milk" respondents have represented and are now representing, directly or by implication that Carnation Instant Chocolate Flavored Nonfat Dry Milk is the nutritional equivalent of reconstituted non-fat dry milk.

PAR. 9. In truth and in fact,

Carnation Instant Chocolate Flavored Nonfat Dry Milk is not the nutritional equivalent of reconstituted non-fat dry milk.

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.

PAR. 10. The dissemination by the respondents of the false advertisements, as aforesaid, constituted and now constitutes, 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 respondents named in the caption hereof, and the respondents 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 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its compliant, makes the following jurisdictional findings, and enters the following order.

1. Respondent Carnation Company 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 5045 Wilshire Boulevard, city of Los Angeles, State of California.

Respondent Erwin Wasey, 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 5455 Wilshire Boulevard, city of Los Angeles, State of California.

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 respondent Carnation Company, a corporation, and respondent Erwin Wasey, Inc., a corporation, and their successors and assigns and respondents' officers, 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 the product designated as Carnation Instant Chocolate Flavored Nonfat Dry Milk, or any other product of 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 that any such product is the nutritional equivalent of milk or of reconstituted nonfat dry milk, through the use of the name Carnation Instant Chocolate Flavored Nonfat Dry Milk or otherwise.

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 representation prohibited by Paragraph 1 hereof.

It is further ordered, That respondents Carnation Company and Erwin Wasey, Inc. shall forthwith cease and desist, for a period of one (1) year from the date this order becomes final, from disseminating any advertisement in commerce, as "commerce" is defined in the Federal Trade Commission Act, for any product subject to this order, unless such advertisement contains a clear and conspicuous disclosure that

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such product is not the nutritional equivalent of non-fat milk, except that no such disclosure shall be required in any advertisement that promotes the use of any such product as a substitute for non-milk beverages. *Provided, however,* That the aforesaid disclosure shall be required in *any* advertisement that states or represents that any product subject to this order contains, or is made with, non-fat dry milk. *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 the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries or any other changes 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