

Complaint

84 F.T.C.

IN THE MATTER OF

GENERAL FOODS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2606. Complaint, Dec. 3, 1974 - Decision, Dec. 3, 1974*

Consent order requiring a White Plains, N.Y., distributor of "Gainesburgers" dog food, among other things to cease misrepresenting the nutrient content of its product; misrepresenting the nutritional need of pets; misrepresenting the nutritional value of any of the ingredients contained in its product; and failing to maintain accurate records which support any advertising claims made by respondent.

Appearances

For the Commission: *Henry B. Cabell.*

For the respondent: *John F. Kavin, Clifford, Warnke, Glass, McIlwain & Finney, Wash., D.C.*

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 General Foods Corp., 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 250 North Street, White Plains, N.Y.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, sale and distribution of a product, specifically a dog food called "Gainesburgers."

PAR. 3. Respondent causes the said product when sold, to be transported from its places of business in various states 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, magazine and newspaper advertisements, and by means of television broadcasts transmitted by television 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 advertisement disseminated as hereinabove set forth are the following:

1. A television commercial stating that "Gaines.burgers are a dog food * * * with * * * milk protein* * *"

2. A television commercial stating that "Gaines.burgers" are "* * *a tasty combination of meat by-products and meat plus all the vitamins, minerals, vegetables and milk protein your dog needs* * *"

3. A print advertisement stating that "Gaines.burgers" have all the "* * *milk protein he (your dog) needs* * *"

4. A print commercial stating that "Gaines.burgers" have more "* * *-milk protein * * * than the leading complete canned dog food."

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

1. that dogs have a need for milk protein as a particular kind of protein;

2. that "Gaines.burgers" have a quantum of milk protein which has any nutritional significance at all.

PAR. 7.

1. In truth and in fact dogs do not have a special need for milk or the protein in milk which is distinct or different from their protein need which can be satisfied from other sources;

2. Since a dog does not have a special need for milk protein, no quantum of milk protein satisfies the alleged need for milk protein which a dog has;

3. "Gaines.burgers" contain an amount of milk protein which is not of nutritional significance in the context of the total product.

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 advertising 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 dog foods 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 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 principal place of business located at 250 North Street, White Plains, N.Y.

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 General Foods Corporation, a corporation, its successors and assigns, and its agents, officers, representatives and employees, directly or through any corporate or other devices, in connection with the advertising, offering for sale, sale or distribution of any pet food, 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, directly or indirectly, orally, visually, or by any other means, that "Gaines.burgers" contain any nutrient ingredient unless that ingredient is present in a nutritionally significant amount, *Provided, however,* That "Gaines.burgers" may be described as flavored with a certain ingredient or tasting of a certain ingredient without that ingredient being present in a nutritionally significant amount.

b. any representation, directly or indirectly, orally, visually, or by any other means, that pets have a need for a nutrient which they do not in fact need.

c. any statement or representation, direct or indirect, as to the nutritional value of any pet food or any nutrient ingredient in any pet food unless at the time of such representation

respondent has a reasonable basis for such statement or representation, which shall consist of competent scientific, veterinary medical, or other similar objective material.

2. Failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

a. which consist of documentation in support of any claim included in advertising or sales promotional material disseminated by respondent, insofar as the text of such claim is prepared, or is authorized and approved by any person who is an officer or employee of respondent, or of any division or subdivision of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division or subsidiary, which claim concerns the nutritional characteristics of any General Foods pet food; and

b. which provided the basis upon which respondent relied as of the time the claim was made; and

c. which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by respondent or any division or subsidiary of respondent.

The provision of Paragraph 2 shall be in effect for a period of ten (10) years from the date this order becomes final.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its 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.

It is further ordered, That respondent shall, within sixty (60) days after the service of the order upon them, file with the Commission a report in detail of the manner and form of its compliance with the order to cease and desist.

IN THE MATTER OF
STATEWIDE INTERIORS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TEXTILE FIBER PRODUCTS
IDENTIFICATION ACTS

Docket C-2607. Complaint, Dec. 4, 1974 - Decision, Dec. 4, 1974

Consent order requiring two Nevada and Idaho distributors and retailers of upholstery fabrics, draperies and floor coverings, among other things to cease misbranding its textile fiber products.

Appearances

For the Commission: *Jerome M. Steiner, Jr.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Statewide Interiors, Inc., a Nevada corporation and Statewide Interiors, Inc., an Idaho corporation, and Alfred F. Allen, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Statewide Interiors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business located at 95 Grove Street, Reno, Nev.

Respondent Statewide Interiors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 2160 South Yellowstone, Idaho Falls, Idaho.

Respondent Alfred F. Allen is an individual and is an officer of both corporate respondents. He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. The business address of respondent Alfred F. Allen is 95 Grove Street, Reno, Nev.