

IN THE MATTER OF
RICHARD FOODS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2827. Complaint, July 6, 1976—Decision, July 6, 1976

Consent order requiring a Melrose Park, Ill., manufacturer and seller of protein food supplements, among other things to cease misrepresenting the nutritional value and vitamin and mineral content of its soya powder baby formula; misrepresenting medical approval of its product and failing to disclose relevant facts concerning the treatment of symptoms listed in their advertisements without medical authorization by use of its formula. The order further provides for the immediate recall of all advertising materials and requires a warning on the label of its soya powder and all other protein supplements for infant use, that such products are not for infants under one year of age unless recommended by a physician.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondents: *James Van Vliet, Schiff, Hardin & White,*
Chicago, Ill.

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 Richard Foods Corporation, a corporation, and Louis P. Richard, individually and as an officer of said 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 Richard Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4520 James Place, Melrose Park, Illinois.

Respondent Louis P. Richard is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are engaged in the advertising, offering for sale, and sale of food supplements and other food products. The products are

manufactured by respondents or by others according to their respective specifications and are marketed in all fifty States by businesses designated as retail "food stores" that sell to consumers and "distributorships" who sell to other retail food stores. In the course and conduct of the aforesaid business, respondents are now and for some time past have been engaged in the publishing, dissemination and distribution of advertisements, promotional materials and labels concerning the uses, purposes, utility, characteristics and effects of protein supplements, which come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements, promotional literature and labels concerning their protein supplement, called "Fearn Natural Soya Powder" by the United States mail, and have distributed their protein supplements for the purpose of purchase and consumption by consumers, from their place of business in the State of Illinois to distributors in other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, and cause, and at all times mentioned herein have caused, the dissemination of advertisements by the United States mail, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing others to purchase said protein supplements, respondents have made, and are now making, directly or by implication, in advertisements which they cause to be placed in promotional brochures and labels, various statements and representations concerning said protein supplements. Typical and illustrative of such statements and representations are the following:

Baby Formula — Add 1 cup Soya Bean Powder to two quarts water. Simmer 10 minutes and strain. Add 2 tsp dark molasses after cooling. Shake occasionally during feeding. If feeding is too slow, enlarge holes in nipples with heated needle. This formula should be supplemented with baby vitamins (Vit A, C, and D) at about one month or foods containing these vitamins. Although the calcium content of the above formula is lower than for cow's milk, it is well assimilated. This formula may be supplemented by adding 1 heap tsp bone meal, calcium lactate, Fearn's Wheat Germ Powder, or brewer's yeast. The calcium lactate and bone meal may be used for all ages, but the brewer's yeast and Wheat Germ Powder may cause digestive troubles if added before two months.

ENRICH BABY FOODS by mixing Soya Bean Powder into fruits, vegetables, and cereals.

ALLERGY AND DIGESTIVE PROBLEMS

Food allergies are alarmingly high. One pediatrician reported that 38% of 1000 infants taken to him were allergic to various foods. The allergies in the order of their importance were cows milk, wheat, orange juice, vitamins, and eggs. Symptoms of food allergies include running noses, stomach ache, gas, and diarrhea. Because soya milk is much lower in allergenic properties than cows milk we recommend that a soya milk formula be used in preference to cows milk for infants. One formula for infants follows:

Add 1 cup Soya Bean Powder to two quarts water. Simmer 10 minutes and strain. Add 2 tsp dark molasses after cooling. Shake occasionally during feeding. If feeding is too slow, enlarge holes in nipples with heated needle. This formula should be supplemented with baby vitamins (Vitamin A, C, and D) at about one month of foods containing these vitamins. Although the calcium content of the above formula is lower than for cow's milk, it is well assimilated. This formula may be supplemented by adding 1 heaping tsp bone meal or calcium lactate.

Also you may enrich baby foods by mixing Soya Bean Powder into fruits, vegetables, and cereals.

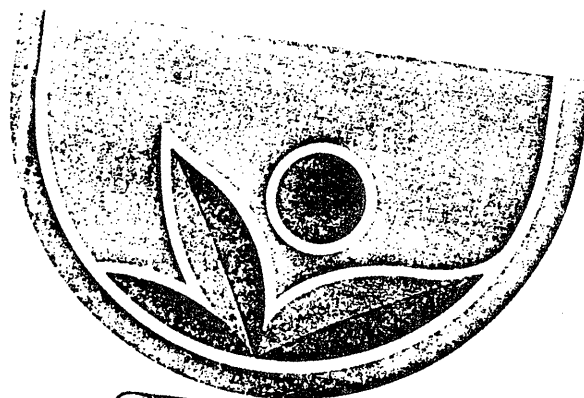
In case of a severe attack of food allergies, an elimination period of about 4 days is recommended by many allergists. In this period very little is eaten and the food which is eaten must be low in allergenic properties. Some chronic sufferers of food allergies have advised that they are able to use soya powder in tomato juice during the elimination period. If a patient is able to tolerate a drink of 1 heaping tablespoon of soya powder in one eight ounce glass of tomato juice, this seems to help reduce the discomforts of the elimination period considerably. This drink can be taken 3 times per day. Three glasses of this drink contain 260 calories, 22 grams of protein, more than the recommended amounts of Vitamin A and C and iodine and about half the recommended amounts of the B-complex Vitamins, phosphorus, and iron.

Charles E. Fearn, M.D. was recognized as the first to produce an edible soybean powder and his patented process is used in producing Dr. Fearn's Pure Soya Bean Powder used in other Dr. Fearn products. Dr. Fearn was recognized as the outstanding authority in the world and he was selected by President Wilson in 1917 to come to the United States and get the soybean started.

FEDERAL TRADE COMMISSION DECISIONS

Complaint

88 F.T.C.

**Team****NATURAL
SOYA
POWDER**CONTAINS ALL THE
NATURAL OIL OF THE SOYBEAN
USE IN BAKING AND FOR MAKING
SOYA MILK

NET WT 1 OZ

NATURAL SOYA POWDER

Produced by the expeller process without the use of solvents or other additives. May be eaten as is or added to many recipes as a nutrition booster.

CALORIES
 8.2 per level tsp. 98 per ¼ cup
 25. per heaping tsp. 390 per 100 grams (1 cup)

LOW SODIUM DIETS
 NATURAL SOYA POWDER has less than 10 mg. sodium per 100 grams. (Typical analysis: 4 mg. sodium per 100 grams.)

ALKALINE
 NATURAL SOYA POWDER is one of the most alkaline foods in common use (contains about 26 cc 1.0 N alkali per 100 grams). Because it is alkaline NATURAL SOYA POWDER may help counteract the acidity caused by meats and grains.

APPROXIMATE ANALYSIS

Protein (N x 6.25)	42. %
Dil.	24. %
Carbohydrate	
Available	9. %
Not Available	12. %
Lecithin	2.4 %
Fibre	2.1 %
Mineral Ash	4.5 %
Moisture	4. %

100 grams of NATURAL SOYA POWDER (one cup) supply the following percentages of the adult minimum daily requirements:

Phosphorus	89%
Iron	105%
Iodine	over 100%
Calcium	27%
Thiamine	82%
Riboflavin	27%
Niacin	48%

MADE IN U.S.A.
 Distributed by
FEARN SOYA FOODS
 Div. of Richard Foods Corp.
 MELROSE PARK, ILL. 60160.
 U.S.A.

PAR. 5. Through the use of said advertisements and labels and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

1. Fearn soya milk is an adequate nutritional replacement of human or cow's milk for infants under one year of age.
2. Fearn soya milk is adequate in protein content and availability to support normal cell and body growth in infants under one year of age.
3. Fearn soya milk with added molasses is nutritionally adequate in its caloric content to support daily energy requirements and to maintain an adequate rate of growth in infants under one year of age.
4. Fearn soya milk is nutritionally adequate in its vitamin content for normal growth and development of infants under one year of age.
5. Fearn soya milk is nutritionally adequate in minerals such as calcium and iodine for normal growth and development in infants under one year of age.
6. The calcium content of Fearn soya milk is well assimilated by infants under one year of age for normal growth and development of bones, teeth and muscle tissues.
7. Running noses, stomach ache, gas and diarrhea in infants under one year of age are symptoms that are due to food allergies.
8. Food allergies in infants under one year of age may be safely determined by anyone through the use of self-diagnosis and without the need of any professional consultation or advice from a pediatrician or physician.
9. Severe problems of food allergies in infants under one year of age can be alleviated by consumption of soya powder in tomato juice without the need of any medical advice or consultation.
10. Infants under one year of age are normally allergic to the vitamin content in natural foods.
11. Infants under one year of age could normally ingest enough of respondents' soya milk to satisfy daily energy requirements and maintain an adequate rate of growth and development.
12. Infants under one year of age could subsist on respondents' soya milk formula without other nutritional supplements for a significant period of time without suffering any risks to health or to normal growth and development.
13. Respondent's baby formula for the preparation of soya milk is approved by medical authorities for infants under one year of age.
14. The addition of "Fearn Soya Powder" to supplement the normal diet of infants in the United States from the first day such infants take

solid foods is desirable or recommended for sturdy growth and good health.

PAR. 6. In truth and in fact:

1. Fearn soya milk is not an adequate nutritional replacement for human or cow's milk for infants under one year of age.
2. Fearn soya milk is inadequate in protein content and availability to support normal cell and body growth in infants under one year of age. The protein content in soya milk could not be utilized effectively in the synthesis of tissue protein because the caloric content of soya milk is deficient.
3. Fearn soya milk with or without added molasses is nutritionally inadequate in its caloric content to support daily energy requirements and an adequate rate of growth in infants under one year of age.
4. Fearn soya milk is severely deficient in riboflavin and B-12 vitamins that are necessary for the normal growth and development of infants under one year of age.
5. Fearn soya milk is nutritionally inadequate in minerals such as calcium and iodine for normal growth and development in infants under one year of age. The severe deficiency in calcium requires necessary supplementation for adequate growth and development and cannot be left optional as implied by respondents.
6. The calcium content of Fearn soya milk is not well assimilated by infants under one year of age for normal growth and development of bones, teeth and muscular tissues. The absorption of calcium in infants would be seriously affected by the calcium-phosphorous ratio in the formula for Fearn soya powder and would seriously aggravate the already impaired bone development that would be caused by the low calcium content of the formula.
7. Running noses, stomach ache, gas and diarrhea in infants under one year of age are not symptoms that are confined to food allergies and may relate to more serious conditions in infants.
8. Food allergies in infants under one year of age cannot be safely determined by anyone through the use of self-diagnosis. The determination of food allergies in infants requires a medical diagnosis to insure that visible symptoms are the result of allergic conditions and to insure proper treatment for relief and to avoid aggravating the conditions that may be present.
9. Severe problems of food allergies in infants under one year of age cannot be alleviated by the consumption of soya powder in tomato juice or by any other treatment with soya powder. Problems of food allergies in infants are clinical in nature and should be properly diagnosed and treated by a pediatrician or physician.

10. Infants under one year of age are not normally allergic to the vitamin content in natural foods.

11. Infants under one year of age cannot normally ingest enough of respondents' dilute soya milk to satisfy daily energy requirements and maintain an adequate rate of growth and development.

12. Substantial risks to health and to normal growth and development would be caused by the use of respondents' soya milk formula without other nutritionally adequate foods for a significant period of time. Such a formula should not be given to infants at all except under highly qualified medical supervision.

13. Respondents' baby formula for the preparation of soya milk is not approved by medical authorities for infants under one year of age.

14. Without medical authorization, the addition of a concentrated protein product such as "Fearn Soya Powder" in unspecified amounts to the normal diet of infants under the age of one year, and particularly those who are dehydrated, can cause serious adverse effects, such as fever or serious illness.

PAR. 7. Furthermore, respondents deceptively failed to disclose in advertising directed toward the use of their baby formula for infants, that running noses, stomach ache, gas and diarrhea are not confined to food allergies and should be properly diagnosed and treated by a physician and that treatment of such symptoms by respondents' soya milk formula without medical authorization can cause serious adverse effects in infants that could affect normal growth and development.

PAR. 8. Therefore, the statements, representations, and failures to disclose material facts in said advertisements, promotional materials, and labels referred to in Paragraph Four were and are false, misleading, and deceptive in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act, and the statements, representations, and failure to disclose material facts as set forth in Paragraphs Five, Six, and Seven were, and are, false, misleading, and deceptive acts or practices.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of protein supplements.

PAR. 10. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, have had, and now have, 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 complete, into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief, and into taking unnecessary risks with respect to their health and well-being and that of others.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago 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 and 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 complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Richard Foods Corporation is a 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 4520 James Place, Melrose Park, Illinois.

Respondent Louis P. Richard is an officer of said corporation. 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

For purposes of this order, the term "Fearn Natural Soya Powder" refers to the product of that name presently marketed by respondents and any other protein supplement for infant use.

For purposes of this order, a "protein supplement for infant use" is any protein food product that is marketed, advertised or recommended, directly or by implication, for infant use as a protein dietary supplement.

For purposes of this order, the term "soya milk" refers to the mixture that is prepared according to respondents' formula for infant use.

It is ordered, That respondents Richard Foods Corporation, a corporation, its successors and assigns, and its officers, and Louis P. Richard, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through its distributors or franchisees, if any, in connection with advertising and labeling, offering for sale, or sale and distribution of "Fearn Natural Soya Powder," or any other food product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' baby formula for soya milk or any other substantially similar formula for the preparation of soya milk, is an adequate nutritional replacement of human or cow's milk for the feeding of infants under one year of age.
2. Representing, directly or by implication, that soya milk is nutritionally adequate in protein content and availability to support normal cell and body growth in infants under one year of age.
3. Representing, directly or by implication, that soya milk is nutritionally adequate in its caloric content to satisfy daily energy requirements and maintain an adequate rate of growth in infants under one year of age.
4. Representing, directly or by implication, that soya milk is nutritionally adequate in its vitamin content to support normal growth and development in infants under one year of age.
5. Representing, directly or by implication, that soya milk is nutritionally adequate in mineral content, such as calcium and iodine, to support normal growth and development in infants under one year of age.
6. Representing, directly or by implication, that the calcium content

of soya milk is well assimilated in infants under one year of age for normal growth of bones, teeth and muscular tissue.

7. Representing, directly or by implication, that running noses, stomach ache, gas and diarrhea in infants under one year of age are symptoms that are confined to food allergies.

8. Representing, directly or by implication, that food allergies in infants under one year of age may be safely determined by anyone through self-diagnosis without the need for any medical consultation or advice.

9. Representing, directly or by implication, that attacks of food allergies in infants under one year of age may be adequately treated without medical authorization by adding soya powder to their diets.

10. Representing, directly or by implication that infants under one year of age are normally allergic to vitamins contained in natural foods.

11. Representing, directly or by implication, that infants under one year of age could normally ingest enough soya milk to satisfy daily energy requirements and maintain sufficient nutrition for adequate growth and development.

12. Representing, directly or by implication, that infants under one year of age may subsist on soya milk without other nutritional supplements for a significant period of time without suffering any nutritional risk to health, growth or development.

13. Representing, directly or by implication, that the soya milk formula is approved by medical authorities as being nutritionally adequate for consumption by infants under one year of age.

14. Representing, directly or by implication, that, in the absence of medical authorization "Fearn Soya Powder" should be added to the diets of infants under one year of age.

15. Failing to disclose the following warning clearly and conspicuously, *verbatim* on the label of "Fearn Natural Soya Powder" and on the label of any other protein supplement for infant use now or hereafter marketed by respondents.

NOTICE: Not for use in diets of
infants under one year of age unless
recommended by a physician.

For purposes of this order, the above Notice shall be deemed to be clear and conspicuous if the smallest letter of the Notice is no smaller than one-sixteenth of an inch and the Notice is in no way obscured by background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

16. Failing to disclose for a period of two years from the effective

date of this order, the following warning clearly and conspicuously (in print of a size and type no less prominent than the majority of the text of the document in which it is required to be contained), *verbatim*, in any advertising and promotional materials (excluding labels) for "Fearn Natural Soya Powder," or any other protein supplement for infant use now or hereafter marketed by respondents, excepting only those advertisements or promotional materials whose text is limited to the name and price of the product and a general description of the product of no more than one sentence or phrase:

NOTICE: Not for use in diets of infants

under one year of age unless recommended

by a physician.

Provided, however, that in any advertisement or promotional material (other than the kinds of limited advertising previously referred to in this paragraph of this order) consisting of no more than four sentences of text relating to "Fearn Natural Soya Powder," or any other protein supplement for infant use now or hereafter marketed by respondents, and not directed, explicitly or by implication, to infants or young children as users of the product, the notice may be limited to the following:

Use as directed by label.

A. Respondents, which have heretofore recalled their promotional leaflets advertising their soya milk infant formula, take any and all actions necessary and available to them to obtain the return to them of all copies, if any, of said leaflets remaining in the possession of their distributors and retail store customers of which respondents' officers have or obtain actual knowledge.

B. Respondents shall not be in violation of this order as the result of actions of their distributors or franchisees, if any, unless, respondents' officers obtain actual knowledge that an act, which would otherwise be a violation by respondents of the other provisions of this order, has been committed by such distributor or franchisee and respondents have failed within a reasonable period to take such action as respondents deem appropriate to cause such acts to be terminated; *provided*, that respondents shall be in violation of this order if respondents' officers obtain actual knowledge that an act which would otherwise be a violation by respondents of the other provisions of this order has been committed on more than one occasion (at least one of which occasions having occurred after respondents took appropriate action under the preceding clause) by such distributor or franchisee and respondents have failed within a reasonable period to take any and all

actions, including but not limited to termination of such distributor or franchisee, necessary and available to it to cause such acts to be terminated.

C. Respondents shall be in compliance with any provision of this order which is the subject of any of the provisions of a trade regulation rule hereafter adopted by the Commission regulating the advertising or labeling of protein supplements, such as "Fearn Natural Soya Powder" if respondents are in compliance with such provisions of such trade regulation rule.

D. Respondents forthwith cease and desist from furnishing distributors or others with any means, instrumentalities, directions or instructions whereby the public may be misled or deceived as to any of the matters or things prohibited by this order.

E. Respondents notify the Commission at least 30 days prior to any proposed change in the respondent corporation 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.

F. Respondents shall forthwith distribute (1) a copy of this order to each of their operating divisions; and (2) a notice to each of their distributors and franchisees, if any, notifying them of the provisions of paragraphs 1 through 16 of this order.

G. 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 this order.

Complaint

88 F.T.C.

IN THE MATTER OF
UNITED AUDIO PRODUCTS, INC.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2828. Complaint, July 12, 1976—Decision, July 12, 1976

Consent order requiring a Mount Vernon, N. Y., manufacturer, importer and distributor of high fidelity audio components, among other things to cease maintaining resale prices and engaging in restrictive trade practices. Further, the order requires respondent to maintain records; reinstate dealers terminated for non-conformance with previously required pricing schedules and to take appropriate action against those distributors found to be in violation of the order.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg*.

For the respondent: *Rudolph Taplitz, Taplitz & Taplitz*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appears that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent United Audio Products, Inc. is a corporation organized under the laws of the State of New York, with its principal office located at 120 South Columbus Ave., Mount Vernon, New York.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and