

IN THE MATTER OF
UNCLE BEN'S, INC., ET AL.

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

Docket C-2870. Complaint, Feb. 23, 1977 --- Decision, Feb. 23, 1977

Consent order requiring a Houston, Texas producer and distributor of food products, and its New York City advertising agency, among other things, to cease disseminating advertisements which depict or portray children coming close to foods in the process of being cooked, or attempting to cook foods themselves, without close adult supervision, or any other advertisements which may have the tendency to influence children to engage in behavior inconsistent with recognized safety practices.

Appearances

For the Commission: *Mark D. Gordon.*

For the respondents: *Rosenfeld, Sirowitz & Lawson, New York City, David Carlin, Hall, Dickler, Lawler, Kent & Howley, New York City and Lawrence G. Meyer, Patton, Boggs & Blow, Washington, 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 Uncle Ben's, Inc., a corporation, and Rosenfeld, Sirowitz & Lawson, Inc., a corporation, 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 its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purposes of this complaint, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "false advertisement" means false advertisement as defined by the Federal Trade Commission Act, as amended.

PAR. 2. Respondent Uncle Ben's, 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 13000 Westheimer Road, Houston, Texas.

PAR. 3. Respondent Rosenfeld, Sirowitz & Lawson, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and with its office and

principal place of business located at 1370 Avenue of the Americas, New York, New York.

PAR. 4. Respondent Uncle Ben's, Inc. is now, and for all times relevant to this complaint has been engaged in the production, distribution, and sale of a variety of food products, including but not limited to "Uncle Ben's Converted Rice," a brand of rice (hereinafter referred to as Uncle Ben's Rice). Said product is a "food" as defined in the Federal Trade Commission Act.

PAR. 5. Respondent Rosenfeld, Sirowitz & Lawson, Inc. was for some time an advertising agency of Uncle Ben's, Inc. and has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of Uncle Ben's Rice.

PAR. 6. In the course and conduct of its aforesaid business, respondent Uncle Ben's, Inc. causes Uncle Ben's Rice in its product package to be transported from its place of business to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent Uncle Ben's, Inc. maintains and at all times mentioned herein has maintained, a substantial course of trade in said product in or affecting commerce. The volume of business in or affecting commerce has been and is substantial.

PAR. 7. In the course and conduct of their aforesaid businesses, respondents Uncle Ben's, Inc. and Rosenfeld, Sirowitz & Lawson, Inc. have disseminated, and caused the dissemination of, certain advertisements concerning the said product by various means in or affecting commerce including but not limited to, television advertisements broadcast 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 or affecting commerce.

PAR. 8. Typical and illustrative of the statements and representations made in respondents' advertisements disseminated by means of television, but not all inclusive thereof, is the following advertisement, attached hereto and made a part hereof as Appendix A.

PAR. 9. The aforesaid advertisement has the tendency or capacity to influence children to engage in the following behavior with respect to foods which are in the process of being cooked:

(a) coming very close to foods or to containers of foods which are in the process of being cooked;

(b) attempting to cook foods by themselves without close and watchful supervision.

Therefore, such advertisement has the tendency or capacity to induce behavior which is harmful or involves an unreasonable risk of harm, and was and is an unfair or deceptive act or practice.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Uncle Ben's, Inc. has been, and is now, in substantial competition, in or affecting commerce, with other corporations engaged in the manufacture and sale of food products.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Rosenfeld, Sirowitz & Lawson, Inc. has been, and is now in substantial competition in or affecting commerce with other advertising agencies.

PAR. 12. The aforesaid acts or practices of respondents, as herein alleged as aforesaid, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

Complaint

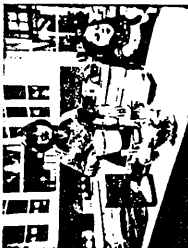
89 F.T.C.



MOTHER: Slimer 20 minutes. Then
 she's as good as
 finished cooking itself.
 Perfect every time.



MOTHER TO CHILD: Sure. Watch
 the Uncle Ben's.



...during the last few minutes
 you don't have to watch the pot.
 CHILD: Can I help?



MOTHER TO AUDIENCE: Now that
 Uncle Ben's is foolproof...



You don't have to watch the pot.



...so why not try it?
 CHILD: I cooked it all by myself.



UNCLE BEN'S is foolproof...



MOTHER: Maybe you're using
 Minute Rice because you're afraid
 of cooking rice.

ANCHOR: Uncle Ben's Converted
 Rice. No cooking,
 and you don't have to watch the
 pot.

Appendix: A

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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Uncle Ben's, 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 13000 Westheimer Road, Houston, Texas.

2. Respondent Rosenfeld, Sirowitz & Lawson, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and with its office and principal place of business located at 1370 Avenue of the Americas, New York, New York.

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

For the purposes of this order, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "food" means any article used for food or drink for man or other animals.
3. The term "cooking" shall mean a process of food preparation which includes the application of heat.
4. The term "child" shall mean a person who appears to be or in fact is under the age of 12.

I

It is ordered. That the respondents Uncle Ben's, Inc., a corporation, and Rosenfeld, Sirowitz & Lawson, Inc., a corporation, (hereinafter referred to as respondents), 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 advertising, offering for sale or distribution in or affecting commerce of any product, forthwith cease and desist from, directly or indirectly:

A. Representing, through depictions, descriptions, or otherwise, children closely examining, or closely approaching foods or containers of foods which are in the process of being cooked.

B. Representing, through depictions, descriptions, or otherwise, children participating in the process of cooking without close supervision of an adult.

C. Representing, through depictions, descriptions, or otherwise, children initiating participation with persons who are in the process of cooking by touching a utensil, glove, pot or other object that is being used in the process of cooking without first having received permission from an adult.

D. Representing, through depictions, descriptions, or otherwise, children without close adult supervision in a kitchen or other area where foods are in the process of being cooked, provided that this subparagraph D shall not prohibit depiction of children eating foods or children engaging in other behavior not likely to affect the cooking process in the presence of adults who are attending to the process of cooking foods.

E. Representing, through depictions, descriptions, or otherwise, children engaging in the activity in a kitchen or in an area where foods are in the process of being cooked where it is reasonably foreseeable, through reasonable inquiry, that such representation has the tendency or capacity to influence children to engage in behavior which creates an unreasonable risk of harm to themselves or to others.

131

Decision and Order

II

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 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 the order.

It is further ordered, That 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.

Order

89 F.T.C.

IN THE MATTER OF
GENESCO INCORPORATED

Docket 9019. Interlocutory Order, Feb. 24, 1977

Parties to file brief memoranda in seven days as to whether they object to matter being withdrawn from adjudication while Commission considers their proposed order; respondent to advise whether it concurs in counsel supporting complaint's recommendation for adoption of administrative law judge's findings of fact, conclusions of law and order as modified by the parties.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder and John F. LeFevre.*

For the respondent: *Sanford M. Litvack, Donovan, Leisure, Newton & Irvine, New York City.*

ORDER

On February 18, 1977, the Commission issued an order granting the parties' joint motion that their notices of intention to appeal from the initial decision be withdrawn and that further proceedings be stayed pending consideration by the Commission of the parties' proposed order. The Commission further indicated that the matter will not be withdrawn from adjudication unless and until the Commission so orders.

The Commission requests the parties to file brief memoranda, not later than seven days after the date of this order, indicating whether they object to this matter being withdrawn from adjudication while the Commission considers their proposed order.¹ In addition, respondent is requested to advise whether it concurs in complaint counsel's recommendation "that the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order as modified by the parties."²

It is so ordered.

¹ If the case were withdrawn from adjudication, the Commission would be permitted to receive advice concerning the proposed order without regard to the requirements of Section 4.7 of the Rules of Practice.

² Motion to Support Withdrawal of Notices of Appeal, p. 3.