

IN THE MATTER OF
BLOCK DRUG COMPANY, INC., ET AL.

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

Docket 9050. Complaint,¹ July 29, 1975 — Decision, Nov. 17, 1978.

This consent order, among other things, requires Grey Advertising, Inc., a New York City advertising firm, to cease misrepresenting or making unsubstantiated claims regarding the performance or efficacy of denture adhesives and cleansers.

Appearances

For the Commission: *Melvin H. Orlans* and *Mark A. Heller*.

For the respondents: *Leonard Orkin* and *Stuart L. Friedel, Davis & Gilbert*, New York City.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges the above-named respondents with violation of the Federal Trade Commission Act; and

Respondent Grey Advertising, Inc. ("Grey") and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent Grey of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Grey 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 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 makes the following jurisdictional findings, and enters the following order:

1. Respondent Grey 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 777 Third Ave., New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject

¹ Reported in 90 F.T.C. 893.

matter of this proceeding and of respondent Grey, and the proceeding against respondent Grey is in the public interest.

ORDER

It is ordered, That respondent Grey Advertising, Inc., and its officers, representatives, agents and employees directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of products, by the respondent in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any statements or representations directly or by implication concerning any performance or other characteristic or attribute of any dental product, except denture cleansers, unless respondent possessed and relied upon a reasonable basis for each such statement or representation at the time it was made or respondent can establish that it neither knew nor should have known that its basis was not reasonable.

2. Making any comparative statements or representations directly or by implication concerning any performance attribute of any competing denture cleanser products unless respondent possessed and relied upon a reasonable basis for each such statement or representation at the time it was made or respondent can establish that it neither knew nor should have known that its basis was not reasonable.

3. Misrepresenting in any manner the effectiveness of any denture adhesive product.

4. Representing, directly or by implication, that:

- a. Every user of denture adhesives, regardless of his or her particular denture holding problem, can eat any of a group of so-called "problem" foods (including, for example, apples, peanuts, carrots, steak, corn-on-the-cob, celery, thick sandwiches, fried chicken and caramels) without embarrassment or discomfort; and/or

- b. After the use of a denture adhesive, dentures will hold in place for every denture wearer, regardless of his or her particular denture holding problem, when the wearer eats any of the aforementioned "problem" foods.

5. As referred to herein, the term reasonable basis may consist of an opinion, where appropriate, in writing signed by a person qualified by education or experience to render the opinion that a competent scientific test(s) or other objective data exist; *provided, however,* that such opinion also discloses and describes the contents of such test(s) or other objective data.

It is further ordered, That the respondent corporation 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 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 the order.

It is further ordered, That the respondent submit to the Commission, in writing, a compliance report detailing the manner and form in which it complied with this order. Such reports shall be submitted sixty (60) days after the entry of a final order and, thereafter, annually for two (2) years from the date of the first submission.

In addition, any provision of this order shall abate when inconsistent with a final Federal Trade Commission trade regulation rule if the trade regulation rule specifically authorizes any claim prohibited herein.

Interlocutory Order

IN THE MATTER OF

SUNKIST GROWERS, INC.

Docket 9100. Interlocutory Order, Nov. 17, 1978

ORDER DENYING REQUEST FOR REIMBURSEMENT OF
REPRODUCTION EXPENSES

The administrative law judge has certified to the Commission respondent's request for payment of costs incurred pursuant to reproduction of documents produced in response to a subpoena *duces tecum* issued on February 17, 1978. That subpoena called for production of certain documents in Sunkist's possession for inspection and copying by complaint counsel. Return of the subpoena was ordered to be made in Los Angeles and Sunkist apparently offered to undertake the photocopying of those documents identified by complaint counsel. There is some dispute, however, over whether or not complaint counsel offered to reimburse respondent for its efforts. Sunkist contends that complaint counsel agreed that Sunkist was to be reimbursed for the copying and that \$.10 per page was a reasonable charge.¹ Complaint counsel affies that he agreed only that it was reasonable for Sunkist to request reimbursement of reproduction expenses from the Commission, and that he made clear to Sunkist's counsel that only the Commission could authorize reimbursement.

The Commission Rules make no provision for payment of reproduction expenses incurred by a respondent in connection with a Commission proceeding. Moreover, service contracts involving the expenditure of agency funds must be executed by an individual possessing authority to enter into a contract on behalf of the Commission.² Thus, assuming *arguendo* that complaint counsel did enter into an otherwise proper contract with respondent's counsel, the law is clear that the Commission is not bound by the unauthorized acts of its employees.³ Accordingly,

It is ordered, That respondent's motion is denied.

¹ It appears from the affidavit filed by respondent's counsel that Sunkist first suggested that the copying be done on its facilities and that complaint counsel agreed with this suggestion.

² Under Federal Procurement Regulation § 1.404-2, 41 C.F.R. 1.404-2 (1977), each agency designates its contracting officials. See *The Federal Trade Commission Procurement and Contracting Guidelines*, June, 1978.

³ *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947) ("Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority."); *Albrechtsen v. Andrus*, 570 F.2d 906 (10th Cir. 1978).