

Complaint

108 F.T.C.

## IN THE MATTER OF

## ROY BROG

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF  
THE FEDERAL TRADE COMMISSION ACT*Docket 9197. Complaint, Sept. 10, 1985—Decision, July 15, 1986*

This consent order requires a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent is prohibited from excluding some distributors in computing "average" distributor earnings without proper disclosures concerning the method of computation.

*Appearances*

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *B.H. Harris and Joseph M. Chambers, Harris, Preston, Gutke & Chambers, Logan, Utah.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that Roy Brog, individually and as an officer and director of Meadow Fresh Farms, Inc., ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Roy Brog is an officer and director of Meadow Fresh Farms, Inc. He formulates, directs and controls the acts and practices of said corporation, including the acts and practices alleged in this complaint. His principal office or place of business is in Salt Lake City, Utah.

PAR. 2. Respondent manufactures, offers for sale, and sells food products, including Meadow Fresh, a powdered, dairy-based drink, through a multilevel business opportunity.

PAR. 3. Respondent has caused to be prepared, published and disseminated advertising and promotional material, including, but not limited to, the promotional material referred to herein, to promote the sale of Meadow Fresh and membership in a multilevel business opportunity.

PAR. 4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 5. In the course and conduct of his business, respondent has disseminated and caused the dissemination of advertisements and promotional material for food products, including Meadow Fresh, and for a multilevel business opportunity involving the sale of such food products, by various means in or affecting commerce, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products and business opportunities.

PAR. 6. Typical statements in said advertisements and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are the following:

(A) Contains over twenty times less "XO"\* than the whole version of the other product.

\* "XO" is xanthine oxidase, a major contributor to cardiovascular problems.

(B) Meadow Fresh has an expected dry shelf life of 5 to 10 years.

PAR. 7. Through the use of the statements referred to in Paragraphs Six (A) through Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that:

(A) The use of Meadow Fresh instead of milk will reduce the incidence of cardiovascular disease due to reduced levels of xanthine oxidase.

(B) Xanthine oxidase is a major contributor to cardiovascular problems.

(C) Meadow Fresh has an expected storage life of up to 10 years under reasonable storage conditions.

PAR. 8. Through the use of the statements referred to in Paragraph Six (A) through Six (B), and other statements contained in other advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that at the time of initial dissemination of the statements and of each subsequent dissemination, he possessed and relied upon a reasonable basis for the representations set forth in Paragraphs Seven (A) through Seven (C).

PAR. 9. In truth and in fact, at no time has respondent possessed and relied upon a reasonable basis for making the representations set forth in Paragraphs Seven (A) through Seven (C). Therefore, respondent's representation as set forth in Paragraph Eight was, and is, false and misleading.

PAR. 10. In the course and conduct of his business, respondent has disseminated, as previously described, promotional flipcharts upon

which the current average monthly income of each level in the distributor hierarchy is to be entered. (A copy of this flipchart is attached to this complaint as Exhibit A.) These flipcharts are headed "CURRENT AVERAGE INCOMES FOR EACH BONUS LEVEL" and contain blanks following the terms "ADVISOR . . . ; COORDINATOR . . . ; MANAGER . . . ; AMBASSADOR . . ." for income figures to be entered. These flipcharts have represented, and now represent, directly or by implication, that the income figures shown thereon reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question.

PAR. 11. In truth and in fact, the income figures shown on the flipcharts do not reflect an average which is computed by taking into account the total number of distributors who have advanced to the specified bonus level and the amount of money earned by each of them during the month in question. Respondent provides distributors with monthly income figures for use on the flipchart which are computed by taking into account only those distributors who earn some income during the month in question, and the total amount of money earned by them. Because the large majority of distributors earn no income during a given month, this manner of computation results in average income figures which are substantially larger than would be the case if the figures were computed by the method set forth in Paragraph Ten. Therefore, respondent's representation as set forth in Paragraph Ten was, and is, false and misleading.

PAR. 12. The acts or practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

**CURRENT AVERAGE INCOMES  
FOR EACH BONUS LEVEL**

\_\_\_\_\_  
.....  
ADVISOR .....  
\_\_\_\_\_  
.....  
COORDINATOR .....  
\_\_\_\_\_  
.....  
MANAGER .....  
\_\_\_\_\_  
.....  
AMBASSADOR ..... overrides

**NOTE:** The amounts listed here only reflect rebates, overrides and bonuses, not retail profits.

EXHIBIT A

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Contributing Author: Alan Sargent

ROY BROG  
Complaint  
EXHIBIT A

## DECISION AND ORDER

The Federal Trade Commission having issued its complaint charging Roy Brog ("respondent") with violation of Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, his attorney, 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Roy Brog is a former officer and director of Meadow Fresh Farms, Inc. His address is 1320 East 2300 North, Logan, Utah.
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.

## ORDER

## I.

*It is ordered,* That respondent Roy Brog, individually and as a former officer and director of Meadow Fresh Farms, Inc., and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of a powdered, dairy-based drink called "Meadow Fresh" 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 representing, directly or by implication, unless at the

time of such representation respondent possesses and relies upon reliable and competent scientific evidence that substantiates any such representation: (a) any benefit in preventing cardiovascular or other disease through the use of such product; (b) any nutritional or other health related attribute of such product; or (c) any expected shelf life of such product.

*Reliable and competent* shall mean for purposes of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

## II.

*It is further ordered*, That respondent Roy Brog, individually and as a former officer and director of Meadow Fresh Farms, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing as an "average," directly or by implication, any computation of income levels, earnings, sales or other payments received by distributors as a whole or by a specified distributor category which is based on less than all distributors in the stated category, unless the fact that some distributors are excluded and the basis for any such exclusion are clearly and prominently disclosed in close proximity to such representation.

*Distributor* as used in this order shall refer to any person, partnership or corporation which is granted the right to offer, sell or distribute goods or services manufactured, processed, distributed, offered or sold by respondent or to recruit other persons, partnerships or corporations to be distributors of respondent's goods or services.

## III.

*It is further ordered*, That respondent shall, for at least three years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials relied upon to substantiate any representation covered by this order; and
2. All test reports, studies, surveys, or demonstrations in his posses-

sion or control, or of which he has knowledge, that contradict any representation covered by this order.

IV.

*It is further ordered,* That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and that, for a period of four years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V.

*It is further ordered,* That respondent shall forthwith distribute a copy of this order to all distributors of products manufactured or marketed by respondent.

VI.

*It is further ordered,* That respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in a writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF  
AMERICAN ACADEMY OF OPTOMETRY, INC.

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

*Docket C-3193. Complaint, July 21, 1986—Decision, July 21, 1986*

This consent order, among other things, prohibits a Washington, D.C.-based professional association from restricting or declaring unethical any truthful advertising, solicitation of patients or choice of a location to practice.

*Appearances*

For the Commission: *George R. Bellack.*

For the respondent: *John W. Hazard, Jr., Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and 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 American Academy of Optometry, Inc., is a corporation formed pursuant to the laws of the District of Columbia with its mailing address at 5530 Wisconsin Avenue, N.W., Suite 950, Washington, D.C.

PAR. 2. Respondent is a professional association of optometrists. Respondent has approximately 2,700 members.

PAR. 3. Most members of respondent are engaged in the business of providing optometric health care services for a fee and selling eye-care products. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other eye care providers.

PAR. 4. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. In the conduct of their business, members of respondent