

IN THE MATTER OF

MILES INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3323. Complaint, Jan. 28, 1991—Decision, Jan. 28, 1991*

This consent order prohibits, among other things, an Indiana corporation from making any benefit claims relating to the consumption of any vitamin or mineral supplement, and from making any representation concerning the need for, or benefit from, consumption of any One-A-Day vitamin product, unless respondent possesses competent and reliable scientific evidence to substantiate the representation.

Appearances

For the Commission: *Brinley H. Williams* and *Mark D. Kindt*.

For the respondent: *James M. Johnstone, Wiley, Rein & Felding*, Washington, D.C. and *Brian S. Schuster*, Elkhart, IN.

COMPLAINT

The Federal Trade Commission, having reason to believe that Miles Inc., a corporation ("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 is an Indiana corporation, with its office or principal place of business located at 1127 Myrtle Street, Elkhart, Indiana.

PAR. 2. Respondent has advertised, offered for sale, sold or distributed vitamin and mineral supplements, including One-A-Day Maximum Formula, One-A-Day Stressgard, One-A-Day Essential, One-A-Day Plus Extra C, and One-A-Day Within (hereinafter referred to collectively as "One-A-Day").

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated or caused to be disseminated advertisements for One-A-Day, a product subject to the provisions of

Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52. These advertisements have been disseminated by various means in or affecting commerce, including magazines distributed across state lines, and radio and television broadcasts transmitted across state lines, for the purpose of inducing the purchase of such product by members of the public.

PAR. 5. Typical of respondent's advertisements, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A through D. The aforesaid advertisements, and others, contain the following statements and depictions:

(A) Today's world can take a lot out of you. Defending your lungs against air pollution requires vitamins A, E, and C. Daily stress can chip away at your B vitamins. And rigorous physical training can actually knock essential minerals right out of your system. That's why One-A-Day vitamins are uniquely formulated to help put back what your world takes away. So eat a balanced diet and take One-A-Day, everyday. Did you take your One-A-Day today? (*Exhibit A.*)

(B) Strenuous exercise can actually knock essential minerals right out of your system. But One-A-Day vitamins are uniquely formulated to help put back what your world takes away. Did you take your One-A-Day today? (*Exhibit B.*)

(C) I need that report on my desk in two hours. Two hours! The stress of living in today's world can take a lot out of you. Whaddya mean the flight's cancelled? I have a ten o'clock meeting. Your B vitamins, for example, are being chipped away by everyday problems and pressures. But One-A-Day puts them back. One-A-Day vitamins are uniquely formulated to put back what your stressful world takes away.... (*Exhibit C.*)

(D) With any rigorous physical exercise, your body can lose its supply of essential minerals. But One-A-Day puts them back. (*Exhibit D.*)

PAR. 6. Through the use of the statements referred to in paragraph five, and accompanying depictions and other statements and depictions in advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that:

(A) Consumption of vitamins A, C and E in the form and amount contained in One-A-Day protects human lungs against the adverse effects caused by typical air pollution;

(B) The stress of daily living depletes vitamin B in the body so that consumption of a daily vitamin supplement, such as One-A-Day, is necessary or beneficial;

(C) Ordinary rigorous physical exercise depletes essential minerals in the body so that consumption of a daily vitamin supplement, such as One-A-Day, is necessary or beneficial.

PAR. 7. Through the use of the statements set forth in paragraph five, and accompanying depictions and other statements and depictions not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph six, respondent possessed and relied upon a reasonable basis for each such representation.

PAR. 8. In truth and in fact, at the time respondent made the representations set forth in paragraph six, it did not possess and rely upon a reasonable basis for making each such representation. Therefore, respondent's representations as set forth in paragraph seven were and are false and misleading.

PAR. 9. The acts and practices of respondent as alleged in this complaint constitute unfair and deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Starek did not participate.

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EXHIBIT A



MUSIC LP



ANNOUNCEMENT Today's world can take a lot out of you.



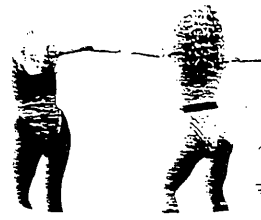
Defending your lungs against air pollution



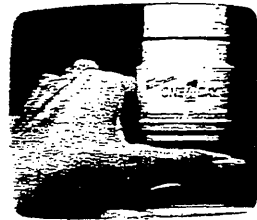
Requires vitamins A, B, and C.



Can stress can and away about B vitamins.



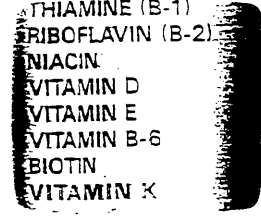
And rigorous physical training can actually knock essential minerals right out of your system.



That's why One-A-Day.



vitamins



One uniquely formulated to hold out back what your world takes away.



Did you take your One-A-Day today?

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EXHIBIT B

	(CLOSED CAPTIONED)
OPEN ON WOMAN RUNNING IN PLACE.	(MUSIC UP)
TO WOMEN IN AEROBICS CLASS.	ANNCR (VO): Fact:
"c 1989 MILES, INC.	Strenuous exercise can SUPER:
CONSUMER HEALTH CARE DIVISION."	actually knock
TO MAN LIFTING WEIGHTS.	essential minerals
CUT TO CU OF WOMAN ON EXERCISE MACHINE.	right out of your system.
TO CU HAND TAKING PRODUCT FROM LOCKER.	But One-A-Day vitamins
CUT TO ONE-A-DAY ART CARD, SLIDE LEFT.	are uniquely formulated
TO ANIMATED LIST OF VITAMINS ZIPPING ONTO SCREEN.	to help put back what your world takes away.
CUT TO MAN WALKING, HE HAS JUST BEEN RUNNING.	Did you take your One-A-Day today?
SUPER: DID YOU TAKE YOUR ONE-A-DAY TODAY?	
MORTISE PRODUCT SECT.	

EXHIBIT C

MUSIC: (UNDER THROUGHOUT)
SFX: (OFFICE)
BOSS: I need that report on my desk in two hours. Two hours!
ANNCR: The stress of living in today's world can take a lot out of you.
SFX: (AIRPORT)
WOMAN: Whaddya mean, the flight's cancelled? I have a 10:00 meeting.
ANNCR: Your B vitamins, for example, are being chipped away by everyday problems and pressures. But One-A-Day puts them back. One-A-Day vitamins are uniquely formulated to help put back what your stressful world takes away.
SFX: (TRAFFIC)
MAN: (ON PHONE) Listen, I need a tow truck. Yeah, my fan belt broke, and...
ANNCR: Did you take your One-A-Day today?

EXHIBIT D

MUSIC: (UNDER THROUGHOUT)

SFX: (FOOTSTEPS RUNNING ON PAVEMENT)
ANNCR: When you run...you lose.
SFX: (AEROBICS INSTRUCTOR BARKING COMMANDS)
ANNCR: When you workout...you lose.
SFX: (PUNCHING OF SPEED BAG)
ANNCR: When you train, hard and fast...you lose.
SFX: (ALL ABOVE SFX COMBINED)
ANNCR: With any rigorous physical exercise, your body can lose its supply of essential minerals.
MUSIC: (BUILDS TO REPLACE SFX)
ANNCR: But One-A-Day puts them back. One-A-Day vitamins are uniquely formulated to help put back what your world takes away.
SFX: (GRUNT, THEN CLANG OF BARBELLS)
ANNCR: Did you take your One-A-Day today?

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 Cleveland Regional Office 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, its attorneys, 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 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 is a corporation organized, existing and doing

business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1127 Myrtle Street, Post Office Box 40, Elkhart, Indiana.

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 Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of vitamin and/or mineral supplements, do forthwith cease and desist from representing, directly or by implication, that consumption of any such product:

- (A) Affords any protection or benefit to human lungs;
- (B) Is necessary or beneficial in replacing any vitamin and/or mineral lost through physical exercise;
- (C) Is necessary or beneficial in replacing any vitamins and/or minerals lost as a result of, or provides any benefit with regard to, the stress of daily living;

unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean 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 by others in the profession or science to yield accurate and reliable results.

II.

It is further ordered, That respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of One-A-Day brand vitamins, including specifically,

but not limited to, One-A-Day Maximum Formula, One-A-Day Stressgard, One-A-Day Essential, One-A-Day Plus Extra C, and One-A-Day Within, do forthwith cease and desist from making any representation, directly or by implication, concerning the need for or benefits to be derived from consumption of such product unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean 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 by others in the profession or science to yield accurate and reliable results.

III.

It is further ordered, That, for three (3) years from the date that the representations are last disseminated, respondent shall maintain and upon request make available to the Commission for inspection and copying:

(A) All materials relied upon to substantiate any claim or representation covered by this order; and

(B) All tests, reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each officer and other person responsible for the preparation or review of advertising material for products subject to this order.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of 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.

VI.

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

Commissioner Starek did not participate.

IN THE MATTER OF

KRAFT, INC.

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

Docket 9208. Complaint, June 17, 1987—Final Order, Jan. 30, 1991

This final order prohibits, among other things, a Delaware corporation from misrepresenting the calcium or any other nutrient content of any cheese, substitute cheese, or imitation cheese product in the future, and prohibits any such absolute or comparative nutrient or calcium-content claim that is not substantiated by competent and reliable scientific evidence.

Appearances

For the Commission: *Robert C. Cheek.*

For the respondent: *Hugh Latimer, Pepper, Hamilton & Scheetz,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Kraft, Inc., a corporation ("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 is a Delaware corporation, with its office or principal place of business located at Kraft Court, Glenview, Illinois.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed cheese and related cheese products including Kraft Singles American Pasteurized Process Cheese Food ("Kraft Singles").

PAR. 3. Respondent has disseminated or caused to be disseminated advertisements for "Kraft Singles" and various other foods, as "food" is defined in Section 12 of the Federal Trade Commission Act. These advertisements have been disseminated by various means in or affecting commerce, including magazines distributed across state lines, and radio and television broadcasts transmitted across state