

IN THE MATTER OF

PACIFIC RICE PRODUCTS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3395. Complaint, Aug. 17, 1992--Decision, Aug. 17, 1992*

This consent order prohibits, among other things, a California company from misrepresenting the contents, validity, results, conclusions or interpretations of any test or study; and from representing that any food produces any health benefit, unless the respondent possesses and relies upon competent and reliable scientific evidence to substantiate the representation.

Appearances

For the Commission: *Philip L. Broyles, Michael Milgrom and Mark D. Kindt.*

For the respondent: *Peter Goodman, Brobeck, Phleger & Harrison, San Francisco, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pacific Rice Products, 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 California corporation, with its office or principal place of business located at 1275 Santa Anita Court, Post Office Box 2060, Woodland, California.

PAR. 2. Respondent has advertised, offered for sale, sold or distributed food products, including Vita Fiber Rice Bran.

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

PAR. 4. Respondent disseminated or caused to be disseminated an advertisement and point-of-purchase materials for Vita Fiber Rice Bran, a "food" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52. This advertisement and point-of-purchase materials were disseminated by various means in or affecting commerce, including newspapers distributed across state lines, for the purpose of inducing the purchase of such foods 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, B, C and D. The aforesaid advertisements and others contain the following statements:

- (A) REDUCE CHOLESTEROL (Exhibit A.)
- (B) THE KEY TO A HEALTHY HEARTTM (Exhibit A.)
- (C) Can help reduce cholesterol as a dietary supplement. (Exhibit B.)
- (D) Lowers LDL. (bad cholesterol) (Exhibit B.)
- (E) Improves HDL/LDL ratio which is the best measure of heart attack risk. (Exhibit B.)
- (F) CAN HELP REDUCE CHOLESTEROL AND LESSEN THE RISK OF HEART DISEASE (Exhibit B.)
- (G) FIGHTS CHOLESTEROL (Exhibit B.)
- (H) Clinical studies show that VITA FIBER Rice Bran Special Fiber Formulation can help reduce blood cholesterol levels. (Exhibit C.)
- (I) U.S.D.A. tests show medium grain rice bran is best for binding bile acids which has a strong correlation with the ability to reduce cholesterol. (Exhibit C.)
- (J) Ounce for ounce, Vita Fiber Rice Bran has nearly twice the total dietary fiber as oat bran. (Exhibit D.)
- (K) Helps reduce the risk of heart disease. (Exhibit B.)

PAR. 6. Through the use of the statements referred to in paragraph five (H) and (I), above, and others in advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that tests and clinical studies have proven that Vita Fiber Rice Bran will help reduce the serum cholesterol levels of consumers who add it to their diets.

PAR. 7. In truth and in fact, tests and clinical studies have not proven that Vita Fiber Rice Bran will help reduce the serum cholesterol levels of consumers who add it to their diets. Therefore,

the representation set forth in paragraph six was and is false and misleading.

PAR. 8. Through the use of the statements referred to in paragraph five, above, and others in advertisements and promotional materials not specifically set forth herein, respondent has represented, directly or by implication, that:

- (A) Consumption of Vita Fiber Rice Bran lowers cholesterol;
- (B) Consumption of Vita Fiber Rice Bran will help reduce the consumer's risk of heart disease; and
- (C) Consumers who add Vita Fiber Rice Bran to their diets will improve the ratio of HDL-to-LDL cholesterol in their blood.

PAR. 9. Through the use of the statements set forth in paragraph five and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph eight, respondent possessed and relied upon a reasonable basis for such representations.

PAR. 10. In truth and in fact, at the time respondent made the representations set forth in paragraph eight, it did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's representation as set forth in paragraph nine was and is false and misleading.

PAR. 11. Respondent's dissemination of the aforesaid false and misleading representations as alleged in this complaint constitutes 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.

EXHIBIT A

Enlarged version

EXHIBIT A

IN HOT
CEREAL SECTION

REDUCE CHOLESTEROL

VITA FIBER™ RICE BRAN

THE KEY TO A HEALTHY HEART™

RECOMMENDED. ROBERT E. KOWALSKI, THE 8-WEEK CHOLESTEROL CURE

- Can help reduce cholesterol when part of a low fat, low cholesterol diet.
- Nearly twice the total dietary fiber as oat bran.
- Tastes great by itself, in muffin and bread recipes, or on your favorite cereal.

50¢

MANUFACTURERS COUPON | EXPIRES 12/31/89

50¢

SAVE 50¢

Good toward purchase of
one 12 oz. box of
VITA FIBER RICE BRAN™



LIMIT: One coupon per purchase.
RETAILER: You will be reimbursed
for the face value of this coupon plus
\$.08 if submitted in compliance with
Pacific Rice Products' redemption
policy, available on request. Cash
value is 1/20 of a cent. Void where
prohibited or taxed by law.

Mail coupons to:
Pacific Rice Products, Inc.,
P.O. Box 700159, El Paso, TX
88570-0159

EXHIBIT B



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THE KEY TO A HEALTHY HEART™



Case Size: 12/12

KD DISPLAY:
 Outside Carton: 1.5"D x 21.5"W x 42.75"H
SET UP SIZE:
 Base: 18"W x 13.25"D
 Overall Height: 65.5"

VITA FIBER CASE SIZE:
 Case Pack: 12/12 oz.
 Dim.: 10.5"D x 10.0"W x 9.0"H
 Wt.: 10.5 Lbs.
 Pallet: 12 x 7 High
 Case: 0.46

Complaint

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EXHIBIT D

VITA FIBER RICE BRAN

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FACT SHEET

PRODUCT DESCRIPTION

Vita Fiber Rice Bran is a high fiber supplement made by Pacific Rice Products. Using a patent pending, all natural method that stabilizes the enzymes found in the oil of the rice bran, Pacific Rice produces a flaked product that preserves all of the many nutrients found in rice bran.

ATTRIBUTES

Can help reduce cholesterol as a dietary supplement.

Contains 27% dietary fiber, nearly twice that of oat bran.

Lowers LDL. (bad cholesterol)

Provides many vitamins and minerals.

Sweetened with apple juice.

Versatile in use.

BENEFITS

Helps reduce the risk of heart disease.

Helps reduce the risk of colon cancer.

Improves the HDL/LDL ratio which is the best measure of heart attack risk.

100% RDA of Niacin
100% RDA of Magnesium
100% RDA of Thiamin
90% RDA of Phosphorus
30% RDA of Vitamin E
30% RDA of Iron
20% RDA of Zinc
20% RDA of Copper

Can be eaten directly from the package or used as an ingredient.

-Topping on yogurt, cereals, salads, etc.
-High fiber supplement to muffins, breads, pancakes, any baked foods.
-Turns any main dish into high fiber meals: soups, chili, spaghetti sauce...

Package Details:

UPC 51376-00515

7.5 oz. Jar

12 jars/case

Dim:

11.25 x 8.5 x 6.75

Case wt. 9.0 lbs.

Case cube: .37 ft.

Cases/pallet: 114

Pallet wt. 1071 lbs.

UPC 51376-60520

12 oz. Box

12 boxes/case

Dim:

10.5 x 10 x 8

Case wt. 10.5 lbs.

Case cube: .46 ft.

Cases/pallet: 84

Pallet wt. 927 lbs.

KD SHIPPER

Dim:

1.5 x 21.5 x 42.75

Set up Dim:

Base: 18 x 13.25

Overall Height: 65.5

Holds 6 cases of the

12 oz. Vita Fiber box.

22 Pallets per standard 45ft. truck load.

EXHIBIT C



Pacific Rice Products, Inc.

VITA FIBER RICE BRAN SPECIAL FIBER FORMULATION

Clinical studies show that VITA FIBER Rice Bran Special Fiber Formulation can help reduce blood cholesterol levels.

VITA FIBER is a product made from rice bran, rice germ, fruit fiber and juice. The rice bran in VITA FIBER is made from medium grain versus long grain rice. The reason for using medium grain rice is that U.S.D.A. tests show medium grain rice bran is best for binding bile acids which has a strong correlation with the ability to reduce cholesterol. Medium grain rice is primarily grown in Northern California.

The following are benefits of VITA FIBER over other rice bran products:

1. Dietary Fiber - approximately 27% to 34%.
2. Contains monounsaturated fat with natural cholesterol reducing capabilities.
3. Flavor - sweet/nutty.
4. Texture - uniform grind.
5. Odor - neutral.
6. All medium grain rice.
7. Lowest Free Fatty Acids - longest stability.
8. U.S.D.A. tests show medium grain bran best for binding bile acids which has a strong correlation with ability to reduce cholesterol.
9. Cleaner - free of hulls, seeds, rice chits.
10. Sanitarily produced and sterilized.
11. Free from infestation.

000012

REDUCE
CHOLESTEROL

VITA FIBER RICE BRAN

INCREASE
PROFITS

SPECIAL FIBER FORMULATION

PACIFIC RICE PRODUCTS

VITA FIBER RICE BRAN

SPECIAL FIBER FORMULATION

NET WT. 12 OZ. (368 g)

- VITA-FIBER is a specially formulated high-fiber supplement made with rice bran.
- Studies show that the ingredients in VITA FIBER RICE BRAN can help make one's diet a part of a diet low in fat and cholesterol.
- VITA-FIBER RICE BRAN is also rich in insoluble dietary fiber which reduces risk factors for cancer and intestinal disorders.
- Just one ounce, VITA FIBER RICE BRAN has nearly twice the total dietary fiber as oat bran.
- Unlike oat bran, VITA FIBER RICE BRAN is naturally high in vitamins E and B-1, and B-6.
- Because VITA FIBER RICE BRAN is naturally sweetened with apple juice concentrate, it's perfect for use in cereals, breads, muffins, and other baked goods. It's also a great topping for cereals, soups, meats, and casseroles.

Exhibit D

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 California, with its office and principal place of business located at 1275 Santa Anita Court, Post Office Box 2060, Woodland, California.
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 Pacific Rice Products, 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 any food product, do forthwith cease and desist from misrepresenting, directly or by implication, the contents, validity, results, conclusions or interpretations of any test or study.

II.

It is further ordered, That respondent Pacific Rice Products, 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 any food product, do forthwith cease and desist from representing, directly or by implication, that any health benefit may or will be derived from consumption of such product unless, at the time such representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of this provision, to the extent evidence consists of scientific or professional tests, analyses, research, studies, or any other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are 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.

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 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 relied upon for such representation.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions and to each officer and other person responsible for the preparation or review of advertising material, and shall secure from each such person a signed statement acknowledging receipt of a copy of 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.

IN THE MATTER OF

BERTOLLI USA, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3396. Complaint, Aug. 17, 1992--Decision, Aug. 17, 1992*

This consent order prohibits, among other things, a New Jersey -- based company from misrepresenting the validity, results, conclusions or interpretations of any test or study; and from representing that olive oil or any other edible oil produces any health benefits, such as reducing blood pressure and blood sugar, unless the respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Appearances

For the Commission: *Nancy S. Warder and Joel Winston.*

For the respondent: *Eugene I. Lambert, Covington & Burling,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Bertolli USA, Inc. ("Bertolli" or "respondent"), a corporation, has violated 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. Bertolli is a Delaware corporation with its offices and principal place of business at 1 Harmon Plaza, P.O. Box 2617, Secaucus, New Jersey.

PAR. 2. Bertolli has advertised, offered for sale, sold, and distributed Bertolli Olive Oil Classico, Bertolli Extra Virgin Olive Oil, and Bertolli Extra Light Olive Oil (collectively referred to as "Bertolli Olive Oil") and other "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.