

IN THE MATTER OF

POMPEIAN, INC.

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

Docket C-3402. Complaint, October 27, 1992--Decision, October 27, 1992

This consent order prohibits, among other things, the Maryland manufacturer of Pompeian Olive Oil from representing that eating olive oil lowers cholesterol more than eating vegetable oil, and is more heart healthy than eating vegetable oil, or that any edible oil has the relative or absolute ability to cause or contribute to any health benefit, or has a favorable impact on any physiologic function or risk factor for disease, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

Appearances

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

For the respondent: *Lloyd S. Mailman, Blum, Yumkas, Mailman, Gutman & Denick. P.A., Arlington, VA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pompeian, Inc. ("Pompeian" or "respondent"), a corporation, has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, alleges;

PARAGRAPH 1. Pompeian is a Maryland corporation with its offices and principal place of business at 4201 Pulaski Highway, Baltimore, Maryland.

PAR. 2. Pompeian has advertised, offered for sale, sold, and distributed Pompeian Olive Oil, a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. Pompeian has disseminated or caused to be disseminated advertisements for Pompeian Olive Oil. These advertisements have been disseminated by various means in or affecting commerce, including television broadcasts and magazines distributed across state lines, for the purpose of inducing the purchase of Pompeian Olive Oil by members of the public.

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

PAR. 5. Respondent has disseminated or caused to be disseminated advertisements for Pompeian Olive Oil, including but not necessarily limited to, the broadcast advertisements attached hereto as Exhibits A and B. These advertisements contain the following statements:

a. I just changed my husband's oil. Yeah, I switched from cooking with vegetable oil to Pompeian Olive Oil....Because medical studies show that olive oil can help reduce your body's level of cholesterol. Oh sure, my vegetable oil was cholesterol-free, but the Pompeian actually helped reduce harmful cholesterol in your body. (Exhibit A)

b. I just changed my husband's oil! Yeah, I switched from cooking with vegetable oil to Pompeian Olive Oil....Because studies show olive oil can reduce your body's level of cholesterol. Sure, my vegetable oil was cholesterol-free. But Pompeian actually reduces harmful cholesterol already in your body...If you're using a cholesterol-free vegetable oil, you're not getting the benefits of Pompeian Olive Oil. Because studies show Pompeian isn't just cholesterol-free. All three varieties can actually reduce your body's level of harmful cholesterol. (Exhibit B)

PAR. 6. Respondent has also disseminated or caused to be disseminated advertisements for Pompeian Olive Oil, including but not necessarily limited to, the print advertisements attached hereto as Exhibits C and D. These advertisements contain the following statements:

a. If you're fed up with giving up good taste to enjoy good health, take heart. Just change your cooking oil to Pompeian Olive Oil. You'll love the unique flavor Pompeian brings to all your favorite recipes, while you receive health benefits no vegetable oil can ever give you. You see, Pompeian's not just cholesterol free -- studies have shown olive oil can actually reduce your body's harmful cholesterol. (Exhibit C)

b. If you're fed up with giving up good taste to enjoy good health, take heart. Just change your cooking oil to Pompeian Olive Oil. You'll love the unique flavor

Pompeian brings to your food, while you receive health benefits no vegetable oil can ever give you. You see, Pompeian's not just cholesterol free -- studies have shown olive oil can actually reduce the level of harmful cholesterol already in your body, and may help lower systolic blood pressure when included as part of a balanced diet. So changing to Pompeian will help your heart. (Exhibit D)

PAR. 7. Through the use of the statements contained in the advertisements referred to in paragraphs five and six, including but not necessarily limited to the advertisements attached as Exhibits A through D, respondent has represented, directly or by implication, that:

- a. Eating vegetable oil does not lower cholesterol; and
- b. Eating olive oil lowers cholesterol more than vegetable oil.

PAR. 8. Through the use of the statements contained in the advertisements referred to in paragraphs five and six, including but not necessarily limited to the advertisements attached as Exhibits A through D, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph seven respondent possessed and relied upon a reasonable basis for such representations.

PAR. 9. In truth and in fact, respondent did not possess and rely upon a reasonable basis for the representations set forth in paragraph seven at the time the representations were made. Therefore, the representation set forth in paragraph eight was and is false and misleading.

PAR. 10. Through the use of the statements contained in the advertisement referred to in paragraph six (b), including but not necessarily limited to the advertisement attached as Exhibit D, respondent has represented, directly or by implication, that olive oil is more heart healthy than all vegetable oils.

PAR. 11. Through the use of the statements contained in the advertisement referred to in paragraph six (b), including but not necessarily limited to the advertisement attached as Exhibit D, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph ten respondent possessed and relied upon a reasonable basis for such representation.

PAR. 12. In truth and in fact, respondent did not possess and rely upon a reasonable basis for the representation set forth in paragraph ten at the time the representation was made. Therefore, the representation set forth in paragraph eleven was and is false and misleading.

PAR. 13. The dissemination by respondent of the aforesaid false and misleading representations as alleged in this complaint constitutes unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

**RADIO
TVREPORTS**

41 East 42nd Street New York, NY 10017 (212) 309-1400

PRODUCT:	POMPEIAN OLIVE OIL	M90-49378
PROGRAM:	HOTEL 6/12/90	30 SEC.
	LIFETIME (MILWAUKEE)	9:56AM



1. (MUSIC) WOMAN: I just changed my husband's oil.



2. Yeah, I switched from cooking with vegetable oil to Pompeian Olive Oil.



3. MAN: Why?



4. WOMAN: Because medical studies show that olive oil can help reduce your body's level of cholesterol.



5. Oh-sure, my vegetable oil was cholesterol-free, but the Pompeian actually helped reduce harmful cholesterol in your body.



6. And if that isn't enough, tastes great.



7. I called Pompeian for a free guide on how to change his oil.



8. You think they've got something for spare tires?



9. (MUSIC OUT)

EXHIBIT A

Complaint

115 F.T.C.

EXHIBIT B

JORDAN AZZAM, INC.

100 California Street, Baltimore, Maryland 21201-1000 (410) 857-1100

CONTACT REPORT

CLIENT
PRODUCT
DATE
TOPIC

Woman: I just changed my husband's oil! Yeah, I switched from cooking with vegetable oil to Pompeian Olive Oil.

Man: Why?

Woman: Because studies show olive oil can reduce your body's level of cholesterol. Sure, my vegetable oil was cholesterol-free. But Pompeian actually reduces harmful cholesterol already in your body. And if that wasn't enough, it also tastes great. I called Pompeian for this free guide to changing his oil. Think they've got something for spare tires?

TAG 2:

If you're using a cholesterol-free vegetable oil, you're not getting the benefits of Pompeian Olive Oil. Because studies show Pompeian isn't just cholesterol-free. All three varieties can actually reduce your body's level of harmful cholesterol. Good for you, Pompeian!

EXHIBIT B

EXHIBIT C

FINALLY
SOMETHING
GOOD FOR YOU



THAT
TASTES GOOD

If you're fed up with giving up good taste to enjoy good health, take heart. Just change your cooking oil to Pompeian Olive Oil. You'll love the unique flavor Pompeian brings to your food, while you receive health benefits no vegetable oil can ever give you. You see, Pompeian's not just cholesterol free — studies have shown olive oil can actually reduce your body's harmful cholesterol. Learn more by calling 1-800-453-7000 for a free guide to adapting all your favorite recipes to one of Pompeian's three varieties. This is one oil change that can't wait.

good for you



EXHIBIT D

FINALLY
SOMETHING
GOOD FOR YOU



THAT
TASTES GOOD

If you're fed up with giving up good taste to enjoy good health, take heart. Just change your cooking oil to Pompeian Olive Oil. You'll love the unique flavor Pompeian brings to your food, while you receive health benefits no vegetable oil can ever give you. You see, Pompeian's not just cholesterol free — studies have shown olive oil can actually reduce the level of harmful cholesterol already in your body, and may help lower systolic blood pressure when included as part of a balanced diet. So changing to Pompeian will help your heart. And add a flavor to your food that's good for your soul.

good for you



EXHIBIT D

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent Pompeian, Inc., a corporation, and the respondent having been furnished 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 respondent with violation of the Federal Trade Commission Act; and

The respondent 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 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 respondents have violated the said Act, and that the 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Pompeian, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal place of business at 4201 Pulaski Highway, Baltimore, Maryland.

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 Pompeian, Inc., a corporation, its successors and assigns, and its officers, representatives, agents, 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 in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

- A. Eating vegetable oil does not lower cholesterol;
- B. Eating olive oil lowers cholesterol more than eating vegetable oil;
- C. Eating olive oil is more heart healthy than vegetable oil;
- D. Any edible oil has the relative or absolute ability to cause or contribute to any health attribute or benefit; or
- E. Any edible oil has a favorable or unfavorable impact on any physiologic function or risk factor for a disease, or provides any other health benefit;

unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; *provided, however*, that any such representation that is specifically permitted in labeling for any such food product by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to have a reasonable basis as required by this paragraph. For any test, analysis, research, study, or other evidence to be "competent and reliable" for purposes of this order, such test, analysis, research, study, or other evidence must be 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 Pompeian, Inc., its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this order; and

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

III.

It is further ordered, That respondent Pompeian, Inc., shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

IV.

It is further ordered, That respondent Pompeian, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change such as the 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.

V.

It is further ordered, That respondent Pompeian, Inc., shall, within sixty (60) days after service upon it of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this order.

IN THE MATTER OF

QUALITY TRAILER PRODUCTS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3403. Complaint, Nov. 5, 1992--Decision, Nov. 5, 1992*

This consent order prohibits, among other things, a Texas manufacturer, seller, and distributor of axle products from requesting, suggesting, urging, or advocating that its competitors raise, fix or stabilize prices or price levels, or cease providing discounts. It also prohibits the respondent from entering into agreements that fix, raise, or stabilize prices. In addition, the order requires the respondent to provide a copy of the order to all of its directors, officers, and management employees.

Appearances

For the Commission: *Michael E. Antalics.*

For the respondent: *Paul B. Hewitt. Akin, Gump, Hauer & Feld,*
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 Quality Trailer Products Corporation, a corporation, hereinafter sometimes referred to as respondent or "Quality Trailer Products," has 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. Respondent Quality Trailer Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 633 Northwest Parkway, Azle,