

IN THE MATTER OF

THE ISALY KLONDIKE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3412. Complaint, Jan. 28, 1993--Decision, Jan. 28, 1993*

This consent order prohibits, among other things, a Florida-based, frozen dessert bar corporation from misrepresenting the amount of fat, any other nutrient or ingredient, or calories in any of its frozen food products in the future. In addition, the order prohibits the respondent from misrepresenting the effect of any frozen food product on serum cholesterol levels or the risk of heart disease through the use of terms such as "low in cholesterol" or in any other manner.

Appearances

For the Commission: *Robert C. Cheek* and *Joel Winston*.

For the respondent: *Martin L. Holton, III, Womble, Carlyle, Sandridge & Rice*, Winston-Salem, N.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Isaly Klondike Company, a corporation formerly known as Klondike (Southeast) 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 The Isaly Klondike Company, a corporation formerly known as Klondike (Southeast) Corporation, is a Delaware Corporation. On January 1, 1992, The Hanover Klondike Company, Inc., a Delaware corporation, and Klondike (Pacific)

Corporation, a California corporation, merged with respondent. Previously all three corporations had done business as The Isaly Klondike Company. Respondent has its office and principal place of business located at 5400 118th Avenue North, Clearwater, Florida.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed the Klondike Lite bar, a “food” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act.

PAR. 4. Respondent disseminated or caused to be disseminated advertisements for Klondike Lite bars, including but not necessarily limited to, the attached Exhibits A through D. Specifically, the aforesaid advertisements contained the following statements:

a. If you don’t believe that something lite can taste delicious, then try new Klondike Lite. It’s 93% fat-free. Low in cholesterol. And made with 100% Nutra Sweet, so it’s sugar-free. (Exhibit A);

b. Klondike Lite Sugar Free 93% Fat Free Frozen Desert with chocolate-flavored coating (Exhibits A and B);

c. ANNCR: We’re here with another letter about new Klondike Lite Frozen Dessert bars. They’re so delicious, it’s hard to believe they’re lite. As Miss Betsy Hudson of Baltimore, Maryland found out.

ANNCR: Dear Sir or Madam, she writes, I just tried a new Klondike Lite Bar, and it’s really delicious. But it cannot be lite as everything lite I’ve ever eaten tastes like I didn’t just eat anything, if you know what I mean. Well, Klondike Lite Bars taste like something. Something delicious, in fact. So they can’t be light. Signed, I’ve got my fingers crossed that Klondike Lite Bars are really lite because if they are lite I can eat them without feeling guilty and I’ll be a Klondike Lite fan forever if they really are lite, please, please, please tell me I’m wrong, Betsy.

ANNCR: Well, Betsy, you’re right, you’re wrong. Klondike Lite Bars are indeed lite. They’re 93% fat-free, they’re made with 100% Nutra Sweet, so they’re sugar-free, and they’re low in cholesterol.... (Exhibit C);

d. ANNCR: When people try new Klondike Lite Frozen Dessert Bars, they're so delicious they find it hard to believe they actually are lite. Among them, a Mr. John Parlato. He writes:

ANNCR: Hey! Who are you trying to kid, here. Do you really think that I believe these Klondike Lite Bars are lite? Lite means bland. Lite means less. Lite means dull, boring, innocuous. Since Klondike Lite Bars are delicious, they can't be lite. If they're light, everything delicious could be light. We'd have lite cheeseburgers, lite pizza, lite devils food cake, everything you ever wanted to eat would be lite. Since that's not the case, ipso facto, Klondike Lite Bars can't be lite. Signed, I wasn't born yesterday, John.

ANNCR: Well John, I'm not trying to kid you. Klondike Lite Bars are lite. They're 93% fat-free. They're made with 100% Nutra Sweet, so they're sugar-free. They're low in cholesterol. And since they're sugar-free, 93% fat-free, and low in cholesterol, ipso facto, they are lite. So try new Klondike Lite Bars.... (Exhibit D).

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through D, respondent represented, directly or by implication, that Klondike Lite bars are 93% fat free.

PAR. 6. In truth and in fact, Klondike Lite bars are not now nor have been 93% fat free because the entire bar, including the coating, contains at least 14% fat by weight. Therefore, the representation as set forth in paragraph five was and is false and misleading.

PAR. 7. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through D, respondent represented, directly or by implication, that Klondike Lite bars are low in fat.

PAR. 8. In truth and in fact, Klondike Lite bars are not now nor have been low in fat. Each bar contained 10 grams of fat at the time of the advertisements referred to in paragraph four. Therefore, the representation as set forth in paragraph seven was and is false and misleading.

PAR. 9. Through the use of statements contained in advertisements referred to in paragraph four, including but not limited to the advertisements attached as Exhibits A through D, respondent represented, directly or by implication, that Klondike Lite bars have significantly less fat and/or provide significantly fewer calories than regular Klondike bars on an equivalent weight basis.

PAR. 10. In truth and in fact, at the time of the advertisements referred to in paragraph four, Klondike Lite bars did not have significantly less fat and/or provide significantly fewer calories than regular Klondike bars on an equivalent weight basis. Therefore, the representation as set forth in paragraph nine was and is false and misleading.

PAR. 11. Respondent disseminated or caused to be disseminated advertisements for Klondike Lite bars, including but not necessarily limited to, the attached Exhibits A, C, and D. Specifically, the aforesaid advertisements contained the following statements:

- a. Klondike Lite...low in cholesterol...(Exhibit A);
- b. Klondike Lite Bars...they're low in cholesterol...(Exhibit C);
- c. Klondike Lite Bars...they're low in cholesterol...they're...low in cholesterol...(Exhibit D).

PAR. 12. Through the use of the statements contained in the advertisements referred to in paragraph eleven, including but not necessarily limited to the advertisements attached as Exhibits A, C, and D, respondent represented, directly or by implication, that consuming Klondike Lite bars will cause little or no increase in serum cholesterol levels.

PAR. 13. In truth and in fact, since Klondike Lite bars contained a substantial amount of saturated fat, consuming Klondike Lite bars would in many cases cause a substantial increase in serum cholesterol levels. Therefore, the representation as set forth in paragraph twelve was and is false and misleading.

PAR. 14. The dissemination by respondent of aforesaid false and misleading representations as alleged in the 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

**Introducing Klondike Lite.
Proof That Less Can Taste Like More.**



Save 30¢ on new Klondike Lite



VOID

1993 1993

If you don't believe that something lite can taste delicious then try new Klondike Lite. It's 43% fat-free. Low in cholesterol. And made with 100% Nutrasweet® so it's sugar-free. Become a believer. Just rip out the coupon and find out why it took Klondike to make Lite delicious.

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EXHIBIT B



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EXHIBIT C

ANNCR: We're here with another letter about new Klondike Lite Frozen Dessert Bars. They're so delicious, it's hard to believe they're lite. As Miss Betsy Hudson of Baltimore, Maryland, found out.

SFX: PAPER RUSTLING

ANNCR: Dear Sir or Madam, she writes, I just tried a Klondike Lite Bar, and it's really delicious. (CROSSFADE TO WOMAN'S VOICE) But it cannot be lite, as everything lite I've ever eaten tastes like I didn't just eat anything, if you know what I mean. Well, Klondike Lite Bars taste like something. Something delicious, in fact. So they can't be light. Signed, I've got my fingers crossed that Klondike Lite Bars are really lite because if they are lite I can eat them without feeling guilty and I'll be a Klondike Lite fan forever. If they really are lite, please (CROSS FADE BACK TO ANNOUNCER) please, please tell me I'm wrong, Betsy.

ANNCR: Well, Betsy, you're right, you're wrong. Klondike Lite Bars are indeed lite. They're 93% fat-free, they're made with 100% Nutrasweet, so they're sugar-free, and they're low in cholesterol. So you can go ahead and uncross your fingers and, uh, by the way, next time you write it would be a lot easier to read writing if you got the chocolate off your fingers before you started your letter. Try new Klondike Lite Bars and find out for yourself why it took Klondike to make lite taste delicious.

Complaint

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EXHIBIT D

ANNCR: When people try new Klondike Lite Frozen Dessert Bars, they're so delicious they find it hard to believe they are actually lite. Among them, a Mr. John Parlato. He writes:

SFX: PAPER RUSTLING

ANNCR: Hey! Who are you trying to kid, here. Do you really think that I believe these Klondike Lite Bars are lite? (CROSS FADE TO MAN'S VOICE) Lite means bland. Lite means less. Lite means dull, boring, innocuous. Since Klondike Lite Bars are delicious, they can't be lite. If they're light, everything delicious could be light. We'd have lite cheeseburgers, lite pizza, lite devils food cake, everything you ever wanted to eat would be lite. Since that's not the case, ipso facto, (CROSS FADE BACK TO ANNCRS. VOICE) Klondike Lite Bars can't be lite. Signed, I wasn't born yesterday, John.

ANNCR: Well John, I'm not trying to kid you. Klondike Lite Bars are lite. They're 93% fat-free. They're made with 100% Nutrasweet, so they're sugar-free. They're low in cholesterol. And since they're sugar-free, 93% fat-free, and low in cholesterol, ipso facto, they are lite. So try new Klondike Lite Bars. And find out for yourself why it took Klondike to make lite delicious.

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 respondent having been furnished thereafter 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, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by 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, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules.

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 The Isaly Klondike Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 5400 118th Avenue, North, Clearwater, Florida.
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 The Isaly Klondike Company, 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, labeling, 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 misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat or any other nutrient or ingredient in any frozen food product, or the amount of calories provided by any frozen food product.

II.

It is ordered, That respondent The Isaly Klondike Company, 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, labeling, offering for 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 misrepresenting in any manner, directly or by implication, through the use of terms such as “low in cholesterol” or in any other manner, the effect of any frozen food product on serum cholesterol levels or the risk of heart disease.

III.

Nothing in this order shall prevent respondent from making any representation that is specifically permitted in labeling for any food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.

It is further ordered, That for three (3) years after the last date of dissemination of the representation, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondent in disseminating any representation covered by this order; and
2. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question any representation that is covered by this order.

V.

It is further ordered, That respondent, or its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representations to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying all advertisements containing any representation covered by parts I and II of this order.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the 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 respondent which may affect compliance obligations arising out of this order.

VII.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees who perform discretionary

functions and are engaged in the preparation or placement of advertisements or other materials covered by this order.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after service 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 this order.

IN THE MATTER OF

CITICORP CREDIT SERVICES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3413. Complaint, Jan. 29, 1993--Decision, Jan. 29, 1993*

This consent order prohibits, among other things, a New York-based processor of credit card transactions to determine each month whether the chargeback rate for each of its merchants exceeds a certain percentage of all credit card transactions for two of the preceding three months. The respondent is required to stop processing the credit card sales of merchants with excessive chargeback rates or determine whether each merchant's chargebacks are the result of fraudulent, deceptive or unfair activity relating to the sale, advertising, promotion, or distribution of goods or services to consumers, and if so, to stop processing credit card transactions for the merchant at that point.

Appearances

For the Commission: *David Medine and Stephen Cohen.*

For the respondent: *Christopher Lipsett, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Citicorp Credit Services, Inc., a corporation hereinafter sometimes referred to as respondent, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, and alleges as follows:

PARAGRAPH 1. Respondent, Citicorp Credit Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 1 Court Square, Long Island City, New York.