

Complaint

116 F.T.C.

IN THE MATTER OF

GRACEWOOD FRUIT COMPANY

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

Docket C-3470. Complaint, Oct. 26, 1993--Decision, Oct. 26, 1993

This consent order requires, among other things, a Florida corporation to have competent and reliable scientific evidence to substantiate future claims that eating normal quantities of grapefruit provides a variety of health benefits, such as reducing serum cholesterol and the risk of stroke, heart attack, and several types of cancer. Also, the respondent is prohibited from misrepresenting any test or study in connection with the marketing of any food.

Appearances

For the Commission: *Anne Maher* and *Lee Peeler*.

For the respondent: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gracewood Fruit Company ("Gracewood" 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. Respondent Gracewood is a Florida corporation with its principal office or place of business at 1626 90th Avenue, Vero Beach, Florida.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed grapefruit and other products to consumers. These products are "foods" 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 Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or caused to be disseminated advertisements for grapefruit, including but not necessarily limited to, the attached Exhibits A and B. These advertisements contain the following statements:

A. Now scientists at the University of Florida College of Medicine have "discovered the real health benefits of eating grove fresh Grapefruit" (Exhibit A) or "found that eating fresh Grapefruit can actually be a health benefit." (Exhibit B).

B. "Special News Bulletin: 'A University of Florida researcher reports new evidence that eating citrus pectin' [found in fresh Grapefruit] 'will help keep arteries clear of cholesterol plaque.' - Gainesville Sun" (Exhibits A and B). (emphasis in the originals).

C. "University of Florida studies also showed that test animals, whose diet included only 3% Grapefruit pectin, experienced an average of 50 PERCENT LESS NARROWING OF THE CORONARY ARTERIES than test animals who didn't receive pectin" (Exhibits A and B).

D. "UF scientists also found that dietary Grapefruit pectin had a beneficial effect in lowering blood levels of both cholesterol and low density lipoproteins (LDL)." (Exhibit A).

E. "And the health benefits don't stop there! The Miami Herald also reports that grove-fresh Grapefruit also contains high levels of the nutrient beta carotene, which has been 'linked with lowering the risk of cancers of the mouth, throat, stomach, lungs, colon and esophagus' [Miami Herald, 5/19/91]." (Exhibit A).

F. "Findings from the Physicians Health Study, as reported to the American Heart Association, revealed that men with previous cardiovascular problems who consume elevated levels of beta carotene (such as found in fresh Grapefruit) run about HALF THE RISK OF STROKE AND HEART ATTACK as men who do not." (Exhibit A). (emphasis in the original).

G. "The evidence is in. Now you can start helping yourself to good health, by eating one of our delicious grove-fresh Grapefruit every morning." (Exhibit A). (emphasis in the original).

PAR. 5. The "Physicians Health Study" reported in abstract before the November 12-15, 1990 convention of the American Heart Association to which the advertisement attached as Exhibit A refers

is by Gaziano and others titled Beta Carotene Therapy for Chronic Stable Angina ("Physicians' Health Study").

PAR. 6. The University of Florida studies to which the advertisements attached as Exhibits A and B refer have been reported as Cerda, Robbins, Burgin, Baumgartner, Rice, The Effects of Grapefruit Pectin on Patients at Risk for Coronary Heart Disease Without Altering Diet or Lifestyle, 11 Clinical Cardiology 589 (1988); Cerda, The Role of Grapefruit Pectin in Health and Disease, 99 Transactions Am. Clinical and Climatological A. 203 (1987); Baeky, Cerda, Burgin, Robbins, Rice, Baumgartner, Grapefruit Pectin Inhibits Hypercholesterolemia and Atherosclerosis in Miniature Swine, 11 Clinical Cardiology 595 (1988); Normann, Cerda, Burgin, Robbins, Sullivan, Grapefruit Pectin Inhibits Atherosclerosis in Microswine with Prolonged Hypercholesterolemia, 5(5) FASEBJ A1252, #5112 (1991); and Sullivan, Cerda, Burgin, Robbins, Normann, Grapefruit Pectin Reduces Plasma Total Cholesterol LDL Cholesterol and Retards Atherosclerosis in Microswine with Prolonged Hypercholesteremia, 39(2) Clinical Res. 656A (1991). ("University of Florida Studies").

PAR. 7. 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 and B, respondent has represented, directly or by implication, that:

A. Eating normal quantities of grapefruit significantly lowers both serum cholesterol and low density lipoproteins ("LDL").

B. Eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque.

C. Eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems.

D. Eating normal quantities of grapefruit significantly lowers the risk of cancers of the mouth, throat, stomach, lungs, colon and esophagus.

PAR. 8. 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 and B, respondent has represented, directly or by implication, that at the time it made representations set forth in paragraph seven, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 9. In truth and in fact, at the time it made the representations set forth in paragraph seven, respondent did not possess and rely upon a reasonable basis that substantiated such representations. 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 advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that the University of Florida Studies demonstrate that eating normal quantities of grapefruit significantly lowers both serum cholesterol and LDLs.

PAR. 11. In truth and in fact, the University of Florida Studies do not demonstrate that eating normal quantities of grapefruit significantly lowers both serum cholesterol and LDLs. Among other reasons, the University of Florida Studies were based on clinical trials conducted with concentrated pectin with a higher ration of soluble to insoluble fiber than found in unconcentrated grapefruit pectin, with pectin levels higher than those found in a grapefruit and upon individuals with elevated cholesterol levels. Therefore, the representation set forth in paragraph ten was, and is, false and misleading.

PAR. 12. 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 and B, respondent has represented, directly or by implication, that the University of Florida Studies demonstrate that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque.

PAR. 13. In truth and in fact, the University of Florida Studies do not demonstrate that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque. Among other reasons, the University of Florida Studies were based on clinical trials conducted on pigs fed a very high fat diet and given very high levels of pectin. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. 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 and B, respondent has represented, directly or by implication, that the Physicians' Health Study demonstrates that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems.

PAR. 15. In truth and in fact, the Physician's Health Study does not demonstrate that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems. Among other reasons, the subjects in the Physicians' Health Study consumed substantially higher levels of beta carotene than those found in a grapefruit. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. The acts and practices of respondent as alleged in this complaint constitute 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.

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6. CONCLUSIONS AND OUTLOOK

EXHIBIT A

Why is our Grove-Fresh Grapefruit so much better than store bought?

It's because we hand-pick them fresh from our Florida groves, and push them directly to you. We bring you the pick of the world's famous Indian River fruit crop, at its naturally sweet and juicy best. You get the maximum health benefits... you get the maximum flavor benefits, too! Every bite tastes so good, you'll want to eat our fresh Ruby Red Grapefruit every morning.

IT'S SO EASY!

1 Pick whatever size suits your family. 1 1/2 bushel! \$20.95, 1 1/2 bushel! \$22.95 (Free Delivery)

2 Tell us how often you want your delicious Ruby Red Grapefruit delivered, from once a week to once a month (Or choose our one time shipment)

3. We never bill you until after each shipment has arrived.
4. And you can cancel your order or skip a shipment at any time. Just give us a call toll free, 1-800-6-8-1154. You're in charge. You get exactly what you want.

FREE BOX: Congratulations! When you've received 6 boxes of delicious growe fresh Grapefruit, your 7th box is absolutely FREE. It's our special gift to you. All boxes must be sent to the same address, please!



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**And the new
don't stop there!**

The *Miami Herald* reports that grow-fresh grapefruit juice also contains beneficially high levels of the nutrient beta-carotene, which has been linked with lowering the risk of cancers of the mouth, throat, stomach, lungs, colon and esophagus. [Miami Herald, 5/29/91]

These new Health Study, reported to the American Heart Association, revealed that men with previous cardiac arrest or problems who consume elevated levels of beta-carotene (such as found in fresh grapefruit) run about 40 percent lower risk of dying from heart disease. [The NEW YORK TIMES AND THE NEW YORK TIMES MAGAZINE, 5/29/91]

Don't do it. The evidence is in. Now you're on a diet helping yourself to good health. We're eating one of our delicious grow-fresh grapefruit every morning.

**Good health has never
been so delicious!**

Now that you know the health benefits of eating more fresh Grapefruit, we want you to know about our Ruby Red Grapefruit variety pack. Delicious. Great.

Why have you thought lowering your cholesterol could be so easy... or taste so good? People all around the world love to taste of premium grown fresh Indian River Grapefruit. Law scientists at the University of Florida College of Medicine have also over the real health benefits of eating lower fresh Grapefruit.

Citrus peeltn, found in the sections of fresh Grapefruit, will actually help keep arteries clear of cholesterol plaque!

Eating fresh grapefruit makes an amazing difference. A University of Florida study showed that test animals, whose diet included only 3% grapefruit pectin, experienced an average of 50 PERCENT LESS NARROWING OF THE CORONARY ARTERIES than the test animals who didn't receive pectin. [As reported in the *Gainesville Sun* and *North Texas* publication 4/25/01]

NY scientists also found that dietary grapefruit pectin had a beneficial effect in lowering blood levels of both cholesterol and low-density lipoproteins. (11)

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EXHIBIT B

SPICES
plus...

Call us today for our new catalog featuring a wide diversity of spices, seasonings, special blends, sauces and gift assortments from far and near.
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- The Frugal Gourmet Cooks With Wine
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Who ever thought lowering your cholesterol could be so easy... or taste so good? People all around the world love the taste of premium grove-fresh Indian River Grapefruit. Now scientists at the University of Florida College of Medicine have found that eating fresh Grapefruit can actually be a health benefit.

Why are our Grove-Fresh Ruby Red Grapefruit so much better than store bought? It's because we hand pick them - fresh from our Florida Groves. World famous Indian River Ruby Red Grapefruit. Naturally sweet and juicy. Then we RUSH them right from the groves to your door. Good health has never been so delicious.

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Special News Bulletin:

A University of Florida researcher reports... evidence that eating citrus pectin (found in fresh Grapefruit) will help keep arteries clear of cholesterol plaque.

University of Florida studies also showed that test animals whose diet included only 3% Grapefruit pectin experienced an average of 50 PERCENT LESS NARROWING OF THE CORONARY ARTERIES than the test animals who didn't receive pectin.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the above caption, and the respondent having been furnished thereafter with a copy of a draft 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 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 aforesaid draft complaint, a statement that the signing of the 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 such complaint, other than jurisdictional facts, are true, 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 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, and having duly considered the comment received, 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 Gracewood Fruit Company (Gracewood) is a Florida corporation with its offices and principal place of business located at 1626 - 90th Avenue, Vero Beach, 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

For purposes of this order the "Physicians' Health Study" means the study by Gaziano, Manson, Ridker, Buring, Hennekens, Beta Carotene Therapy for Chronic Stable Angina, reported in abstract before the November 12-15, 1990 convention of the American Heart Association.

For purposes of this order the "University of Florida Studies" means the studies reported as Cerda, Robbins, Burgin, Baumgartner, Rice, The Effects of Grapefruit Pectin on Patients at Risk for Coronary Heart Disease Without Altering Diet or Lifestyle, 11 Clinical Cardiology 589 (1988); Cerda, The Role of Grapefruit Pectin in Health and Disease, 99 Transactions Am. Clinical and Climatological A. 203 (1987); Baeky, Cerda, Burgin, Robbins, Rice, Baumgartner, Grapefruit Pectin Inhibits Hypercholesterolemia and Atherosclerosis in Miniature Swine, 11 Clinical Cardiology 595 (1988); Normann, Cerda, Burgin, Robbins, Sullivan, Grapefruit Pectin Inhibits Atherosclerosis in Microswine with Prolonged Hypercholesterolemia, 5(5) FASEBJ A1252, #5112 (1991); and Sullivan, Cerda, Burgin, Robbins, Normann, Grapefruit Pectin Reduces Plasma Total Cholesterol, LDL Cholesterol, and Retards Atherosclerosis in Microswine with Prolonged Hypercholesterolemia, 39(2) Clinical Res. 656A (1991).

I.

It is ordered, That respondent Gracewood Fruit Company, 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, promotion, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Eating normal quantities of grapefruit significantly lowers serum cholesterol or low density lipoproteins ("LDL");

B. Eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque;

C. Eating normal quantities of grapefruit significantly reduces the risk of stroke or heart attack for consumers;

D. Eating normal quantities of grapefruit significantly lowers the risk of cancers of the mouth, throat, stomach, lungs, colon or esophagus; or

E. Eating any fruit has a favorable impact on any physiological function or risk factor for a disease, or 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 such food product by regulations promulgated 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 purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent Gracewood Fruit Company, 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, promotion, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. The University of Florida Studies demonstrate that eating normal quantities of grapefruit significantly lowers both serum cholesterol and low density lipoproteins ("LDL");

B. The University of Florida Studies demonstrate that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque;

C. The Physicians' Health Study demonstrates that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems.

III.

It is further ordered, That respondent Gracewood Fruit Company, 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, promotion, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by

implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

IV.

It is further ordered, That, for five (5) years after the last date of last dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered, That respondent 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 such person a signed statement acknowledging receipt 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 corporation 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.

VII.

It is further ordered, That respondent 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
GENERAL MOTORS CORPORATION, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF THE
CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-3132. Consent Order, April 11, 1984--Set Aside Order, Oct. 29, 1993

The Federal Trade Commission has set aside a 1984 consent order with General Motors Corporation, et al., (103 FTC 374), thus removing the Commission's requirement limiting the duration of the joint venture (New United Motor Manufacturing, Inc.) between General Motors Corporation and Toyota Motor Corporation to produce subcompact cars in California. The Commission concluded that changed conditions in the industry warranted reopening and setting aside the order.

ORDER GRANTING PETITION TO REOPEN AND SET ASIDE ORDER

On June 28, 1993, the respondents, General Motors Corporation ("GM") and Toyota Motor Corporation ("Toyota") (hereafter "the respondents"), together with their joint venture, New United Motor Manufacturing, Inc. ("NUMMI"),¹ filed a Petition To Reopen the Proceeding and To Vacate the Consent Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. In their Petition, the respondents ask the Commission to reopen the proceeding in Docket No. C-3132 and set aside the consent order issued by the Commission on April 11, 1984, in *General Motors Corporation, et al.*, 103 FTC 374 (1984) ("order"). The Petition was placed on the public record for thirty days, pursuant to Section 2.51 of the Commission's Rules. Seventeen comments, all in favor of granting the Petition, were received.

After reviewing the Petition and other relevant information, the Commission has determined to grant the Petition. The respondents have shown changed conditions of fact that eliminate the need for

¹ NUMMI, the joint venture established by GM and Toyota, is not a respondent under the Commission's order.