

IN THE MATTER OF

PRESTO FOOD PRODUCTS, INC.

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

Docket C-3480. Complaint, Feb. 23, 1994--Decision, Feb. 23, 1994

This consent order prohibits, among other things, a California corporation from misrepresenting the absolute or comparative amount of total fat, saturated fat, or cholesterol in Mocha Mix, Mocha Mix Lite, or in any milk product or non-dairy substitute and the amount of these nutrients relative to the serving size being advertised for the products.

Appearances

For the Commission: *Rosemary Rosso and Carol Ann Kando.*

For the respondent: *William H. Kitchens, Arnall, Golden & Gregory, Atlanta, GA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Presto Food Products, Inc. ("respondent"), 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 is a California corporation with its offices and principal place of business located at 18275 Arenth Avenue, P.O. Box 584, City of Industry, California.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold and distributed liquid non-dairy creamers, including Mocha Mix and Mocha Mix Lite, and other food products to consumers. Mocha Mix and Mocha Mix Lite 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 has caused to be disseminated advertisements for Mocha Mix and Mocha Mix Lite, including but not necessarily limited to the advertisements attached as Exhibits A through D. These advertisements contain the following statements and depictions:

A. "There are lots of things people are doing today to take care of their hearts." [Depiction of liquid being poured over a bowl of strawberries followed by a depiction of liquid from a carton of Mocha Mix being poured over a bowl of cereal]. "And one of the ways they start to cut down on cholesterol and saturated fat is with Mocha Mix non-dairy creamer. No cholesterol. Low in saturated fat ... fresh, creamy ... Mocha Mix ... a healthier alternative." [Depiction of a carton of Mocha Mix Lite with a cup of coffee, a bowl of cereal and a bowl of fruit]. (Exhibit A).

B. "Mocha Mix is cholesterol free and low in saturated fat. It's Mocha Mix. The original healthier alternative ..." [Depiction of liquid from a carton of Mocha Mix being poured into bowls of cereal and a cup of coffee] "... that's now available in Lite." [Depiction of a carton of Mocha Mix Lite next to a bowl of cereal, bowl of fruit, and cup of coffee]. (Exhibit B).

C. "The Healthier Alternative" [Depiction of a carton of Mocha Mix and a carton of Mocha Mix Lite and a cup of coffee. The carton of Mocha Mix includes the phrases, "Low in saturated fat" and "For coffee, cereal, fruits, desserts and cooking." The Mocha Mix Lite carton includes the phrases, "Lowfat non-dairy creamer" and "For cereals, fruits, coffee and cooking" and a depiction of liquid being poured into a bowl of cereal next to a cup of coffee]. (Exhibit C).

D. "SAVE \$.25 On The Healthier Alternative." [Depiction of a carton of Mocha Mix next to a cup of coffee and a bowl filled with cereal and strawberry slices; the carton of Mocha Mix includes the phrases "For Coffee, Cereals, Fruits, Desserts and Cooking," "LOW IN SATURATED FAT" and "NO TROPICAL OILS."] "... Use Mocha Mix in place of milk or cream to help your family cut down on cholesterol and saturated fat." (Exhibit D).

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through D, respondent has represented, directly or by implication, that:

A. Mocha Mix is a low saturated fat product when consumed in an amount normal for use on cereal, on fruit or in cooking.

B. Mocha Mix is lower in saturated fat than other foods, such as low-fat (1%- or 2%) or whole milk, for which it would be a substitute when used on cereal, on fruit or in cooking.

PAR. 6. In truth and in fact:

A. Mocha Mix is not a low saturated fat product when consumed in an amount normal for use on cereal, on fruit or in cooking.

B. Mocha Mix is not lower in saturated fat than other foods, such as low-fat (1% or 2%) or whole milk, for which it would be a substitute when used on cereal, on fruit or in cooking. A one-half cup serving of Mocha Mix has 2.48 grams of saturated fat, which represents over three times the amount of saturated fat in a one-half cup serving of low-fat (1%) milk (0.79 grams), over one and one-half times the amount of saturated fat in a one-half cup serving of low-fat (2%) milk (1.4 grams) and about the same amount of saturated fat as whole milk (2.5 grams).

Therefore, the representations set forth in paragraph five were and are false and misleading.

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

A. Mocha Mix Lite is a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking.

B. Mocha Mix Lite is lower in fat than other foods, such as low-fat (1% or 2%) or whole milk, for which it would be a substitute when used on cereal, on fruit or in cooking.

PAR. 8. In truth and in fact:

A. Mocha Mix Lite is not a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking.

B. Mocha Mix Lite is not lower in fat than other foods, such as low-fat (1% or 2%) or whole milk, for which it would be a substitute when used on cereal, on fruit or in cooking. A one-half cup serving of Mocha Mix Lite has 6.16 grams of fat, which represents nearly five times the amount of fat in a one-half cup serving of low-fat (1%) milk (1.27 grams), nearly three times the amount of fat in a one-half cup serving of low-fat (2%) milk (2.3 grams) and over one and one-

half times the amount of fat in a one-half cup serving of whole milk (4 grams).

Therefore, the representations set forth in paragraph seven were and are false and misleading.

PAR. 9. The acts or 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.

EXHIBIT A

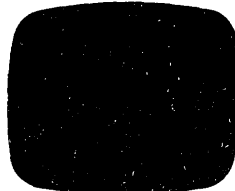
PRESTO FOOD PRODUCTS
Mocha-Mix® Non-Dairy Creamer
"HEARTBEATS" :30 MMCT 7000

Agency: JWT/LA.

Producer: Coppo Films



SFX: Heartbeats. (Strong Runner's Pulse)
MUSIC THROUGHOUT.



ANNCR: There are lots of things...



... people are doing today...



to take care of their hearts.



And one of the ways they start to
cut down on...



... cholesterol and saturated fat...



... is with Mocha Mix non-dairy
creamers



No cholesterol...



... Low in saturated fat...



... fresh, creamy...



... Mocha Mix...



A Healthier
Alternative

... a healthier alternative.

P PRESTO
FOOD PRODUCTS, INC.

18275 ARENTH AVENUE, P.O. BOX 584, INDUSTRY, CALIFORNIA 91747-0584

A000024

EXHIBIT A

117 F.T.C.

ALCOHOL

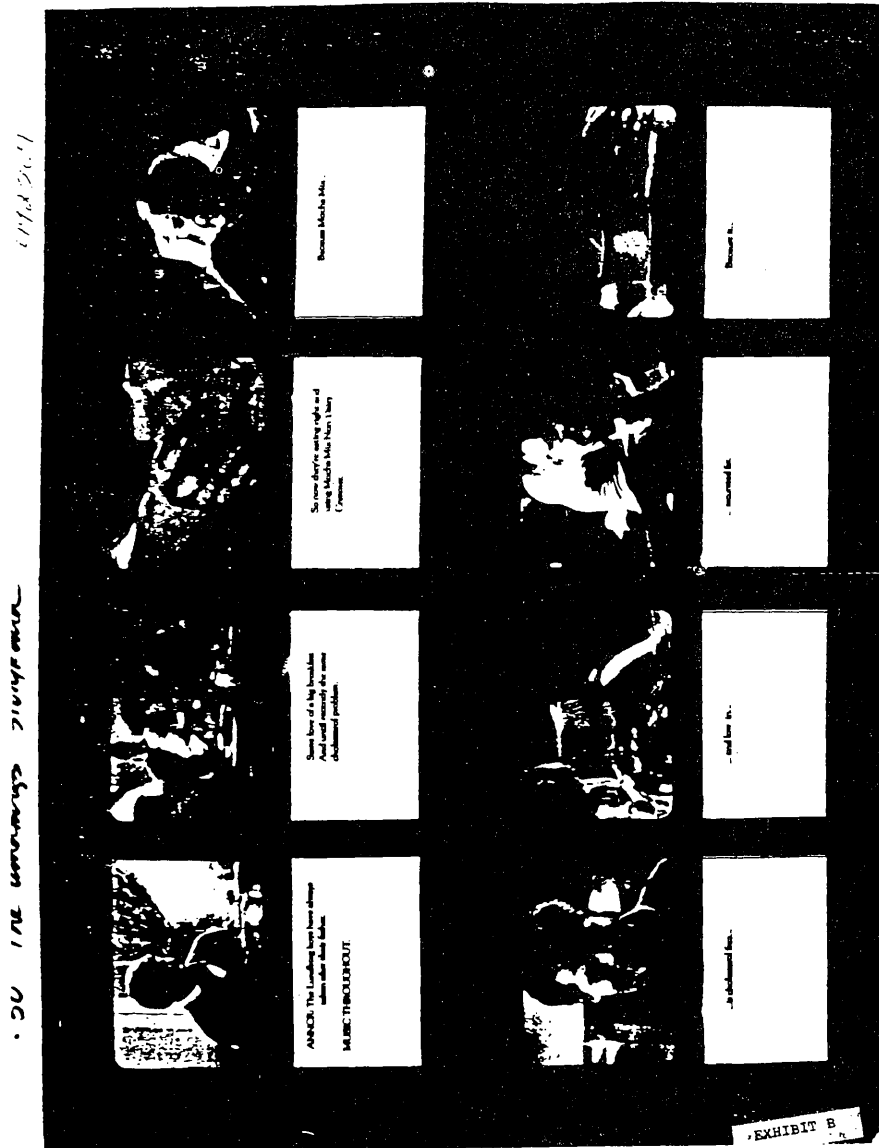
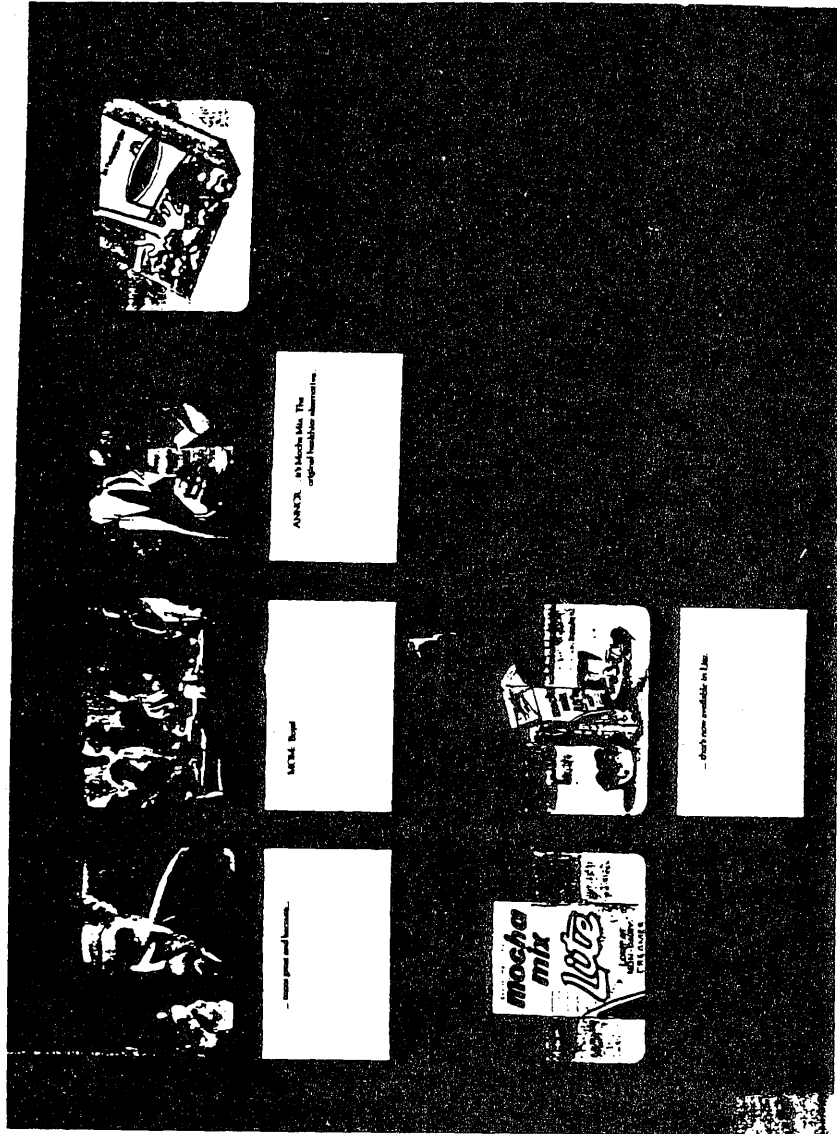


EXHIBIT B

AT 00035



Complaint

117 F.T.C.

EXHIBIT C



A000015

SAVE 25¢ ON THE HEALTHIER ALTERNATIVE™

MOCHA MIX™ THE FRESH-TASTING
LIQUID NON-DAIRY CREAMER

For Coffee, Cereals,
Fruits, Desserts
and Cooking

**mocha
mix**

**COUPON DROP SEPTEMBER 9, 1990
ORDER EXTRA PRODUCT**

- NO CHOLESTEROL
- LOW IN SATURATED FAT
- NO TROPICAL OILS
- 100% MILK-FREE
- LOW IN SODIUM

Take this coupon to your grocer for 25¢ off any size carton. Use Mocha Mix® in place of milk or cream to help your family cut down on cholesterol and saturated fat.

25¢ OFF ANY SIZE CARTON
A000000

**mocha
mix**

NON-DAIRY CREAMER

RETAILER: Mail coupons to Presto Food Products, P.O. Box 870000, El Paso, TX 79907. You will be paid 25¢ per coupon. No cash value. Some restrictions may apply. See coupon for details. Offer good while supplies last. Void where prohibited. ©1990 Presto Food Products. Limit one coupon per purchase. Any other use constitutes fraud.

MANUFACTURER COUPON

Were in your grocer's dairy 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 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 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.

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 Presto Food Products, Inc. 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 18275 Arenth Avenue, P.O. Box 584, City of Industry, State of 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

DEFINITIONS

For purposes of this order, the term "*milk product*" shall mean any product for which a federal standard of identity has been established under 21 CFR 131 as currently in effect as of the date of this order.

For purposes of this order, the term "*non-dairy substitute*" shall mean any product which is commonly used as a substitute for a milk product.

I.

It is ordered, That Presto Food Products, Inc., 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 manufacturing, advertising, labelling, promotion, offering for sale, sale or distribution of Mocha Mix, Mocha Mix Lite or any other food, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of total fat, saturated fat, or cholesterol in any milk product or any non-dairy substitute; and

B. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of total fat, saturated fat, or cholesterol in any milk product or non-dairy substitute relative to the serving size or amount customarily consumed for any particular use being advertised or promoted.

Provided, however, that nothing in provisions A and B above shall prohibit any representation as to the amount of total fat, saturated fat or cholesterol in any milk product or non-dairy substitute if such representation is specifically permitted in labeling, for the serving size advertised or promoted for such product, by regulations promulgated by the U.S. Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act.

II.

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:

A. All materials that were relied upon by the respondent in disseminating any representation covered by this order; and

B. All test reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation that is covered by this order.

III.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of the order.

IV.

It is further ordered, That respondent shall, within thirty (30) days after service upon it of this order, 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.

V.

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 this order.

IN THE MATTER OF

BALTIMORE METROPOLITAN PHARMACEUTICAL
ASSOCIATION, INC., ET AL.

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

Docket 9262. Complaint, Sept. 28, 1993--Decision, Feb. 25, 1994

This consent order prohibits, among other things, two Maryland associations from entering into, or organizing or encouraging any agreement among pharmacy firms to refuse to participate in third-party payer prescription drug reimbursement plans and prohibits, for five years, the respondents from providing comments or advice to any pharmacist or pharmacy on the desirability, profitability, or appropriateness of participating in any existing or proposed participation agreement.

Appearances

For the Commission: *John R. Hoagland and Michael D. McNeely.*

For the respondents: *Joseph Kaufman, Fedder & Garten, P.A., Baltimore, MD.*

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 the Baltimore Metropolitan Pharmaceutical Association and the Maryland Pharmacists Association, Inc. (hereinafter sometimes referred to as "BMPhA" and "MPhA," respectively, or as "respondents," collectively), have 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 Baltimore Metropolitan Pharmaceutical Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland. Respondent Maryland Pharmacists Association, Inc., is