

Complaint

121 F.T.C.

IN THE MATTER OF

MAMA TISH'S ITALIAN SPECIALTIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3644. Complaint, March 19, 1996--Decision, March 19, 1996*

This consent order prohibits, among other things, an Illinois ice cup dessert manufacturer from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product.

Appearances

For the Commission: *C. Steven Baker* and *Barbara Bender*.

For the respondent: *David Goroff, Hopkins & Sutter, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Mama Tish's Italian Specialties, Inc. ("respondent"), a corporation, 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 Mama Tish's Italian Specialties, Inc. is an Illinois corporation, with its principal office or place of business at 4800 Central Avenue, Chicago, Illinois.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed Mama Tish's ice cups to the public. 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 has caused to be disseminated advertisements for Mama Tish's ice cups, including but not necessarily limited to the attached Exhibit 1. These advertisements contain the statement "naturally low in calories."

PAR. 5. Through the use of statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit 1, respondent represented, directly or by implication Mama Tish's ice cups are low in calories.

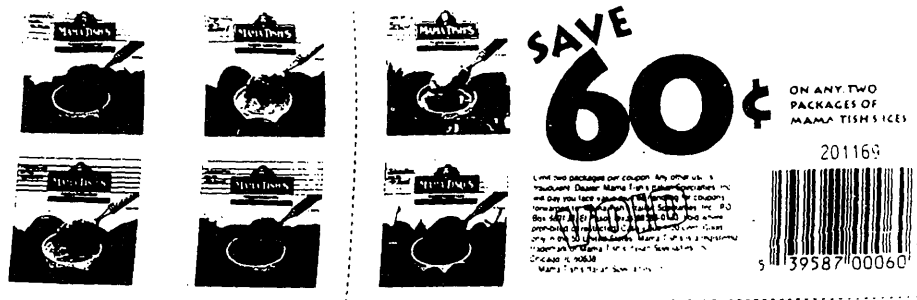
PAR. 6. In truth and in fact, Mama Tish's ice cups are not low in calories. The ten regular flavors of Mama Tish's ice cups contain 104 to 145 calories per four fluid ounce serving. The two flavors sweetened with NutraSweet contain 60 calories per serving. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. The acts and practices of the 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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EXHIBIT 1



WHY YOU SHOULD TRY A MAMA TISH'S® ICE CUP.

- ☐ It's made with real fruit.
- ☐ Lots of great refreshing flavors.
- ☐ It's fat-free, cholesterol-free, and naturally low in calories.
- ☐ The payola at the top of this ad.

On second thought, when something's this good,
who needs a reason?

MAMA TISH'S. THE REFRESHING BLEND OF FRUIT AND ICE.

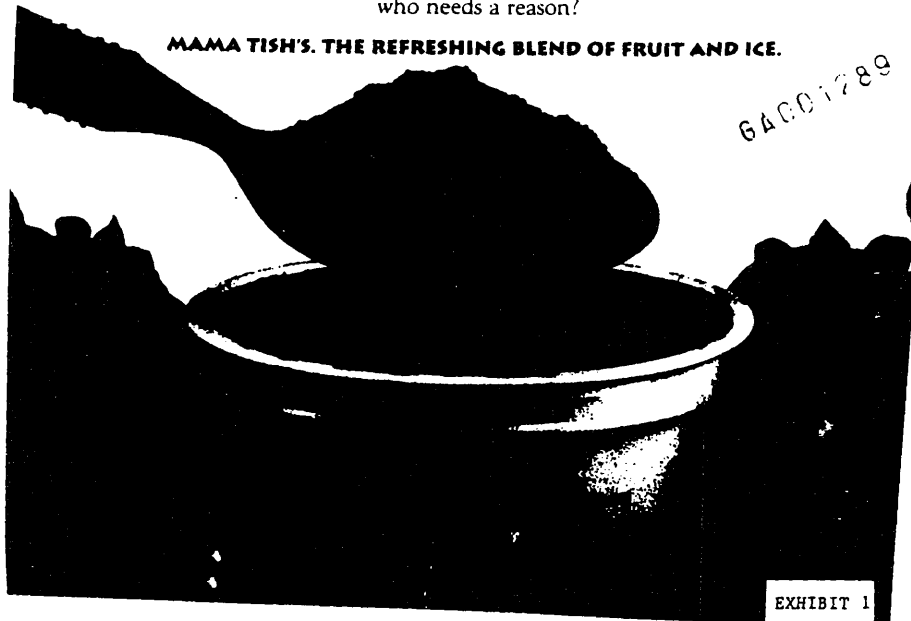


EXHIBIT 1

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 Chicago 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 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 Mama Tish's Italian Specialties, Inc. is an Illinois corporation, with its office and principal place of business located at 4800 South Central Avenue, Chicago, Illinois.

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 Mama Tish's Italian Specialties, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, as "commerce" is 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 calories or any other nutrient or ingredient in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II.

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

III.

It is further ordered, That for five (5) years after the last date of 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, including complaints from consumers.

IV.

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.

V.

It is further ordered, That respondent shall, within thirty (30) days after service of this order, distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, employees, and licensees engaged in the preparation or placement of advertisements or other materials covered by this order.

VI.

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 representation 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 this order.

VII.

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.

VIII.

This order will terminate on March 19, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying

consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

JOHNSON & JOHNSON

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3645. Complaint, March 19, 1996--Decision, March 19, 1996

This consent order prohibits, among other things, a New Jersey-based manufacturer of health care products to divest, within 12 months, the Cordis Neuroscience Business to a Commission-approved acquirer. If the transaction is not completed as required, then the Commission may appoint a trustee.

Appearances

For the Commission: *Ann Malester, Michael Moiseyev and William Baer.*

For the respondent: *Steve Newborn, Rogers & Wells, Washington, D.C. and Mindy Hatton, Hogan & Hartson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Johnson & Johnson, a New Jersey based corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the voting stock of Cordis Corporation ("Cordis"), a Florida based corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Johnson & Johnson is a corporation organized and existing under and by virtue of the laws of the state of New Jersey, with its principal executive offices located at One Johnson & Johnson Plaza, New Brunswick, New Jersey.