

IN THE MATTER OF

MRS. FIELDS COOKIES, INC.

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

Docket C-3657. Complaint, May 13, 1996--Decision, May 13, 1996

This consent order prohibits, among other things, the Utah-based corporation from misrepresenting the fat, saturated fat, cholesterol or caloric content of baked food products.

Appearances

For the Commission: *Phoebe Morse* and *Colleen Lynch*.

For the respondent: *Jere Webb, Stoel Rives*, Portland, OR.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mrs. Fields Cookies, Inc., a corporation ("Mrs. Fields" or "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 Mrs. Fields is a California corporation, with its principal office or place of business at 462 West Bearcat Drive, Salt Lake City, UT.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold and distributed Mrs. Fields Cookies, 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 Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Mrs. Fields Cookies, including but not necessarily limited to the attached

Exhibits 1-5. These advertisements and promotional materials contain the following statements and depictions:

- A. Semi-sweet classic LOW FAT Cookies
[depiction of cookie chips] (Exhibit 1)
- B. Chocolite LOW FAT Cookies
[depiction of cookie chips] (Exhibit 2)
- C. Introducing our new line of LOW FAT Cookies
(Exhibit 3)
- D. Introducing our new line of LOW FAT Cookies
[depiction of cookie chips and Mrs. Fields' logo] (Exhibit 4)
- E. Introducing our new line of LOW FAT Cookies
[depiction of cookie chips and Mrs. Fields' logo] (Exhibit 5)

PAR. 5. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits 1, 3, 4 and 5, respondent has represented, directly or by implication, that Mrs. Fields' "low fat" semi-sweet classic cookie is low fat.

PAR. 6. In truth and in fact, Mrs. Fields' "low fat" semi-sweet classic cookie is not low fat. This cookie contained 5.5 grams of fat per serving at the time of dissemination of the advertisements and promotional materials referred to in paragraph four. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits 2, 3, 4 and 5, respondent has represented, directly or by implication, that Mrs. Fields' "low fat" chocolite cookie is low fat.

PAR. 8. In truth and in fact, Mrs. Fields' "low fat" chocolite cookie is not low fat. This cookie contained 5.5 grams of fat per serving at the time of dissemination of the advertisements and promotional materials referred to in paragraph four. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits 3, 4

and 5, respondent has represented, directly or by implication, that Mrs. Fields' entire 1994 "low fat" line of cookies is low fat.

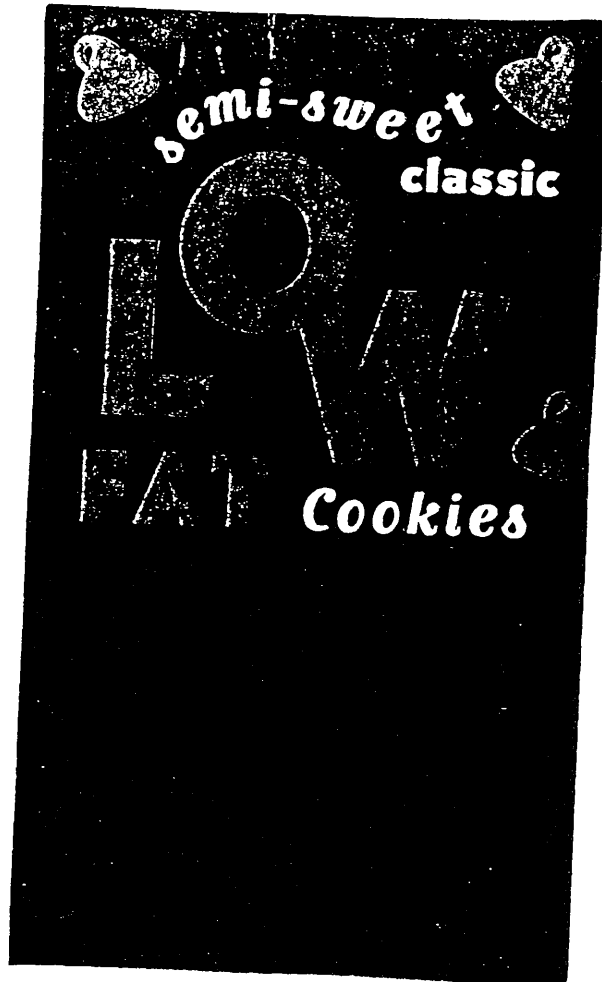
PAR. 10. In truth and in fact, Mrs. Fields' entire 1994 "low fat" line of cookies is not low fat. Only one of the three new cookies introduced as Mrs. Fields' 1994 "low fat" line of cookies was low fat at the time of dissemination of the advertisements and promotional materials referred to in paragraph four. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

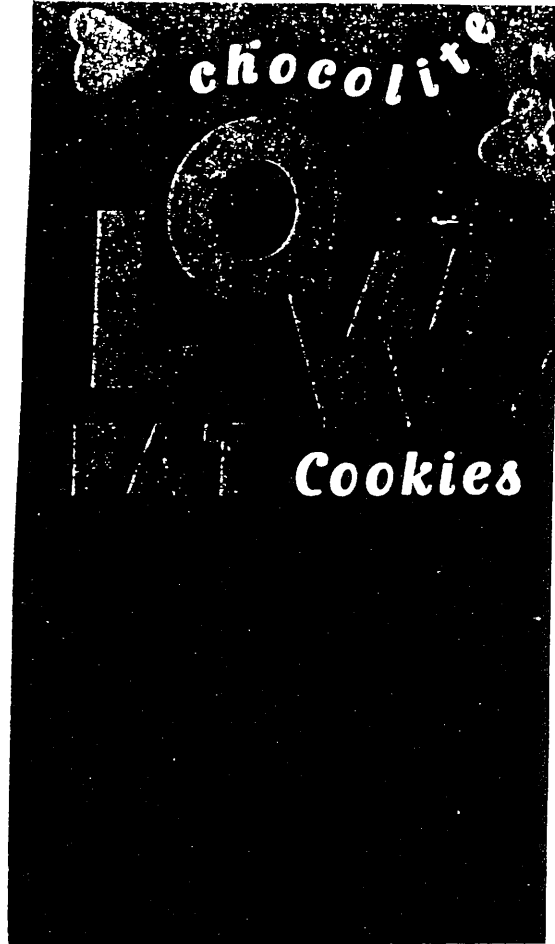
PAR. 11. The acts and practices of the respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements and promotional materials in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

121 F.T.C.

EXHIBIT 1

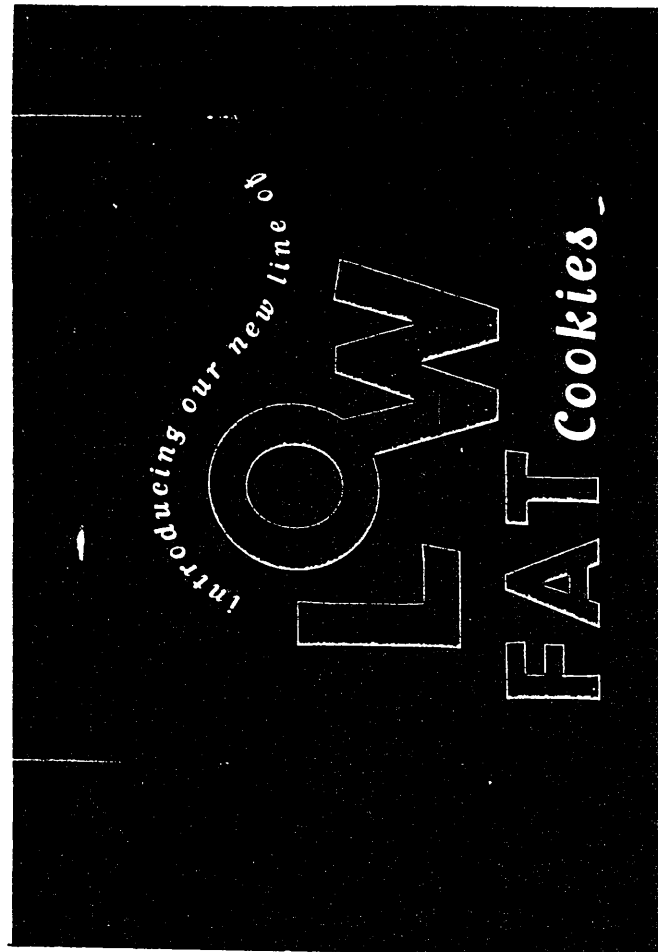




Complaint

121 F.T.C.

EXHIBIT 3



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Complaint

EXHIBIT 4

SENT BY:

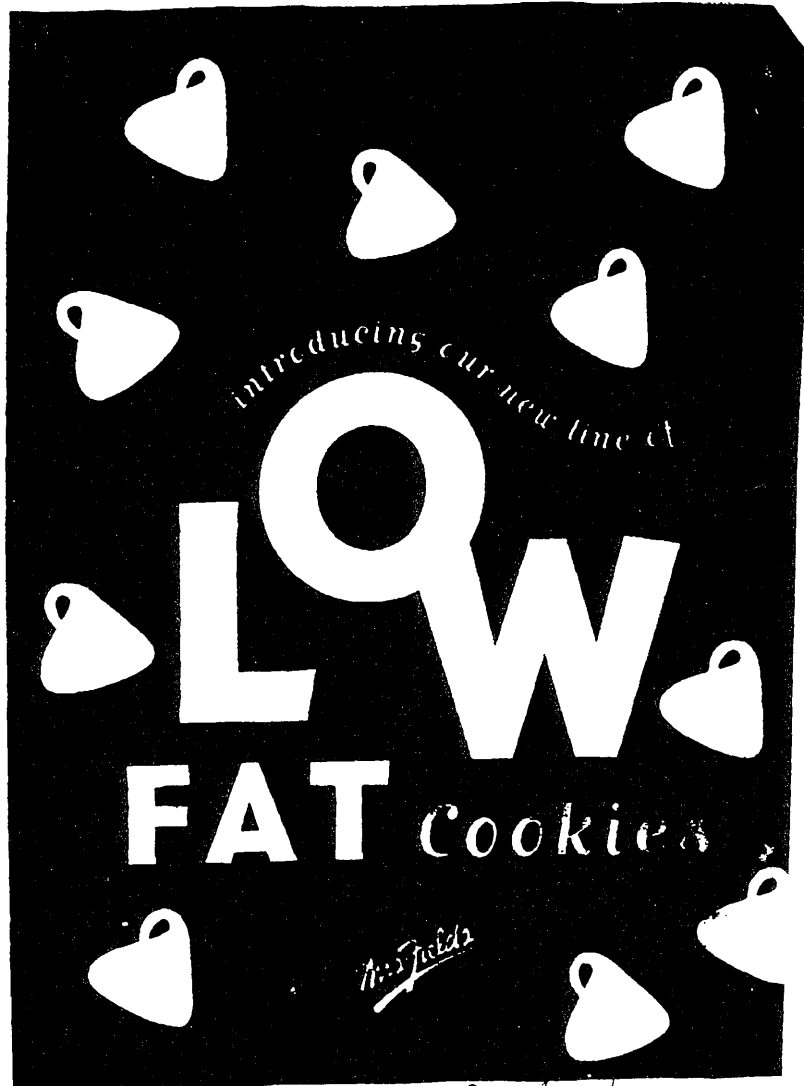
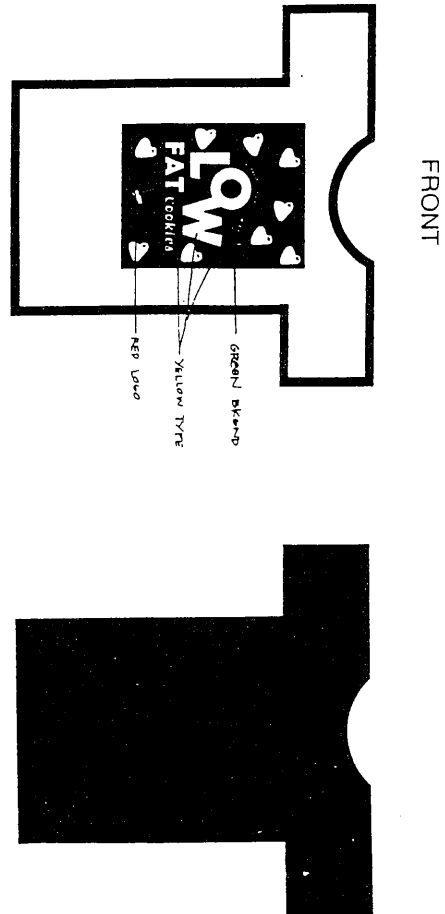


Exhibit 4 Exhibit 4

Complaint

121 F.T.C.

EXHIBIT 5



t. shirt

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 Boston 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, 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 of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the 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 said Act, and that a 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 Mrs. Fields Cookies, 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 462 West Bearcat Drive, Salt Lake City, UT.

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 Mrs. Fields Cookies, 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 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, saturated fat, cholesterol or calories in any bakery food product, whether cooked or uncooked. 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 food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III.

If is further ordered, That for three (3) 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 tests, 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.

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, to each manager of its company-owned and franchised stores, and to each of its officers, agents, representatives, and employees engaged in the preparation or placement of advertisements or promotional materials covered by this order.

VI.

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.

VII.

This order will terminate on May 13, 2016, or twenty (20) 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 of this order that terminates in less than twenty (20) 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 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

COLUMBIA/HCA HEALTHCARE CORPORATION

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

Docket C-3619. Consent Order, Oct. 3, 1995--Modifying Order, May 15, 1996

This order reopens a 1995 consent order -- that permitted Columbia/HCA and Healthtrust, Inc., to merge, required the respondent to terminate its participation in a joint venture with the Orlando Regional Health System, and contained a prior-notice provision -- and this order modifies the termination provisions of the agreement to hold separate regarding the Utah Healthtrust Assets by releasing Columbia/HCA from the provision requiring it to operate the Utah assets separately from its other hospital operations in Utah once it completes the divestiture of Pioneer Valley Hospital and Davis Hospital to Paracelsus Healthcare Corporation.

ORDER REOPENING AND MODIFYING ORDER

On December 15, 1995, Columbia/HCA Healthcare Corporation ("Columbia") filed its Petition To Reopen And Modify Order Containing Agreement To Hold Separate ("Petition") in this matter. Respondent asks that the Commission reopen this 1995 consent order 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. The Petition request that the Commission reopen the order and modify the termination provisions in paragraph 2(b) of the April 21, 1995, Agreement to Hold Separate regarding the Utah Healthtrust Assets ("Utah Hold Separate"), which is attached to the order and made a part thereof. The Petition was subject to a ten-day public comment period that expired on January 22, 1996, and no comments were received. For the reasons discussed below, the Commission has determined to grant Columbia's Petition.

Columbia's Petition seeks to change the termination of the Utah Hold Separate from the date that all Schedule B Assets, as identified in the order, are divested until the date that all of the hospitals identified in Part I of Schedule B are divested. The modification is necessary because of an asset identified as Schedule B, Part II, Item 6: "Lease of 7,134 sq. ft., 150 Wright Bros. Drive, Suite 540, Salt