

IN THE MATTER OF

CONOPCO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3706. Complaint, Jan. 23, 1997--Decision, Jan. 23, 1997*

This consent order prohibits, among other things, Conopco, Inc., a New York-based manufacturer of margarine and spreads, doing business as Van Den Bergh Foods Company, from misrepresenting the amount of fat, saturated fat, cholesterol or calories in any spread or margarine; and requires the respondent to have adequate scientific substantiation for claims that any margarine or spread reduces the risk of heart disease, or causes or contributes to a risk factor for any disease or health-related condition. In addition, the consent order requires, for three years, that advertisements for Promise margarine or spreads must include the total fat disclosure and must disclose either the percentage of calories derived from fat or the fact that the product is not low in fat.

Appearances

For the Commission: *Anne V. Maher, Rosemary Rosso, Maureen Enright and Jill Samuels.*

For the respondent: *Nancy Schnell, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Conopco, Inc., doing business as Van Den Bergh Foods Company ("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 New York corporation with its office and principal place of business located at 390 Park Avenue, New York, New York. Van Den Bergh Foods Company is an unincorporated operating division of Conopco, Inc. Conopco, Inc. is a wholly-owned subsidiary of Unilever United States, Inc., a Delaware corporation with its office and principal place of business also located at 390 Park Avenue, New York, New York.

PAR. 2. Respondent, through its operating division known as Van Den Bergh Foods Company, has manufactured, advertised, labeled, offered for sale, sold and distributed margarines and spreads, including Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread (hereinafter sometimes collectively referred to as "Promise margarines and spreads") and other foods to consumers. Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread 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 Promise margarines and spreads, including but not necessarily limited to the advertisements attached as Exhibits A through E. These advertisements contain the following statements and depictions:

A. "HEART DISEASE: NATION'S #1 KILLER" [Depiction of Newspaper Headline] [SFX: Dramatic Tone]

MUSIC: YOU MAKE ME FEEL SO YOUNG. YOU MAKE ME FEEL THERE ARE SONGS TO BE SUNG.

[Depiction of an adult male with two young children, one child male and the other female]

[Depiction of a plate of pancakes with two heart-shaped pats of margarine on the pancakes; behind the plate is a package of Promise spread (stick form), with the following statements on the package label: "Low in Saturated Fat" and "NO CHOLESTEROL"]

[Depiction of adult male smiling and looking down, moving to depiction of the young girl smiling and looking up]

"HEALTH TODAY Serum Cholesterol: the warning is real." [Depiction of Newspaper Headline] [SFX: Dramatic Tone] MUSIC: AND EVERY TIME I SEE YOU GRIN ...

[Depictions of the adult male with the two children] "FIT-OR- FAT"

[Depiction of Newspaper Headline, shown several times] [SFX: Printing Press Sounds]

VOICEOVER: "Promise spread has no cholesterol" [Depiction of the adult male with the two children; a super at the bottom of the screen states: "Include Promise as part of a low saturated fat, low cholesterol diet."]

VOICEOVER: "...and is lower in saturated fat than leading margarines." [Depiction of a knife spreading margarine on pancakes with a package of Promise spread (stick form) behind the plate; the Promise package label states "Low in Saturated Fat" and "NO CHOLESTEROL" and a super at the bottom of the screen continues to state: "Include Promise as part of a low saturated fat, low cholesterol diet."]

MUSIC: YOU MAKE ME FEEL SO YOUNG [Depiction of the adult male with two children at a table moving to screen depicting the female child eating and then to a depiction of the male child eating and then to the adult male eating]

VOICEOVER: "Promise. Get Heart Smart."

[Depiction of packages of Promise spread (tub form), Promise spread (stick form) and Promise Extra Light margarine in top third of screen] A super in large caps in the center of screen reads: "PROMISE. GET HEART SMART" [Depiction of the male adult with the two children in the bottom of the screen] (Exhibit A).

B. "GET HEART SMART." (Exhibits A through E).

C. Depiction of Heart-Shaped Pat[s] of Margarine in conjunction with depictions of packages of Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread. (Exhibits A through E).

D. "Low in Saturated Fat." [Depiction of package of Promise spread (stick form)] (Exhibit B).

E. "ZERO FAT BREAKTHROUGH" [Depiction of Headline] [SFX MUSICAL/ELECTRONIC]

* * * * *

"EXCLUSIVE THE FIRST Fat Free MARGARINE" [Depiction of Headline] SFX COMPUTER PRINTER

* * * * *

VOICEOVER: "Discover Fat Free Promise Ultra." [Depiction of plate with two muffin halves with heart-shaped pats of margarine on the muffins; behind the plate is a package of Promise Ultra Fat Free spread]

"Zero Fat with ...just five delicious calories a serving." [Depiction of young girl with three adults, moving to depiction of a knife spreading margarine on a muffin half]; a super at the bottom of the screen states: "Include Promise Ultra as part of a low saturated fat, low cholesterol diet."]

[Depiction of adults and young girl at a table; a super at the bottom of the screen states: "Include Promise Ultra as part of a low saturated fat, low cholesterol diet."]

* * * * *

VOICEOVER: It's the first fat free...margarine. Definitely one of a kind." [Depiction of people at table moving to male adult eating muffin with margarine on it]
"SPREAD THE FAT FREE NEWS" SFX ELECTRONIC

* * * * *

VOICEOVER: "Regular or Fat Free Promise Ultra ... " [Depiction of packages of Promise Ultra (26%) spread and Promise Ultra Fat Free spread in top third of screen]

VOICEOVER: "Get Heart Smart." [Depiction of packages of Promise Ultra (26%) spread and Promise Ultra Fat Free spread in top third of screen; a super in large caps in the center of screen reads: "GET HEART SMART"] (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 E, respondent has represented, directly or by implication, that eating Promise spread, Promise Extra Light margarine or Promise Ultra (26%) spread helps reduce the risk of heart disease.

PAR. 6. Through the use of the statements and depictions set forth in the advertisements referred to in paragraph four, including

but not necessarily limited to the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 7. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. 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 and D, respondent has represented, directly or by implication, that Promise spread and Promise Extra Light margarine [Exhibit A] and Promise Ultra (26%) spread [Exhibit D] are low in total fat.

PAR. 9. In truth and in fact, Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread are not low in total fat. At the time respondent made the representation, Promise spread contained 9.5 grams of fat per 14 gram serving and 34 grams of fat per 50 grams; Promise Extra Light margarine contained 5.6 grams of fat per 14 gram serving and 20 grams of fat per 50 grams; and Promise Ultra (26%) spread contained 3.64 grams of fat per 14 gram serving and 13 grams of fat per 50 grams. Therefore, the representation set forth in paragraph eight was and is false and misleading.

PAR. 10. 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 and B, respondent has represented, directly or by implication; that Promise spread is low in saturated fat.

PAR. 11. In truth and in fact, Promise spread is not low in saturated fat. At the time respondent made the representation, Promise spread contained 1.6 grams of saturated fat per 14 gram serving with 17 percent of calories derived from saturated fat. Therefore, the representation set forth in paragraph ten was and is false and misleading.

PAR. 12. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not limited to the advertisement attached as Exhibit A,

respondent has represented, directly or by implication, that Promise spread and Promise Extra Light margarine have no dietary cholesterol. Respondent has failed to adequately disclose that Promise spread and Promise Extra Light margarine contain a significant amount of total fat. In light of respondent's representation that Promise spread and Promise Extra Light margarine have no dietary cholesterol, the significant total fat content of the products would be material to consumers and the failure to adequately disclose this fact is deceptive.

PAR. 13. 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.

Complaint

123 F.T.C.

EXHIBIT A-1

VAN DEN BERGH
FOODS COMPANY

Promise.
"HEADLINES"



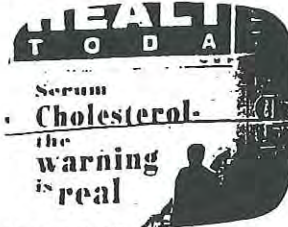
SFX: Dramatic Tone.

MUSIC: YOU MAKE ME FEEL SO
YOUNG.

YOU MAKE ME FEEL THERE ARE



SONGS TO BE SUNG.



SFX: Dramatic Tone.

MUSIC: AND EVERY TIME I SEE YOU
GRIN...

SFX: Printing press sounds.

VO: Promise Spread has no
cholesteroland is lower in saturated fat than
leading margarines.

MUSIC: YOU MAKE ME



FEEL SO YOUNG.



VO: Promise. Get heart smart.

EXHIBIT A-1

EXHIBIT A-2

"HEADLINES" AD
(VIDEOCASSETTE)

Complaint

123 F.T.C.

EXHIBIT B

PROMISE: FOR ALL THE LOVES OF YOUR LIFE.

GET HEART SMART.
Be good to yourself and the ones you love. Include great tasting Promise in a well-balanced, nutritious diet. Eating right—it's one good way to show you care.

MANUFACTURER'S COUPON EXPIRES 3/31/95
SAVE 35¢ on any Promise stick product

44698
1111541033

MANUFACTURER'S COUPON EXPIRES 3/31/95
SAVE 50¢ on any Promise soft product

44668
1111542050

© 1994 Van den Bergh Foods, Inc.

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Complaint

EXHIBIT C-1

McCANN-ERICKSON

TITLE

PAGE

1994 PRIMO ID

Open on Product shot.
Camera pans....

(New footage)



Announcer VO:

Promise Ultra

...from right
to left...

(New footage)

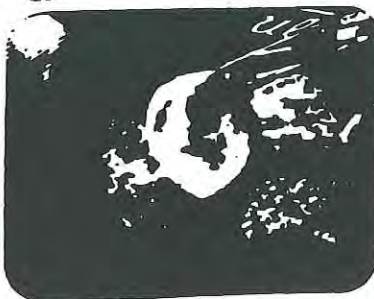


65% less fat and calories
than margarine.

Super: Include Promise as part of a low
cholesterol, low saturated fat di-

Knife spreads
margarine on muffin.

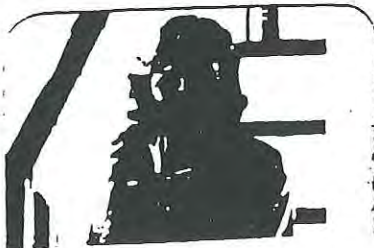
(Pick-up footage)



And a light delicate taste

Woman in kitchen
with muffin.

(Pick-up footage)



(Bite/eating enjoyment)

Exhibit C-1

Complaint

123 F.T.C.

EXHIBIT C-2

McCANN-ERICKSON

TITLE PAGE

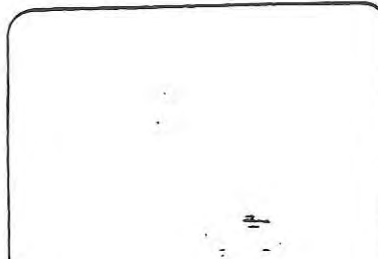
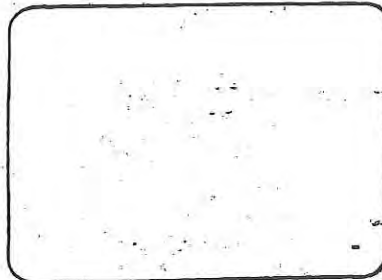
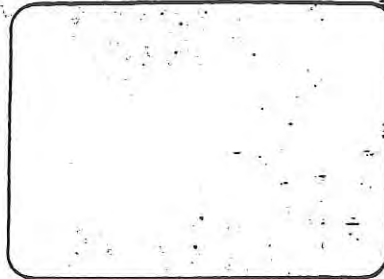
Product shot.
(New footage)Promise Ultra
Get Heart Smart.

Exhibit C-2

Complaint

EXHIBIT D



SFX MUSICAL/ ELECTRONIC



SONG: YOU MAKE ME FEEL SO YOUNG

Title: "The News/ Non-New"



SFX COMPUTER PRINTER



SONG: YOU MAKE ME FEEL THERE ARE SONGS TO BE SUNG



ANNCR V/O: Discover Fat Free Promise Ultra.



Zero fat with



just five delicious calories a serving.



SONG: AND EVERYTIME I SEE



YOU GAIN



ANNCR V/O: It's the first fat free



margarine. Definitely one of a kind.



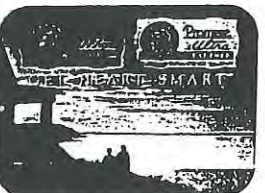
SFX ELECTRONIC



SONG: YOU MAKE ME FEEL SO YOUNG



ANNCR V/O: Regular or Fat Free Promise Ultra.



Get Heart Smart.

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 Federal Trade 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, 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 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 comments 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 Conopco, Inc. is a New York corporation with its office and principal place of business located at 390 Park Avenue, New York, New York. Van Den Bergh Foods Company is an unincorporated operating division of Conopco, Inc. Conopco, Inc. is a wholly-owned subsidiary of Unilever United States, Inc., a Delaware corporation with its office and principal place of business also located at 390 Park Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the proceeding is in the public interest.

ORDER

I.

It is ordered, That Conopco, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (including but not limited to Van Den Bergh Foods Company), in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale or distribution of Promise spread, Promise Extra Light margarine, Promise Ultra (26%) spread, or any other margarine or spread in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Eating Promise spread, Promise Extra Light margarine or Promise Ultra (26%) spread or any other margarine or spread will help to reduce the risk of heart disease; or

B. Any margarine or spread has the relative or absolute ability to cause or contribute to any risk factor for a disease or any health-related condition;

unless at the time of making such representation respondent possesses and relies upon a reasonable basis consisting of 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 Conopco, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (including but not limited to Van Den Bergh Foods Company), in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale or distribution of Promise spread, Promise Extra Light margarine, Promise Ultra (26%) spread, or any other margarine or spread 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 fat, saturated fat, cholesterol or calories 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.

III.

It is further ordered, That respondent Conopco, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (including but not limited to Van Den Bergh Foods Company), in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale or distribution of Promise spread, Promise Extra Light margarine, or any other margarine or spread that contains a total fat disclosure amount as defined in Part V of this order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in any advertisement or promotional material that refers, directly or by implication, to the absolute or comparative amount of cholesterol in such food:

A. The total number of grams of fat per serving; and

B. For three (3) years from the effective date of this order, any advertising or promotion of any margarine or spread advertised,

promoted, offered for sale, sold or distributed under the Promise brand name that contains a total fat disclosure amount as defined in Part V of this order shall also disclose the percentage of calories derived from fat or a statement that the margarine or spread is not a "low fat" food.

IV.

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

V.

For purposes of this order, the following terms and definitions shall apply:

A. The term "spread" shall mean any spread that has organoleptic properties similar to butter or margarine;

B. The term "margarine" or "spread" shall not include:

1. Any foodservice margarine or spread sold in bulk sizes for use by restaurants or foodservice establishments or sold in individual portion packs for table service use by restaurants or foodservice operators, provided that said products bear no nutrient content or health benefit claims in any context on any such product package and provided further that respondent, its successors or assigns, does not advertise, promote, offer for sale, sell or distribute any such product to consumers; or

2. Any margarine or spread sold or distributed to consumers by third parties under private labeling agreements with respondent, its successors or assigns, provided respondent, its successors or assigns, does not participate in the funding, preparation or dissemination of any advertising of said products to consumers; and

C. For purposes of Part III of this order, the term "total fat disclosure amount" shall mean the disclosure level of fat as set forth in final regulations concerning cholesterol content claims as

promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

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 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.

VII.

It is further ordered, That respondent shall 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.

VIII.

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 its Van Den Bergh Foods Company division and any other operating division engaged in the sale or marketing of margarines or spreads, to each of its managerial employees in its Van Den Bergh Foods Company division and any other operating division engaged in the sale or marketing of margarines or spreads, 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.

IX.

It is further ordered, That this order will terminate on January 23, 2017, 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.

X.

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

UNIVERSAL MERCHANTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3707. Complaint, Jan. 23, 1997--Decision, Jan. 23, 1997*

This consent order prohibits, among other things, a California-based dietary supplement manufacturer and its president from claiming, without competent and reliable scientific substantiation, that any food, dietary supplement or drug reduces body fat, causes weight loss, increase lean body mass, or controls appetite or craving for sugar; from misrepresenting the results of any test, study or research; and from representing that any testimonial or endorsement is the typical experience of users of the advertised product, unless the claim is substantiated or the respondent discloses the generally expected results clearly and prominently.

Appearances

For the Commission: *Rosemary Rosso, Maureen Enright, Anne V. Maher and Jill Samuels.*

For the respondents: *Ed Glynn and Gary Hailey, Venable, Baetjer, Howard & Civiletti, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Universal Merchants, Inc., a corporation, and Steven Oscherowitz, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Universal Merchants, Inc. is a Delaware corporation with its principal office or place of business at 4727 Wilshire Blvd., Suite 510, Los Angeles, CA.

2. Respondent Steven Oscherowitz is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal