

IN THE MATTER OF
GERBER PRODUCTS COMPANY

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

Docket C-3744. Complaint, May 27, 1997--Decision, May 27, 1997

This consent order prohibits Gerber, among other things, from making any claims, without competent and reliable scientific substantiation, about the extent to which doctors or other health, nutrition, child care or medical professionals recommend, approve of, or endorse baby or toddler food; and from misrepresenting the results or existence of any survey, test or research.

Appearances

For the Commission: *Jill E. Samuels* and *Rosemary Rosso*.

For the respondent: *John J. James* and *Jane Gennaro*, in-house counsel, Fremont, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gerber Products Company, a corporation ("respondent"), has 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 Gerber Products Company ("Gerber") is a Michigan corporation with its principal office or place of business at 445 State Street, Fremont, Michigan.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including Gerber baby and toddler foods. Gerber baby and toddler foods are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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.

4. Respondent has disseminated or has caused to be disseminated advertisements for Gerber baby and toddler foods, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. [Depiction: Smiling baby]
VOICEOVER: "There's only one baby like yours."
[Depiction: Jar of Gerber baby food]
VOICEOVER: "And only one baby food like ours. Gerber."
[Depiction: Fresh apples]
VOICEOVER: "No one knows more about purity, . . ." [Depiction: Fresh carrots]
VOICEOVER: ". . . safety and nutrition . . ." [Depiction: Toddler being fed]
VOICEOVER: ". . . (and how to make sure baby likes it!) . . ."
[Depiction: Jars of Gerber baby and toddler food]
VOICEOVER: ". . . than Gerber. To learn more why four out of five pediatricians who recommend baby food recommend Gerber, . . ."
[Depiction: Baby being fed] "1-800-4-GERBER"
VOICEOVER: ". . . call us, anytime, day or night. You know you can trust Gerber . . ." [Depiction: Woman eating an apple]
"For learning to eat smart, right from the start."
VOICEOVER: ". . . for learning to eat smart, right from the start."
[Exhibit A, television advertisement]

B. [Ad translated from Spanish] [SFX: Baby crying]
WOMAN: "Oh! Mom could you hand me the baby food from the kitchen. The baby is hungry!"
MOM: "Hey, but not all of them are Gerber."
WOMAN: "But those are less expensive. Aren't they all the same?"
MOM: "Of course not. Gerber is the most recommended by pediatricians."
VOICEOVER: "She knows that there is nothing more nutritious and reliable for babies. As a matter of fact, four out of every five pediatricians that recommend baby food recommend Gerber."
WOMAN: "Now that I know I will always buy Gerber. My baby's health is priceless." [SFX: Baby laughing]
VOICEOVER: "For a better start in life, give him only Gerber."
[Exhibit B, radio advertisement]

C. [Gerber ran a promotion in which consumers who purchased a jar of Beech-Nut baby food were given a checkout coupon for Gerber baby food that offered five minutes of free long-distance telephone time upon calling an 800-number and listening to the following recording]
"Congratulations on your free five minutes of long distance, compliments of Gerber. Gerber feels there are a few things you should know. For one, *nobody* makes a safer baby food than Gerber. Plus, four out of five pediatricians who recommend baby food recommend Gerber. And nobody else knows more about purity, safety, nutrition, and of course, taste. And Gerber offers more variety than any other brand -- more than 180 kinds! In a few of those foods we add a controlled amount of sugar, or tapioca. Because research has proven it enhances the taste, without compromising the nutritional composition. No other baby food in the world does all that. Give Gerber a try and find out why it's the baby food more pediatricians recommend. To begin your call, use your key pad to enter your personal identification number found on your store receipt."
[Exhibit C, script of recorded message]

D. "4 OUT OF 5 PEDIATRICIANS* RECOMMEND GERBER

*A 1994 CONTEMPORARY PEDIATRICS RECOMMENDATION STUDY FOUND THAT 88% OF PEDIATRICIANS WHO RECOMMEND BABY FOOD RECOMMEND GERBER."

[Exhibit D, display case sticker]

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that competent and reliable studies or surveys show that four out of five pediatricians who recommend baby food recommend Gerber.

6. In truth and in fact, competent and reliable studies or surveys do not show that four out of five pediatricians who recommend baby food recommend Gerber. In the survey relied upon by respondent, 562 of the surveyed doctors responded to the questions concerning baby food. Of these 562 pediatricians, 408 responded that they recommend baby food to their patients at least once per week. Of the 408 pediatricians who recommend baby food to their patients at least once per week, 332, or approximately 82%, responded that they did not recommend any specific brands of baby food. Of the 76 pediatricians who did recommend specific brands, 67 recommended Gerber. Thus, only 67 of the 408 pediatricians who recommend baby food, or approximately 16%, recommend Gerber to their patients. Therefore, the representation set forth in paragraph five was, and is, false or misleading.

7. Through the means described in paragraph four, respondent has represented, expressly or by implication, that approximately four out of five pediatricians recommend Gerber.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraphs five and seven, at the time the representations were made.

9. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraphs five and seven, at the time the representations were made. In the survey relied upon by respondent, 67, or approximately 12%, of the 562 pediatricians surveyed recommended Gerber. Therefore, the representations set forth in paragraphs five and eight were, and are, false or misleading.

10. 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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EXHIBIT A

RTV

PRODUCT: GERBER PRODUCTS/BABY FOOD
 TITLE: "FOR LEARNING TO EAT SMART"
 PROGRAM: NEWS
 STATION: WABC

10/12/95
 (NEW YORK)

95-15562 MI
 :30
 12:16PM



(MUSIC)



WOMAN ANNCR: There's only one
 baby like yours.



and only one baby food like ours,
 Gerber.



No one knows more



about purity,



safety and nutrition,



and how to make sure baby likes it
 than Gerber.



To learn more, why four out of five
 pediatricians



who recommend baby food
 recommend Gerber.



call us



anytime day or night



You know you can trust Gerber, for
 learning to eat smart, right from
 the start. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

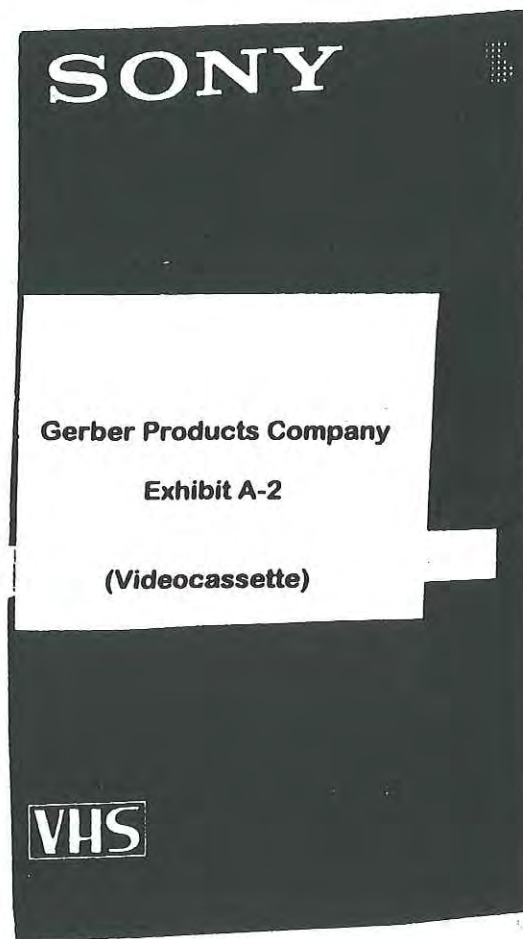
WABC-TV's efforts to ensure the accuracy of material submitted to it in connection with the above-captioned matter are hereby acknowledged.

Exhibit A-1

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EXHIBIT A



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EXHIBIT B

Transcripción: Gerber
Spot: "Cuatro de cada cinco"
30ss / Radio

SFX

-sfx: Bebe llorando

-sfx: páos

-sfx: música

-sfx: bebe llorando

COPY

-Mujer: "Hay mami alcanzame el baby food
de la cocina que el bebé tiene
hambre"

-Mamá: "Oye, pero no todos son Gerber"

-Mujer: "Pero esos son más baratos, no da
igual?"

-Mamá: "Claro que no. Gerber es el más
recomendado por pediatras."

-Locutor: "Ella sabe que no hay
nada más nutritivo y
confiable para bebés. De
hecho 4 de cada 5
pediatras que recomiendan
alimentos para bebés
recomiendan Gerber."

-Mujer: "Ahora que lo sé compraré Gerber
siempre. La salud de mi bebé no
puede esperar."

-Locutor: "Para un mejor comienzo en la
vida sólo son Gerber."

Exhibit B

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EXHIBIT C

Shoppers who have purchased a jar of Beech-Nut baby food in supermarkets (in the St. Louis area, at least) recently, have been given a "Catalina coupon" as they checked out at the register. The coupon offers 5 minutes of free long distance telephone time, if one calls (800) 507-8807. On calling the number, one hears the following:

"Congratulations on your free five minutes of long distance, compliments of Gerber.

Gerber feels there are a few things you should know. For one, nobody makes a safer baby food than Gerber.

Plus, four out of five pediatricians who recommend baby food, recommend Gerber. And nobody else knows more about purity, safety, nutrition, and of course, taste.

And Gerber offers more variety than any other brand, more than one hundred and eighty kinds.

In a few of these foods we add a controlled amount of sugar or tapioca, because research has proven it enhances the taste without compromising the nutritional composition.

No other baby food in the world does all that.

Give Gerber a try and find out why it's the baby food more pediatricians recommend.

To begin your call please use your touch tone phone to enter your pin number found on your red and white phone certificate.

(a beep is heard)"

CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON
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THIS IS A LIVE PHONE CARD!

FREE

5 MINUTES OF LONG DISTANCE PHONE CALLS

GOOD IN THE U.S. PUERTO RICO & THE US VIRGIN ISLES
DIAL: 800-507-8807
PIN NUMBER: 4708236916

To make your FREE call (5) dial 800-507-8807

After prompt enter your PIN# 4708236916

After tone, dial the area code and number you wish to call

You will hear tones indicating when you have 5, 4, 3, 2, 1 seconds remaining in your call

Customer Services: 1-800-507-8807

FREE PHONE TIME EXPIRES 12/31/80

CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON	CHECKOUT COUPON
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Exhibit C

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EXHIBIT D



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, 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 Gerber Products Company is a Michigan corporation with its principal office or place of business at 445 State Street, Fremont, Michigan.

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

ORDER

DEFINITIONS

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

1. "*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.

2. Unless otherwise specified, "*respondent*" shall mean Gerber Products Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

3. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. "*Baby or toddler food*" shall mean any food or juice manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed by respondent for consumption by infants and children up to 4 years of age.

I.

It is ordered, That respondent, 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 baby or toddler food shall not make any representation, in any manner, expressly or by implication, about:

A. The extent to which doctors or other health, nutrition, child care, or medical professionals recommend such product; or

B. The recommendation, approval, or endorsement of such product by any health, nutrition, child care, or medical professional, profession, group, or other such entity,

unless, at the time it is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

II.

It is further ordered, That respondent, 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 baby or toddler food, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions or interpretations of any survey, test, study, or research.

III.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any baby or toddler food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, or by nutrition labeling regulations promulgated by the Department of Agriculture pursuant to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

IV.

It is further ordered, That respondent, and its successors and assigns, shall for three (3) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including written consumer complaints or any communications with governmental or consumer protection organizations.

V.

It is further ordered, That respondent, and its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, deliver a copy of this order to all current principals, officers, directors, and sales, advertising, and marketing managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of this order; and

B. For a period of five (5) years after the date of service of this order, deliver a copy of this order to all future principals, officers, directors, and sales, advertising, and marketing managers, and to all

employees, agents, and representatives having responsibilities with respect to the subject matter of this order, within thirty (30) days after the person assumes such position or responsibilities.

VI.

It is further ordered, That respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VII.

It is further ordered, That respondent, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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 May 27, 2017, 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 Part in this order that terminates in less than twenty (20) years;

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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 Part.

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 Part as though the complaint had never been 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.

Complaint

123 F.T.C.

IN THE MATTER OF

ABBOTT LABORATORIES

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3745. Complaint, May 30, 1997--Decision, May 30, 1997*

This consent order prohibits, among other things, the Illinois corporation that manufactures and advertises Ensure, a meal supplement, from making scientifically unsubstantiated claims about the extent to which doctors or other professionals recommend any food dietary or nutritional supplement for healthy adults; and about the recommendation, approval or endorsement of any such product by any person, profession or other entity. The consent order also prohibits the respondent from misrepresenting that one serving of any product sold as a meal replacement or supplement, including Ensure, for healthy adults provides vitamins in an amount comparable to typical vitamin supplements; and from misrepresenting the amount of any vitamin or any other nutrient or ingredient in such products.

Appearances

For the Commission: *Michelle Rusk, Michael Ostheimer and C. Lee Peeler.*

For the respondent: *Nancy Buc, Buc & Bearsdley, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Abbott Laboratories, a corporation ("respondent"), has 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 Abbott Laboratories ("Abbott") is an Illinois corporation with its principal office or place of business at One Abbott Park Road, Abbott Park, Illinois.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed nutritional products to the public, including Ensure products. Ensure products are marketed through Abbott's Ross Products Division and include Ensure, Ensure High Protein, Ensure Plus, Ensure With Fiber, Ensure Pudding, and Ensure Light. These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

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.