

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.

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

A. VIDEO

Close-up of a graduation photograph of man and woman.

Man and woman who appear to be in their middle thirties.

Can of Ensure being poured into glass.

Man and woman jogging in a park.

Cans of Ensure. Super:

RECOMMENDED #1 BY DOCTORS.

(Exhibit A, television advertisement entitled "Younger Husband/Wife").

B. VIDEO

Close-up of black and white photograph of little girl and young father fishing.

Father and adult daughter fishing on dock.

Three cans of Ensure. Super:
RECOMMENDED #1 BY DOCTORS.

Can of Ensure being poured into glass.

Father and daughter in boat with father casting.

Three cans of Ensure. Super:
RECOMMENDED #1 BY DOCTORS.

AUDIO

Man: For 15 years, we've taken good care of each other.

Woman: We sure have.

Man: And to take better care of our health, we started drinking Ensure.

Woman: More than a vitamin supplement, Ensure is a delicious drink with all the nutrients adults need to help stay healthy, active, be energetic.

Man: Drink Ensure as a meal.

Woman: Or in between meals.

Man: Ensure is even recommended number one by doctors as a source of complete balanced nutrition.

Woman: Ensure, to your health honey.

Man: Uh, uh, to our health.

AUDIO

Woman: When I was young, you and mom made sure I ate right.

Man: Well you were my little girl.

Woman: Well today we're listening to our doctors and taking better care of our health with Ensure.

Man: Ensure is recommended number one by doctors as a source of complete balanced nutrition.

Woman: More than a vitamin supplement, Ensure has all the nutrients adults need to help stay healthy, active, be energetic.

Man: Drink Ensure as a meal.

Woman: Or in between meals. Ensure, to your health dad.

Mother: Uh, uh, to our health.

Announcer: Ensure, doctors recommend it number one.

(Exhibit B, television advertisement entitled "Father/Daughter").

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C. Wife: Oh boy, that water felt great!

Husband: Sure did. I always feel so good after a swim.

Wife: For 15 years, we've shared a pretty active life.

Husband: I've loved every minute.

Wife: And to help make sure we stay active, one thing we've done lately is to drink Ensure.

Husband: Hm Hmm. See, our doctor told us that a key to being energetic and in good health is good nutrition.

Wife: Right. And one way to help guarantee that you're getting the nutrition you need, is by drinking Ensure.

Husband: More than a vitamin supplement, Ensure is a delicious drink that provides complete balanced nutrition.

Wife: It's got the protein, carbohydrates, minerals and vitamins your body needs everyday to help you stay healthy, active, be energetic.

Husband: Drink Ensure anytime.

Wife: I like it as a delicious meal.

Husband: I like it in between meals. Ensure is even recommended number one by doctors and nutritionists for complete balanced nutrition.

Wife: So make sure the ones you love get the nutrition they need. Ensure. To your health, dear.

Husband: Uh, uh, to our health.

(Exhibit C, radio advertisement entitled "Younger Husband/Wife").

D. Depiction: Snapshots of a young man and a young woman. "Back then we promised to make the most out of life...today we're enjoying every moment."

DRINK TO YOUR HEALTH WITH ENSURE.[®] Depiction: Man and woman who appear to be in their thirties holding glasses of Ensure.

The #1 Doctor Recommended Source of Nutrition.

Most doctors will tell you that a key to good health is good nutrition. But even if you've improved your diet by eating more lean meats, fruits and vegetables, you still may not be getting the balanced nutrition you need.

So how can you help guarantee that you and the ones you love get the right nutrition?

With Ensure and *New Ensure High Protein*.

Ensure is more than a vitamin supplement. It's complete balanced nutrition in a delicious ready-to-serve drink that provides an excellent balance of protein, carbohydrate, vitamins, and minerals. In addition, *New Ensure High Protein* is low in cholesterol and low in saturated fat while being high in the nutrients you need everyday to help stay healthy, be energetic and more active. Drink your favorite Ensure anytime. Enjoy it as a healthy meal by itself or as a healthy between-meal snack. Ensure is even recommended #1 by doctors as a complete source of nutrition.

So make sure the ones you love get the right nutrition. Drink Ensure and drink to your health.

(Exhibit D, print advertisement).

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that many doctors recommend Ensure as a meal supplement and as a meal replacement for healthy adults, including those in their thirties and forties.

6. 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 representation set forth in paragraph five, at the time the representation was made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in paragraph five, at the time the representation was made. Among other reasons, a survey of doctors relied upon by respondent was not designed to elicit whether many doctors actually recommend Ensure as a meal supplement or meal replacement for healthy adults, as opposed to for adults who are ill or elderly and may have nutritional deficiencies. The survey merely asked doctors to assume that they would recommend a supplement for adults who were not ill, and then to select the brand they would most recommend. Therefore, the representation set forth in paragraph six was, and is, false or misleading.

8. Through the means described in paragraph four, respondent has represented, expressly or by implication, that one serving of Ensure provides vitamins in an amount comparable to typical multivitamin supplements.

9. In truth and in fact, one serving of Ensure does not provide vitamins in an amount comparable to typical multivitamin supplements. While the typical multivitamin supplement provides at least 100% of the recommended daily intake (RDI) of vitamins for which RDIs have been established, at the time the advertisements were first disseminated, one serving of Ensure provided 62% of the RDI of Vitamin C and between 12% and 26% of the RDIs of the other vitamins for which RDIs have been established. Ensure has been reformulated and currently one serving provides 50% of the RDI of Vitamin C and 25% of the RDIs of the other vitamins for which RDIs have been established. Therefore, the representation set forth in paragraph eight was, and is, 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: ENSURE VITAMIN SUPPLEMENT
 TITLE: "LOW IN SATURATED FAT"
 PROGRAM: WORLD NEWS TONIGHT
 STATION: ABC

6/16/95
 (NEW YORK)

95-09482 KH
 :30
 6:47PM



(MUSIC) MAN: For 15 years, we've taken good care of each other.



WOMAN: We sure have.



MAN: And to take better care of our health,



we started drinking Ensure.



WOMAN: More than a vitamin supplement,



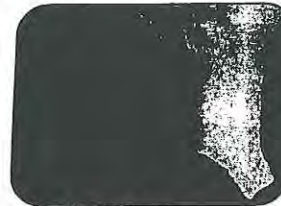
Ensure is a delicious drink with all the nutrients



adults need to help stay healthy, active, be energetic.



MAN: Drink Ensure as a meal.
 WOMAN: Or in between meals.



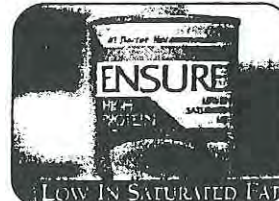
MAN: Ensure is even recommended



RECOMMENDED #1 BY DOCTORS
 number one by doctors as a source of complete balanced nutrition.



WOMAN: Ensure. To your health, honey. MAN: Uh uh, to our health.



ANNCR: Also try Ensure high protein. It's low in saturated fat. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE Exhibit A-1
 While Radio TV Reports undertakes to ensure the accuracy of material supplied by it, it cannot be responsible for omissions or misstatements.
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EXHIBIT A

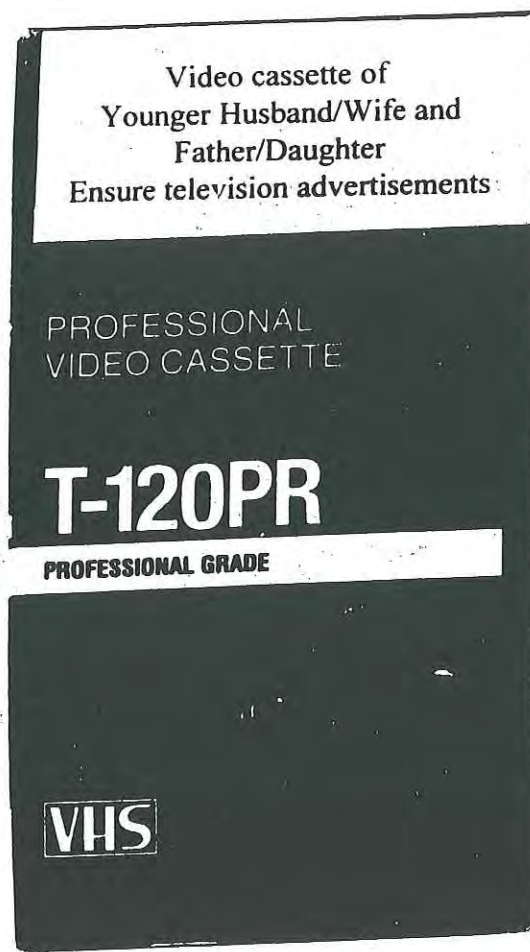


Exhibit A-2

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EXHIBIT B

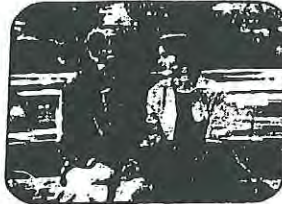
RTV

PRODUCT: ENSURE VITAMIN SUPPLEMENT
 TITLE: "FATHER & DAUGHTER"
 PROGRAM: CBS EVENING NEWS
 STATION: CBS

95-10434 AH
 07/10/95
 (NEW YORK)
 :30
 6:48PM



(MUSIC) DAUGHTER: When I was young,



you and Mom made sure I ate right.



FATHER: Well you were my little girl.



DAUGHTER: Well today we're listening to our doctor, and taking better care of our health with Ensure.



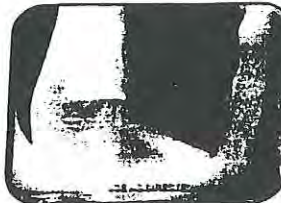
FATHER: Ensure is recommended number one by Doctors as a source of complete balanced nutrition.



DAUGHTER: More than a Vitamin Supplement



Ensure has all the nutrients



adults need



to help stay healthy, active,



be energetic. FATHER: Drink Ensure as a meal--



DAUGHTER: or in between. Ensure, to your health Dad. FATHER: Uh, to our health



ANNCR: Ensure, doctors recommend it number one. (MUSIC OUT)

ALSO AVAILABLE IN COLOR VIDEO-TAPE CASSETTE

Exhibit B-1

While Radio TV stations endeavor to ensure the accuracy of material supplied by it, it cannot be responsible for the material supplied by Radio TV stations may be used for the and reference purposes only. It may not be reproduced, distributed, or otherwise disseminated or transmitted.

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EXHIBIT B

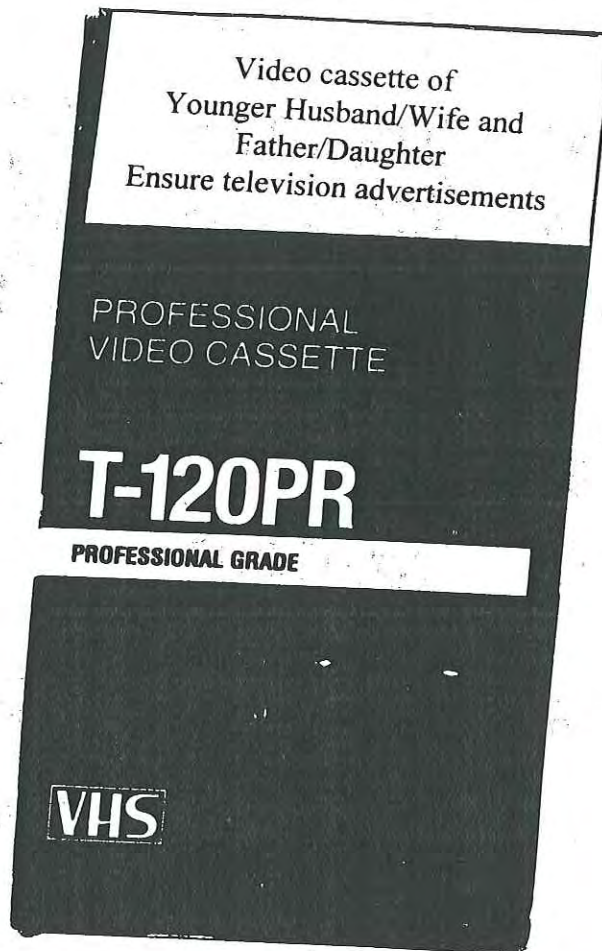


Exhibit B-2

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EXHIBIT C

SCRIPT FOR
☒ RADIO ☐ TELEVISION FROM
LCF&L

Date: 6/21/94
Client: Ross Labs\Ensure
Commercial title: "Younger Husband/Wife"
Version no: RLE-428-60
Length: :60

(MUSIC & SFX UNDER)

WIFE: Oh, boy, that water felt great!

HUSBAND: Sure did. I always feel so good after a swim.

WIFE: For 15 years, we've shared a pretty active life.

HUSBAND: I've loved every minute.

WIFE: And to help make sure we stay active, one thing we've been doing lately is to drink ENSURE.

HUSBAND: Hm Hm. See, our doctor told us that a key to being energetic and in good health is good nutrition.

WIFE: Right. And one way to help guarantee that you're getting the nutrition you need, is by drinking ENSURE.

HUSBAND: More than a vitamin supplement, ENSURE is a delicious drink that provides complete balanced nutrition.

WIFE: It's got the protein, carbohydrates, minerals and vitamins your body needs everyday to help you stay health, active, be energetic.

Exhibit C

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EXHIBIT C

HUSBAND: Drink ENSURE anytime.

WIFE: I like it as a delicious meal.

HUSBAND: I like it in between meals. ENSURE is even recommended #1 by doctors and nutritionists for complete balanced nutrition.

WIFE: So make sure the ones you love get the nutrition they need. ENSURE. To your health, dear.

HUSBAND: Uh, uh, to our health.
(SFX: CLINK)

ANNCR: Use as directed.

Exhibit C

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EXHIBIT D



The #1 Doctor Recommended Source of Nutrition.

Most doctors will tell you that a key to good health is good nutrition. But even if you've improved your diet by eating more lean meats, fruits and vegetables, you still may not be getting the balanced nutrition you need.

So how can you help guarantee that you and the ones you love get the right nutrition?

With Ensure and *New* Ensure High Protein.

Ensure is more than a vitamin supplement. It's complete, balanced nutrition in a delicious ready-to-serve drink that provides an excellent balance

of protein, carbohydrate, vitamins and minerals. In addition, *New* Ensure High Protein is low in cholesterol and low in saturated fat while being high in the nutrients you need everyday to help stay healthy, be energetic and more active. Drink your favorite Ensure anytime. Enjoy it as a healthy meal by itself

or as a healthy between-meal snack.

Ensure is even recommended #1 by doctors as a complete source of nutrition.

So make sure the ones you love get the right nutrition. Drink Ensure and drink to your health.



ENSURE



ENSURE

Exhibit D

Available in 11 Delicious Flavors

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 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 attorneys, 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 complaint, a statement that the signing of the 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 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 Abbott Laboratories is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office or place of business at One Abbott Park Road, Abbott Park, 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

DEFINITIONS

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

1. Unless otherwise specified, "*respondent*" shall mean Abbott Laboratories, a corporation, its successors and assigns, and its officers, agents, representatives and employees.

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

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 Ensure products, any other food, or any other dietary or nutritional supplement in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

A. The extent to which doctors or other professionals recommend such product for healthy adults; or

B. The recommendation, approval, or endorsement of such product by any person, profession, group, or other 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. 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, 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 Ensure products, or any other product advertised, marketed or sold as a meal replacement or meal supplement for healthy adults, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

A. That one serving of such product provides vitamins in an amount comparable to typical vitamin supplements; or

B. The absolute or comparative amount of any vitamin or any other nutrient or ingredient contained in or provided by 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.

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

IV.

It is further ordered, That respondent, and its successors and assigns, shall for five (5) 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 complaints and other communications with consumers or 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 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 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 30, 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;

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

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IN THE MATTER OF

BST ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9276. Complaint, Sept. 27, 1995--Final Order, May 30, 1997*

This final order adopts the initial decision and order issued by the Administrative Law Judge which prohibits, among other things, the maker of ABS BrakeSafe Equipment and its president from using the term ABS in connection with their retrofitted brakes and from representing that their brakes: are an antilock braking system; will qualify a vehicle for an automobile insurance discount; comply with performance standards set by the Society of Automotive Engineers or the National Highway Traffic Safety Administration; or provide antilock benefits equivalent to those provided by genuine ABS systems. In addition, the order prohibits safety claims, unless the respondents possess competent and reliable scientific substantiation.

*Appearances*For the Commission: *Theodore Hoppock.*For the respondents: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BST Enterprises, Inc., a corporation, and Michael Woodruff, individually and as an officer and director of said corporation ("respondents"), have 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 BST Enterprises, Inc., is a Nevada corporation, with its offices and principal place of business located at 3139 National Circle, Garland, Texas.

Respondent Michael Woodruff is or was at relevant times herein an officer and director of BST Enterprises, Inc. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His office and principal place of business is at 3139 National Circle, Garland, Texas.