

Complaint

IN THE MATTER OF
BUMBLE BEE SEAFOODS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3954; File No. 9823560
Complaint, June 12, 2000--Decision, June 12, 2000

This consent order prohibits Respondent Bumble Bee Seafoods, Inc. From making representation of the terms or conditions of any rebate offer and requires the company to display prominently the amount of items required for purchase to receive any rebate. The consent order defines "rebate" as cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who purchase products from the respondent, which is provided subsequent to purchase. The consent order also requires that Respondent commence a coupon program that includes the distribution of seven million, five hundred eighty-six thousand, two hundred and eight tearpad coupons that clearly offer 75¢ off any two or multi-pack Bumble Bee Solid White Albacore Tuna which an expiration date of at least six months after distribution.

Participants

For the Commission: *Don D'Amato, Rhonda Joy McLean, and BE.*

For the Respondents: *John F. Kroeger, International Home Foods, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Bumble Bee Seafoods, Inc., a corporation, (hereinafter "Bumble Bee" or "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:

Complaint

1. Respondent Bumble Bee is a Delaware corporation with its principal office or place of business at 3990 Ruffin Road, San Diego, CA 92123.

2. Respondent has advertised, offered for sale, sold and distributed food products to the public, including Bumble Bee Solid White Albacore Tuna. Bumble Bee Solid White Albacore Tuna is sold in six ounce cans, among other sizes.

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 distributed or caused to be distributed six ounce cans of Bumble Bee Solid White Albacore Tuna that are affixed with labels that include, but are not limited to, the attached Exhibit A. Copy on the face side of these labels includes the statement: "75¢ OFF Next Purchase Details Inside Label."

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that purchasers of six ounce cans of Bumble Bee Solid White Albacore Tuna affixed with the label described in Paragraph 4 can receive seventy-five cents off their next purchase of a single six ounce can of Bumble Bee Solid White Albacore Tuna.

6. In truth and in fact, purchasers of six ounce cans of Bumble Bee Solid White Albacore Tuna affixed with the label described in Paragraph 4 cannot receive seventy-five cents off their next purchase of a single six ounce can of Bumble Bee Solid White Albacore Tuna. Purchasers are not eligible for the seventy-five cents off unless they purchase five additional six ounce cans of Bumble Bee Solid White Albacore Tuna. That fact is disclosed only on the reverse side of the label, which is affixed to the can and is not accessible until after the purchase. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

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7. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twelfth day of June, 2000, has issued this complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("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 Commission's Northeast Region 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 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

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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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its rules, 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 Bumble Bee Seafoods, Inc. is a Delaware corporation with its principal office or place of business at 3990 Ruffin Road, San Diego, CA 92123.
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 Bumble Bee Seafoods, Inc., a corporation, its successors and assigns and its officers; and each of the above's agents, representatives, and employees.
2. "Rebate" shall mean cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who

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purchase products or services from respondent, which is provided subsequent to the purchase.

3. "Clearly and prominently" shall mean as follows:

- A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. ***Provided, however,*** that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.
- B. In a print advertisement, promotional material, or instructional manuals, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or, alternatively, on the first page.
- C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and

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comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. "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 any product or service in or affecting commerce, shall:

- A. Not misrepresent, in any manner, expressly or by implication, the terms or conditions of any rebate offer; and
- B. Disclose the number of products or services that must be purchased in order to qualify for any rebate offer. The disclosure shall be made clearly and prominently and in close proximity to the offer.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall commence within ninety (90) days after the service of this order a consumer tearpad coupon program that includes a national distribution of at least seven million, five hundred and eighty-six thousand, two hundred and eight (7,586,208) tearpad coupons at least five inches (5") by two and one-half inches (2½") in size that clearly and prominently offer seventy-five cents (75¢)

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off the purchase of “any two (2) cans or multi-packs” of Bumble Bee Solid White Albacore Tuna. These tearpad coupons shall be redeemable at the place of purchase, and have an expiration date of at least six (6) months after distribution. Respondent’s obligations set forth in this Subpart shall hereafter be referred to as the “Program.”

- B. Respondent agrees that if the total costs incurred in this Program (including but not limited to the costs of printing, distributing, and redeeming the tearpad coupons) do not exceed two hundred thousand dollars (\$200,000) (“Minimum Expenditure”) ninety (90) days after the expiration date on the tearpad coupon, respondent shall transfer electronically to the United States Treasury within ten (10) business days a dollar amount equal to the difference between the actual cost of the Program and the Minimum Expenditure.
- C. In the event of respondent’s failure to implement the Program in accordance with the terms of this order, the entire amount of the Minimum Expenditure, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of service of this order to the date of payment, shall immediately become due and payable. Notwithstanding any other provision of this order, respondent agrees that if it fails to meet the payment obligations set forth in this Part, respondent shall pay the costs and attorneys fees incurred by the Federal Trade Commission and its agents in any attempts to collect amounts due pursuant to this order.
- D. Respondent further agrees that the facts as alleged in the complaint filed in this action shall be taken as true in any subsequent litigation filed by the Federal Trade Commission to enforce its rights pursuant to this Part.

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III.

IT IS FURTHER ORDERED that respondent shall within ninety (90) days after the date of service of this order, send by certified mail a report, in the form of a sworn affidavit executed on behalf of the respondent to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 certifying that it has implemented the Program set forth in Part II. Within ninety (90) days of the expiration date on the Program's tearpad coupon, the respondent shall send by certified mail a report, in the form of a sworn affidavit executed on behalf of the respondent to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 setting forth in detail the manner and form it has complied with Part II of this order, including but not limited to a detailed report that specifies the costs of the Program such as monies expended printing the coupons, distributing the coupons, dispersing coupon processing fees to retailers, and redeeming the coupons.

IV.

IT IS FURTHER ORDERED that respondent 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, product labels, and promotional materials containing the representation; and
- B. 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.

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V.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any change in the corporation 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 Federal Trade 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. 20580.

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VII.

IT IS FURTHER ORDERED that respondent 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 Federal Trade 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 June 12, 2020, 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.

By the Commission.

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Bumble Bee Seafoods, Inc. ("Bumble Bee").

The proposed consent order has been placed on the public record for sixty (60) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Bumble Bee's making of a representation in the marketing and sale of canned tuna. Specifically, the face of the product label indicates that the purchaser will save seventy-five cents (75¢) on his next purchase of tuna, however, the reverse side of the label, which is affixed to the can and is not accessible until after purchase, indicates that the purchase of five additional cans of tuna is required in order to save the seventy-five cents (75¢). The proposed complaint alleges that Bumble Bee has violated Section 5 of the Federal Trade Commission Act ("FTC Act") by misrepresenting that purchasers of tuna affixed with the subject label can receive seventy-five cents (75¢) off their next purchase of a single can of tuna.

Part I of the proposed order prohibits Bumble Bee from misrepresenting the terms or conditions of any rebate offer and requires the company to disclose clearly and prominently and in close proximity to the offer the number of products that must be purchased in order to qualify for any rebate offer. The order defines "rebate" to mean cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who

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purchase products from the respondent, which is provided subsequent to purchase.

Part II A provides that Bumble Bee shall commence within ninety (90) days after the service of the order, a consumer tearpad coupon program that includes a national distribution of at least seven million, five hundred and eighty-six thousand, two hundred and eight (7,586,208) tearpad coupons at least five inches (5") by two and one-half inches (2½") in size that clearly and prominently offer seventy-five cents (75¢) off the purchase of "any two (2) cans or multi-packs" of Bumble Bee Solid White Albacore Tuna. Part II A further provides that these tearpad coupons shall be redeemable at the place of purchase, and have an expiration date of at least six (6) months after distribution. The proposed order refers to Bumble Bee's obligations set forth in Part II A as the "Program."

Part II B provides that if Bumble Bee's total costs incurred by implementing the Program do not exceed two hundred thousand dollars (\$200,000) ("Minimum Expenditure") ninety (90) days after the expiration date on the tearpad coupon, Bumble Bee shall transfer electronically to the United States Treasury within ten (10) business days a dollar amount equal to the difference between the actual cost of the Program and the Minimum Expenditure.

Part III provides that Bumble Bee shall provide to the Commission: a) within ninety (90) days after the date of service of the order, a sworn affidavit certifying that it has implemented the Program set forth in Part II; and b) within ninety (90) days of the expiration date on the Program's tearpad coupon, a sworn affidavit setting forth in detail the manner and form in which it has complied with Part II of the order, including but not limited to, a detailed report that specifies the costs of the Program.

Part IV of the proposed order contains record keeping requirements for materials related to representations covered by the proposed order. Part V of the proposed order requires

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distribution of a copy of the order to current and future officers and agents having responsibilities with respect to the subject matter of the proposed order. Part VI provides for Commission notification upon a change in the respondent and Part VII requires the respondent to keep and maintain all records demonstrating compliance with the terms and provisions of the order. Part VIII provides for the termination of the order after twenty (20) years under certain circumstances.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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IN THE MATTER OF

**SANTA FE NATURAL TOBACCO COMPANY,
INC.**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3952; File No. 9923026
Complaint, June 12, 2000--Decision, June 12, 2000

This consent order requires Respondent Santa Fe Natural Tobacco Company, Inc. to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." The order exempts Santa Fe from the disclosure requirement: (1) for cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Santa Fe possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. Respondent is also required to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." The disclosure must be included in all advertising and on packaging for herbal smoking products that represent that the product has no tobacco, unless respondent possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks.

Participants

For the Commission: *Michael Ostheimer, Shira Modell, Matthew D. Gold, Linda K. Badger, Kerry O'Brien, C. Lee Peeler, and BE.*

For the Respondents: *C. Randall Nuckolls and Mark R. Heilbrun, Long Aldridge & Norman.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Santa Fe Natural Tobacco Company, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade