

Complaint

IN THE MATTER OF

CAMPBELL MITHUN LLCCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4043; File No. 0123204*
Complaint, April 16, 2002--Decision, April 16, 2002

This consent order addresses allegedly unsubstantiated representations in television commercials created by Respondent Campbell Mithun LLC, an advertising agency, about the effects of the calcium in Wonder Bread on children's memory and brain function. The order, among other things, prohibits the respondent from representing that – as a good source of calcium – Wonder Bread helps children's minds work better, or helps children remember things, without possessing competent and reliable scientific evidence that substantiates the claim. The order also requires the respondent to possess competent and reliable scientific evidence for any claim that any bread, bread product, rolls or muffins or any of their ingredients, helps brain function or memory, or can treat, cure or prevent any disease or related health condition. In addition, the order provides that a mere statement that a product contains a particular vitamin or mineral will not, without more, be considered for purposes of this order a representation that the product can treat, cure or prevent any disease or related health condition.

Participants

For the Commission: *Richard F. Kelly, Kial S. Young, Mary K. Engle, and Joseph P. Mulholland.*

For the Respondent: *Jeffrey S. Edelstein and Elky Stone, Hall Dickler Kent Goldstein & Wood.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Campbell Mithun LLC, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

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1. Respondent Campbell Mithun LLC is a Delaware corporation with its principal office or place of business at 222 South Ninth Street, Minneapolis, Minnesota, 55402.
2. Respondent, at all times relevant to this complaint, was an advertising agency of Interstate Bakeries Corporation and prepared and disseminated advertisements to promote the sale of Wonder Bread. Wonder Bread is a “food” 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 prepared and disseminated or caused to be disseminated advertisements for Wonder Bread, including, but not necessarily limited to, the attached Exhibit A. These advertisements contain the following statements and depictions:
 - A. “PROFESSOR WONDER: Moms know calcium helps build strong bones. But did you know it helps build strong minds, too? * Neurons in your brain need calcium to transmit signals. Without it, they can be, well, a little slow. [Inside Missy’s brain, Professor Wonder sees tired neurons that have obviously not gotten enough calcium] Let’s see what happens when you give them soft, delicious Wonder Bread. [Professor Wonder, with the help of Mom, constructs a demonstration that will allow Missy to get her calcium.] A good source of calcium with vitamins and minerals. WOMAN: [After Missy takes a bite of her sandwich, Mom directs Missy to do her homework in order to show how well the calcium worked. Professor Wonder looks into her brain again.] Missy, go do your homework. [Inside Missy’s brain we see lively, active neurons.] NEURON: Let’s go, guys, time to do homework.

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PROFESSOR WONDER: Wow! I've never seen anything like it! Calcium helps you remember things, too. So remember, Wonder helps build strong bodies and minds."

* The following superscript appears in small, white type, on varying backgrounds, at the bottom of the screen, for approximately three (3) seconds: "With regular exercise and a balanced diet."

(Exhibit A) (Exhibit A is a storyboard of a thirty-second television advertisement) (*See also* Exhibit B, a videotape version of the advertisement)

5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph 4, including but not necessarily limited to the advertisements attached as Exhibit A, respondent has represented, expressly or by implication, that:

- A. As a good source of calcium, Wonder Bread helps children's minds work better, and
- B. As a good source of calcium, Wonder Bread helps children remember things.

6. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

7. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Respondent knew or should have known that the representation set forth in paragraph 6 was and is false or misleading.

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9. 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 and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission on this sixteenth day of April, 2002, has issued this complaint against respondent.

By the Commission, Commissioner Anthony recused.

WONDER

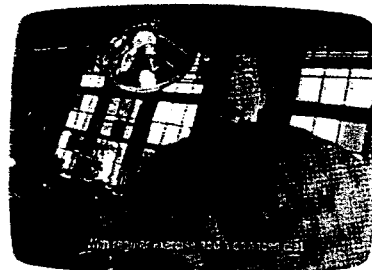
New :30 Wonder Television Commercial "Neurons"



1. (Open on a frame of a heroic Professor Wonder holding a package of Wonder Bread.)
SUPER: PROFESSOR WONDER



2. (Professor Wonder confirms what moms know, that calcium, most frequently identified with milk, helps build strong bones.)
PW: Mom's know calcium helps build strong bones.



3. (With the help of a brain prop, Professor Wonder shares new news with mom: that calcium helps build strong minds.)
PW: But did you know it helps build strong minds too.
SUPER: WITH REGULAR EXERCISE AND A BALANCED DIET.



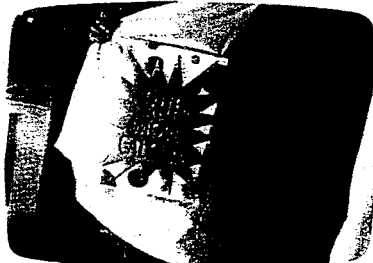
4. (In an attempt to further explain this new news, Professor Wonder uses a souped-up magnifying glass to look into Missy's brain.)
PW: Neurons in your brain need calcium to transmit signals



5. (Inside Missy's brain, Professor Wonder sees tired neurons that have obviously not gotten enough calcium.)
PW: With out it they can be, well, a little slow.



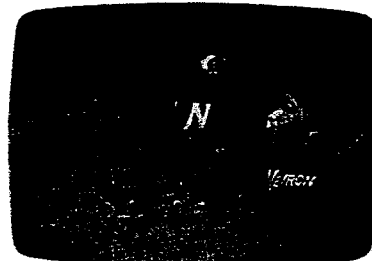
6. (Professor Wonder, with the help of mom, constructs a demonstration that will allow Missy to get her calcium.)
PW: Let's see what happens when you give them soft delicious Wonder Bread.



7. (A visual demonstration of the 200% more calcium enrichment in Wonder Bread.)
PW: A good source of calcium with vitamins and minerals.



8. (After Missy takes a bite of her sandwich, mom directs Missy to do her homework in order to show how well the calcium worked. Professor Wonder looks into her brain again.)
MOM: Missy, go do your homework.



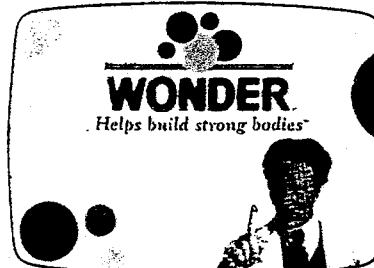
9. (Inside Missy's brain we see lively, active neurons.)
NEURON: Let's go guys, time to do homework.



10. (Professor Wonder is amazed by what he just saw.)
PW: Wow! I've never seen anything like it!



11. (As we see the active neurons, Professor Wonder restates the new news we've just learned about calcium.)
PW: Calcium helps you remember things too.



12. (Closing scene, again with Professor Wonder and the Wonder Bread logo.)
PW: So remember, Wonder helps build strong bodies, and minds!

Decision and Order

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 the 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 complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Campbell Mithun LLC is a Delaware corporation with its principal office or place of business at 222 South Ninth Street, Minneapolis, Minnesota, 55402.
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.

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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 Campbell Mithun LLC, its successors and assigns, and its officers, agents, representatives, and employees.
3. "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 advertising, promotion, offering for sale, sale, or distribution of Wonder Bread, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that:

- A. As a good source of calcium, Wonder Bread helps children's minds work better, or,
- B. As a good source of calcium, Wonder Bread helps children remember things,

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unless, at the time the representation is made, respondent possesses and relies upon 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 advertising, promotion, offering for sale, sale, or distribution of any bread, bread product, rolls, or muffins, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product or any of its ingredients, helps brain function or memory, or can treat, cure or prevent any disease or related health condition, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation;

provided, however, that a mere statement that the product contains a particular vitamin or mineral shall not, without more, be considered for purposes of this order a representation that the product can treat, cure or prevent any disease or related health condition.

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 Campbell Mithun LLC, 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:

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- A. All advertisements and promotional materials containing the representation including videotape recordings of all such broadcast advertisements;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations or other evidence in their 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 Campbell Mithun LLC, and its successors and assigns, 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.

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VI.

IT IS FURTHER ORDERED that respondent Campbell Mithun LLC, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure 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, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent Campbell Mithun LLC, and its successors and assigns, shall, within sixty (60) days from 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 April 16, 2022, 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:

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- 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, Commissioner Anthony recused.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Campbell Mithun LLC (Campbell), an advertising agency.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves allegedly unsubstantiated representations made on television advertising about the effects of the calcium in Wonder Bread on children's memory and brain function. Campbell was the advertising agency that created these commercials. According to the FTC complaint, Campbell made unsubstantiated claims that as a good source of calcium, Wonder Bread helps children's minds work better and helps children remember things. The complaint further alleges that the ad agency knew or should have known that the claims were unsubstantiated.

The proposed consent order contains provisions designed to prevent Campbell from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Campbell from making any unsubstantiated claim (a claim lacking competent and reliable scientific evidence) that as a good source of calcium, Wonder Bread helps children's minds work better, or as a good source of calcium, Wonder Bread helps children remember things.

Part II of the order requires Campbell to have competent and reliable scientific evidence for any claim that any bread, bread product, rolls or muffins or any of their ingredients, helps brain function or memory, or can treat, cure or prevent any disease or related health condition. Part II also provides that a mere statement that a product contains a particular vitamin or mineral

Analysis

will not, without more, be considered for purposes of this order a representation that the product can treat, cure or prevent any disease or related health condition.

Part III of the order notes that this order does not prohibit Campbell from making any claim that is specifically permitted in labeling pursuant to the Nutrition Labeling and Education Act of 1990. Parts IV through VII of the order require Campbell to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file a compliance report with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this 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.

Complaint

IN THE MATTER OF

PALM, INC.

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

Docket C-4041; File No. 0023332
Complaint, April 17, 2002--Decision, April 17, 2002

This consent order addresses representations that Respondent Palm, Inc. made in advertisements regarding the ability of Palm handheld computers and personal digital assistants ("PDAs") to wirelessly access the Internet and email accounts and to perform other functions. The order, among other things, prohibits the respondent from misrepresenting that any PDA or handheld Internet or email access device can perform any common business function that it cannot perform without additional products or services that consumers must purchase. The order also prohibits the respondent from misrepresenting that wireless Internet or email service coverage for such products is available everywhere or almost everywhere in the United States. In addition, the order prohibits the respondent from misrepresenting performance characteristics relating to Internet or email account access of any non-wireless PDA or handheld Internet or email access device. The order also requires the respondent – whenever it makes any claims about the ability of any PDA or handheld Internet or email access device to perform any function that requires the purchase of additional products or services – to clearly and conspicuously disclose the contours of that requirement.

Participants

For the Commission: *Jock Chung, Keith Fentonmiller, Michael Ostheimer, Mary K. Engle, and Louis Silversin.*

For the Respondent: *Kevin J. Arquit, Craig A. Waldman, and Jeffrey H. Drichta, Clifford Chance Rogers & Wells.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Palm, Inc., 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: