

IN THE MATTER OF

EGGLAND'S BEST, INC.

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

Docket C-3520. Complaint, Aug. 15, 1994--Decision, Aug. 15, 1994

This consent order prohibits, among other things, a Pennsylvania company from misrepresenting the amount of nutrients or other ingredients, such as cholesterol and fat, that is in its eggs or foods containing egg yolks, and requires the respondent to have competent and reliable scientific evidence to substantiate future health-benefit claims for such foods and, for one year, to label certain egg packages with a corrective notice stating that no studies show Egglan's eggs are different from other eggs in their effect on serum cholesterol.

Appearances

For the Commission: *Michelle K. Rusk, Anne V. Maher and Beth M. Grossman.*

For the respondent: *Eugene I. Lambert, Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Egglan's Best, Inc. ("respondent"), a corporation, 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:

PARAGRAPH 1. Respondent is a Pennsylvania corporation with its offices and principal place of business at 842 First Street, King of Prussia, Pennsylvania.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed Egglan's Best eggs and other egg products to consumers. These products are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for Eggland's Best eggs, including but not necessarily limited to the attached Exhibits A-E. These advertisements contain the following statements:

- A. **Eggland's Best. Eggs that won't increase your serum cholesterol.** Imagine! Fresh, delicious, 100% real eggs that won't increase your serum cholesterol. You read it right.
In recent clinical tests as part of a low-fat diet, even a dozen Eggland's Best eggs a week caused no increase in serum cholesterol even though they contain about as much cholesterol as other eggs.
Know what that means? Now you can eat real eggs again.
So go ahead, enjoy! Cut out the coupon below and save 35¢ on real eggs that won't increase your serum cholesterol.
Eggland's Best. Now you can eat real eggs again.
[Exhibit A (Print: "Eggs That Won't Increase Your Serum Cholesterol")]
- B. You can eat eggs again . . . and not increase your serum cholesterol.
Introducing Eggland's Best. They're fresh, real eggs. And in clinical tests in a low-fat diet even twelve a week caused no increase in serum cholesterol They're special eggs from specially fed hens. . . .
Eggland's Best. Now, you can eat real eggs again.
[Exhibit B (TV: "Egg Dishes," Ver. 3)]
- C. Do you remember eating eggs every day? Then there was all this cholesterol business. Well, now we can eat eggs again without worrying about raising our cholesterol.
New Eggland's Best eggs are fresh, real eggs that won't increase serum cholesterol . . . even though they contain about as much cholesterol as other eggs. In recent clinical tests, as part of a low-fat diet, people ate as many as twelve Eggland's Best eggs a week . . . and didn't increase their serum cholesterol.
Eggland's Best eggs come from very specially fed hens, you see.
Hens that eat no animal fat. Just healthy grains, extra Vitamin E and a special all-natural supplement that's rich in minerals. Plus canola oil, the oil lowest in saturated fat. So now there's a delicious, honest-to-goodness fresh egg that we can enjoy without worrying about cholesterol.
Now we can eat real eggs again!
[Exhibit C (Radio: "Hattie," Rev. 3)]
- D. If you love eggs, but cholesterol has put you on a lowfat diet, here's a way to turn that diet sunny side up.
Introducing Eggland's Best, eggs from specially fed hens.
Like ordinary eggs, they contain cholesterol. Yet in clinical tests, people ate twelve Eggland's Best eggs a week as part of a low-fat diet and showed no increase in their serum cholesterol.
Try Eggland's Best. Your cholesterol-conscious diet can now have a sunny side. [Exhibit D (TV: "Put Back On," 93 Rev.)]
- E. **It's simple. When the hens eat better, you eat better, too.**
Introducing Eggland's Best. Premium eggs from hens fed a premium diet.

Unlike ordinary eggs, Egglan's Best are laid by hens that eat no animal fat. Just lots of healthy grains, extra Vitamin E and a little canola oil -- the oil lowest in saturated fat.

[Exhibit E (Print: "It's Simple")]

PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that:

- A. Eating Egglan's Best eggs will not increase serum cholesterol.
- B. Eating Egglan's Best eggs will not increase serum cholesterol as much as eating ordinary eggs.

PAR. 6. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

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

PAR. 8. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that clinical studies have proven that adding twelve Egglan's Best eggs per week to a low-fat diet does not increase serum cholesterol.

PAR. 9. In truth and in fact, clinical studies have not proven that adding twelve Egglan's Best eggs per week to a low-fat diet does not increase serum cholesterol. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits C and E, respondent has represented, directly or by implication, that:

- A. Eggland's Best eggs are low in saturated fat.
- B. Eggland's Best eggs are lower in saturated fat than ordinary eggs.

PAR. 11. In truth and in fact:

- A. Eggland's Best eggs are not low in saturated fat.
- B. Eggland's Best eggs are not lower in saturated fat than ordinary eggs.

Therefore, the representations set forth in paragraph ten were, and are, false and misleading.

PAR. 12. 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.

Commissioner Owen dissenting.

EXHIBIT B

Ayer

NW Ayer Incorporated
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7498
212-474-5000
Fax: 212-474-5400

EXHIBIT B

CLIENT EGGLAND'S BEST
PRODUCT Eggs
TITLE "Egg Dishes Vers. 3"
NUMBER ZAYA 2021 ***AS PRODUCED***

PROGRAM
FACILITIES TV
DATE 7/27/92
LENGTH :30

VIDEO

AUDIO

OPEN ON CU OF MAN TALKING TO HIMSELF
CUT TO CU L/R PAN OF TWO EGGS IN PAN
CUT TO QUICK PAN OF MAN TALKING
CUT TO CU OF POACHED EGG BEING LIFTED
OUT OF BOILING WATER
CUT TO L/R PAN OF EGGLAND CARTON
CUT TO CU OF WHOLE EGGS FALLING INTO
BOILING WATER
CUT TO ECU OF HARD-BOILED EGG BEING
PEELED
CUT TO PLATE OF EGGS AND POTATOES
CUT TO HARD-BOILED EGG BEING SLICED
CUT TO L/R PAN OF FULL EGG CARTON
CUT TO CU OF SCRAMBLED EGGS BEING PUT
ON MUFFIN
CUT TO CU OF MAN TALKING
CUT TO RAW EGGS BEING MIXED IN BOWL
CUT TO MUSHROOMS BEING PUT IN OMELET
CUT TO CU OF MAN
CUT TO ECU OF EGGLAND LOGO ON EGGS
CUT TO SHOT OF EGGLAND'S BEST CARTON.
SUPER: NOW YOU CAN EAT REAL EGGS AGAIN.


(MUSIC THROUGHOUT)
MAN OC: "Two eggs over easy."
AVO: You can eat eggs again.
MAN OC: "No wait...poached!"
AVO: and not increase your serum cholesterol.
Introducing Eggland's Best.
They're fresh.
real eggs.
And in
clinical tests in a
lowfat diet even twelve a week
caused no increase in serum cholesterol.
MAN OC: "An omelet."
AVO: They're special eggs
from specially
fed hens.
MAN OC "Sunnyside...that's it!"
Eggland's Best.
Now, you can eat real eggs again

Complaint

EXHIBIT B

EXHIBIT B - P. 2

EXHIBIT B - P. 2

1. G.A. BOCK/EGGLAND'S BEST EGGS/EGG BEATERS

 CUT TO MAN IN KITCHEN TENDING HOT LOGS.
 VOICE: BOCK'S MAN
 BOCK: The eggs were great.

2. CUT TO FETTER BOGS BEING FLIPPED.
 VOICE: You can get eggs right!

3. CUT BACK TO MAN AS HE CHANGES HIS EGG.
 BOCK: He said: "Pardon."

4. CUT TO THE EGGLAND'S BEST EGGS FALLING THROUGH ROLLING WATER.
 They're fresh, real eggs...

5. CAMERA PANS OVER TOP OF EGGLAND'S BEST CAPTION.
 VOICE: Introducing Eggland's Best.

6. CUT TO CO OF PACKED EGGS BEING LIFTED OUT OF THE ROLLING WATER.
 VOICE: AND ONE EGGLAND'S BEST
 BETTER CHOICE!

7. CUT TO A BASKET OF EGGS BEING SLICED.
 ...in a simple way...

8. CUT TO A BASKET OF EGGS BEING SLICED INTO
 FLAVORFUL EGGS...
 ...in a simple way...




9. CUT TO MAN IN KITCHEN. HE'S CHANGING HIS EGG.
 BOCK: He said: "Pardon."

10. CUT TO EGGLAND'S BEST EGGS IN AN OPEN CAPTION.
 VOICE: Introducing Eggland's Best.

11. CUT TO SCRAMBLED EGGS BEING SLICED ON A PLATE.
 VOICE: Introducing Eggland's Best.

EXHIBIT B

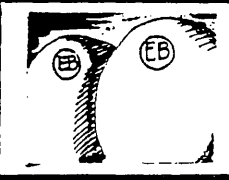

C. L. BOCK/EGGLAND'S BEST BOCK/EGG STICKS

CUT TO BOCK BEING FLIPPED IN A KILLING BOA.
They're special eggs

CUT TO AN OMELETTE BEING FLIPPED.
...from specially fed hens.

CUT BACK TO BOCK IN HIS KITCHEN.
BOCK: ...can you have a sunny side.
BOCK: Sure, sure! That's it.

KEEP PULLING BACK TO REVEAL EGG'S SLEAZEBALL BAKED BOCK.
Eggland's Best.

CUT TO BEAUTY BOCK IN EGGLAND'S BEST PACKAGE.
How you can get great eggs again!

Complaint

118 F.T.C.

EXHIBIT C

EXHIBIT C

STRACHAN-McMILLIN
WORLDWIDE PLAZA

WORLDWIDE PLAZA
 120 EIGHTH AVENUE, 1801 LL
 NEW YORK, N.Y. 10019-7498
 TEL: 474-6966 FAX: 474-5299
 FAX: 474-5895

CLIENT EGGLAND BEST EGGS

PROGRAM

PRODUCT SAME

FACILITIES RADIO

TITLE HATTIE

DATE August 24, 1992

NUMBER 08-0792 AS PRODUCED

LENGTH :60

Track #7

HATTIE: Hi, this is Hattie Winston. Do you remember eating eggs every day? Then there was all this cholesterol business. Well, now we can eat eggs again without worrying about raising our cholesterol.

New Egglan*d's Best* eggs are fresh, real eggs that won't increase serum cholesterol...even though they contain about as much cholesterol as other eggs. In recent clinical tests, as part of a low-fat diet, people ate as many as twelve Egglan*d's Best* eggs a week...and didn't increase their serum cholesterol.

Egglan*d's Best* eggs come from very specially fed hens, you see.

Hens that eat no animal fat. Just healthy grains, extra vitamin E and a special all-natural supplement that's rich in minerals. Plus canola oil, the oil lowest in saturated fat. So now there's a delicious, honest-to-goodness fresh egg that we can enjoy without worrying about cholesterol.

Now we can eat real eggs again!

ANNCR: Look for the initials "EB" on every Egglan*d's Best* egg.

APPROVED

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Complaint

EXHIBIT D

EGGLAND'S BEST
130 TV
"PUT BACK ON"
1/15/93
AS PRODUCED

EXHIBIT D

Pulp White ZAYA 3004

MUSIC:

UNDER THROUGHOUT

V.O.:

If you love eggs, but
cholesterol has put you on a low-fat diet...
here's a way to turn that diet sunny side up.

Introducing Egglan's Best, eggs from
specially fed hens.

Like ordinary eggs, they contain cholesterol.
Yet, in clinical tests, people ate 12 Egglan's
Best eggs a week as part of a low-fat diet
and showed no increase in their serum
cholesterol.

Try Egglan's Best.
Your cholesterol-conscious diet can now have a
sunny side.

EXHIBIT D

EXHIBIT D - p. 2

EGGLAND'S BEST
"PUT BACK ON"
150%

OPEN ON ECU EGG IN SILHOUETTE.
MUSIC UNDER THROUGHOUT.
Answer to: If you love eggs...

EGG ROTATES TO REVEAL "EB" LOGO.
but cholesterol has put you on a low-fat diet...

CUT TO HAND CRACKING EGG IN SLOW-MOTION.
here's a way to turn that diet...

CUT TO SUNNY SIDE UP IN PAN.
sunny side up...

CUT TO L/R PAN EGGLAND WHITE EGG CARTON.
Introducing Eggland's Best.

CUT TO ECU OF HARD-BOILED WHITE EGG BEING PEELED.
eggs from specially fed hens.

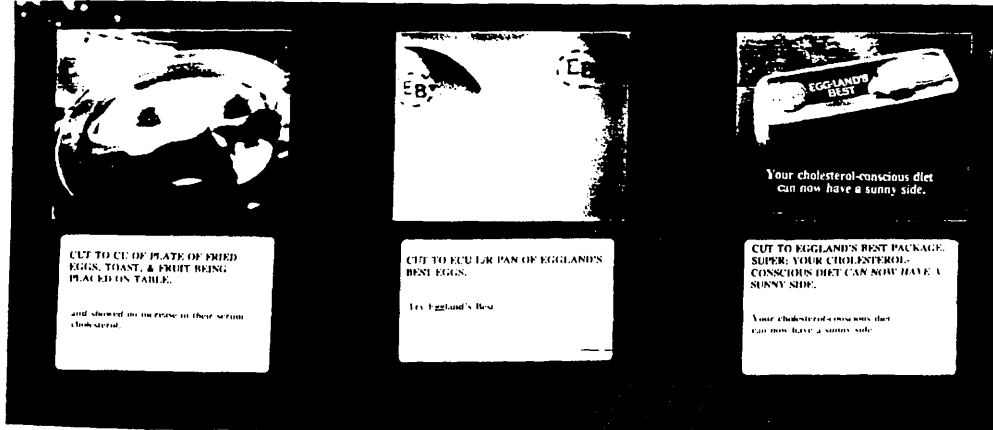
CUT TO CU POACHED EGG BEING LIFTED FROM BOILING WATER.
Like ordinary eggs, they contain cholesterol.

CUT TO L/R PAN OF EGGS IN CARTON.
Yes, in clinical tests, people ate 12 Eggland's Best eggs a week.

CUT TO SPANISH OMELET IN PAN.
as part of a low-fat diet

EXHIBIT D

EXHIBIT D - p. 3



Complaint

118 F.T.C.

EXHIBIT E

28701

EXHIBIT E

It's simple. When the hens eat better, you eat better, too.

Introducing Egg-land's Best® Premium eggs from hens fed a premium diet. Unlike ordinary eggs, Egg-land's Best are laid by hens that eat no grains, extra Vitamin E and a little canola oil—the oil lowest in saturated fat.



Ask for them at one of the fine restaurants listed in this book. And find out just how good an egg can be.

Introducing Egg-land's Best.

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UTAH MENU GUIDE AD -- RAN JULY 1992

CR NAT P20003
8" x 5"
Utah Menu Directory—July 1992

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 violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments 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 Eggland's Best, Inc. is a corporation organized, existing and doing business under and by the virtue of the laws of the State of Pennsylvania, with its offices and principal place of business located at 842 First Street, King of Prussia, Pennsylvania.
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

DEFINITION

For purposes of this order, the phrase "food containing egg yolk" shall not include "medical foods" as defined by 21 U.S.C. 360ee (b)(3) as currently in effect as of the date of this order.

I.

It is ordered, That respondent Egglan's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of cholesterol, total fat, saturated fat or any other nutrient or ingredient in such food.

II.

It is further ordered, That respondent Egglan's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative effect of such food on serum cholesterol, whether or not such food is consumed as part of an unrestricted diet or as part of any specific dietary regimen, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation; provided, however, that any such representation that is specifically permitted in labeling for such food by regulations promulgated by the Food and

Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated as required by this paragraph. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That respondent Egglan's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the absolute or comparative health benefits of such food, including but not limited to its effect on heart disease, unless at the time of making the representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating such representation; provided, however, that any such representation that is specifically permitted in labeling for such food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to be substantiated as required by this paragraph.

IV.

It is further ordered, That respondent Egglan's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any food in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the

existence, contents, validity, results, conclusions or interpretations of any test or study.

V.

It is further ordered, That respondent Egglan's Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of eggs or any food containing egg yolk in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to disclose clearly and prominently in any advertisement or promotional material that refers, directly or by implication, to the absolute or comparative amount of cholesterol, fat or saturated fat in such food, the average cholesterol content of such food expressed in the following terms:

1. The number of milligrams; and
2. The percentage of "Maximum Daily Value."

The statements required by subparagraphs A.1 and A.2 of this Part shall appear in close proximity. For purposes of this Part, the term "Maximum Daily Value" shall mean: (1) the daily reference value or other daily intake limit for cholesterol established in an effective final regulation of the Food and Drug Administration; or (2) in the absence of such a regulation, the daily intake limit of cholesterol advised by any one of the following three organizations: the National Academy of Sciences, the Surgeon General of the Public Health Service, or the American Heart Association. In the event that the Food and Drug Administration does not have a final effective regulation and none of the three named organizations advises that daily cholesterol intake be limited to a specific maximum amount, subparagraph A.2 of this Part shall not apply. Provided, however, that this Part will not be deemed to apply to any representation that is specifically permitted in labeling for such food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

