

IN THE MATTER OF

SHAKLEE CORPORATION

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

Docket C-2613. Complaint, Dec. 5, 1974 - Decision, Dec. 5, 1974

Consent order requiring an Emeryville, Calif., distributor of food supplements, cosmetic and bath, and household products, among other things to cease misrepresenting the nutritional value of its concentrated protein supplement; failing to include a disclosure notice in advertisements which warns against the use of the product by infants under 1 year of age without prior consultation with a physician; misrepresenting the nutritional content of its product; and furnishing means or instrumentalities of misrepresentation or deception to its distributors.

Appearances

For the Commission: *Harrison J. Sheppard, Robert B. Galler and Barry I. Miller.*

For the respondent: *L. G. Farren, Emeryville, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Shaklee Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Shaklee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1900 Powell Street, Emeryville, Calif.

PAR. 2. Respondent is engaged in the advertising, offering for sale, and sale of food supplements, cosmetic and bath products, and household products. The products are manufactured by respondent or by others according to respondent's specifications, and are marketed through over 100,000 sales persons, who operate businesses designated "Distributorships," "Assistant Supervisorships" and "Supervisorships," located in all fifty states, and who sell to consumers at their homes and offices. In the course and conduct of the aforesaid business, respondent is now and for sometime past has been engaged in the publishing,

Complaint

dissemination and distribution of advertisements, promotional materials and labels concerning the uses, purposes, utility, characteristics and effects of protein supplements, which come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its business, respondent has disseminated, and caused the dissemination of, certain advertisements, promotional literature and labels concerning its protein supplement called "Instant Protein," by the United States mails, and has distributed its protein supplements for the purpose of purchase and consumption by consumers in other States of the United States, and maintains and at all times mentioned herein has maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, and causes, and at all times mentioned herein has caused, the dissemination of advertisements by the United States mails, and for the purpose meaning of Sec. 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing others to purchase said protein supplements, respondent has made, and is now making, directly or by implication, in advertisements statements and representations concerning said protein supplements. Typical and illustrative of such statements and representations are the following:

In addition - and mothers tell us this is one of the finest features - add SHAKLEE INSTANT PROTEIN to baby's food from the very first day solids are given. It is exceptionally digestible, and you can then be sure your baby's diet contains ALL of the essential amino acids necessary for sturdy growth and good health.

"PROTEIN POVERTY", according to eminent clinicians, may lead to a serious amino acid deficiency which often appears in those of teenage and those of advanced years. SHAKLEE INSTANT PROTEIN, due to its pleasant taste and conveniently drinkable form, is an ideal way to help eliminate such deficiency.

There are various reasons why one might be deficient in protein of high biological value. In older people, "PROTEIN POVERTY" may arise because of poor appetite, inability to properly digest heavy protein foods, loss of teeth or ill-fitting dentures that prevent proper mastication. Youngsters may be encouraging deficiency through careless eating habits. Regardless of the cause, a dietary evaluation of protein intake is in order.

An exclusive research formula, INSTANT PROTEIN was designed especially for those who have encountered "PROTEIN POVERTY." It is a scientific approach to the problem of helping to retard amino acid deficiency, so often a cause of "last wasting years".

SHAKLEE CORPORATION

1593

Complaint

Not all who are old in years are old in spirit and appearance. Some are full of life—full of energy and desire to accomplish their purpose. On the other hand, certain ones of advanced years are marked by symptoms which typify old age. Why is this? What is the underlying cause? It may lie in living habits, lack of interest in hobbies, etc.—but it may also be aggravated by prolonged and complex deficiencies of protein, vitamins and minerals.

* * * * *

For optimum nutrition during childhood—during the prime of life—in the twilight years—your body needs ALL of the essential amino acids for repair and maintenance. It will get them from only one source: the food you eat. Your present and your future are up to you.

ONE OUNCE PER DAY
(approx. three tablespoonfuls)
as a dietary supplement supplies

Protein (96.6% Dry Basis)	15 grams			
LECITHIN	1.3 grams		MDR*	
		Adult	6-12	1-6
		Years	Years	Years
Vitamin B-1, primary grown yeast	2.0 mg.	200%	266%	400%
Vitamin B-2, primary grown yeast	2.0 mg.	166%	222%	222%
Vitamin B-6, primary grown yeast	0.5 mg.	**	**	**
Niacin, primary grown yeast	10.0 mg.	100%	133%	200%
Pantothenic Acid, primary grown yeast	2.0 mg.	**	**	**
Calcium	500.0 mg.	67%	67%	67%
Phosphorus	250.0 mg.	33%	33%	33%
Iron	12.0 mg.	120%	120%	160%

*Minimum Daily Requirement

**Minimum Daily Requirement (MDR) has not been established

The protein ingredient of one ounce of Instant Protein w/ Cocoa Bean provides approximately the following amounts of the essential amino acids:

Methionine	135 mg.
Isoleucine	690 mg.
Leucine	1170 mg.
Phenylalanine	780 mg.
Lysine	855 mg.
Threonine	540 mg.
Tryptophan	165 mg.
Valine	675 mg.

Complaint

Ingredients: Soy protein isolate, washed raw sugar, cocoa bean powder, lecithin, calcium carbonate, tricalcium phosphate, calcium carrageenan, primary grown yeast, ferrous fumarate natural flavors.

Calories per tablespoon 37

SHAKLEE INSTANT PROTEIN w/ Cocoa Bean is a biologically complete protein drink that is especially compounded from soy-bean lecithin minerals and vitamins.

DIRECTIONS: to a glass of milk, add Instant Protein w/ Cocoa Bean to taste. Stir and serve. Use a blender to create a wide variety of beverages. Whirled with ice cream or yogurt, Instant Protein w/ Cocoa Bean creates a delicious variety of nutritious beverages.

Dist. by Shaklee Marketing Corp. Hayward, CA 94540 Made in U.S.A.

Exhibit 2

SHAKLEE

THE NAME THAT IS THE STAMP OF QUALITY

**INSTANT
PROTEIN**

with powdered
COCOA BEAN
Lecithin, Vitamins and
Minerals

A flavorful drink for young and old!

NET WT. 36 OZ.
(2lb.4 oz.)
1.02 kg

SHAKLEE CORPORATION
Complaint

1593

PAR. 5. Through the use of said advertisements and labels and others similar thereto not specifically set out herein, disseminated as aforesaid, respondent has represented and is now representing, directly and by implication, that:

1. The addition of one ounce per day of "Instant Protein" to supplement the normal diet of infants in the United States from the first day such infants take solid foods is desirable or recommended for sturdy growth and good health.
2. "Instant Protein" is 96.6 percent protein.
3. Health problems of the elderly including but not limited to those involving lack of energy and lack of desire to accomplish goals can be alleviated by consumption of "Instant Protein."

PAR. 6. In truth and in fact:

1. Without medical authorization, the addition of a concentrated protein product such as "Instant Protein," in the amount of one ounce per day to the normal diet of infants under the age of one year, and particularly those who are dehydrated, can cause serious adverse effects, such as fever or serious illness.
2. "Instant Protein" contains substantially less than 96.6 percent protein.
3. Health problems of the elderly including but not limited to those involving a lack of energy and desire to accomplish goals, cannot be alleviated by consumption of a concentrated protein product such as "Instant Protein." Such problems are clinical in nature and should properly be diagnosed and treated by a physician.

PAR. 7. Furthermore, respondent deceptively failed to disclose, in advertising directed toward the elderly, that a concentrated protein product such as "Instant Protein," can be detrimental to those persons most specifically the elderly, suffering from liver or kidney dysfunction, and deceptive in material respects and constituted, and failures to disclose material facts in said advertisements, promotional materials, and labels referred to in Paragraph Four were and are false, misleading, "false advertisements," as that term is defined in the Federal Trade Commission Act, and the statements, representations, and failures to disclose material facts as set forth in Paragraphs Five, Six, and Seven were, and are, false, misleading, and deceptive acts or practices.

PAR. 8. Therefore, the statements, representations, and failures to disclose material facts in said advertisements, promotional materials, and labels referred to in Paragraph Four were and are false, misleading, and failures to disclose material facts as set forth in Paragraphs Five, Six, and Seven were, and are, false, misleading, and deceptive acts or practices.

PAR. 9. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of protein supplements.

PAR. 10. The use by respondent of the aforesaid false, misleading, and deceptive statements, representations and practices, and its failure to

disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief, and into taking unnecessary risks with respect to their health and well-being and that of others.

PAR. 11. The respondent's acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondent's competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts or practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

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 San Francisco Regional Office 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 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, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Proposed respondent Shaklee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1900 Powell Street, Emeryville, Calif.

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

For purposes of this order, the term "Instant Protein" refers to the product of that name presently marketed by respondent and any other concentrated protein product for infant use.

For purposes of this order, a "concentrated protein product for infant use" is any protein food product marketed for general public or family use which (a) contains ten or more grams of protein per ounce in the form in which it is sold at retail and (b) is readily ingestible by infants one year of age or less (when taken as is or when added to water, juice, or milk) in quantities sufficient to provide at least fifty percent of the infant's daily protein needs (RDA).

It is ordered, That respondent Shaklee Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, or through its distributors or franchisees, if any, in connection with advertising and labeling, offering for sale, or sale of "Instant Protein," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that, in the absence of medical authorization "Instant Protein" should be added to the diets of infants under one year of age.

B. Failing to disclose the following warning clearly and conspicuously, *verbatim* on the label of "Instant Protein:"

NOTICE: Should not be used by infants under one year of age without consulting a physician.

For purposes of this order, the above notice shall be deemed to be clear and conspicuous if the smallest letter of the notice is no smaller than one-sixteenth of an inch and the notice is in no way obscured by background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

C. Failing to disclose for a period of two years from the effective date of this order, the following warning clearly and conspicuously (in print of a size and type no less prominent than the majority of the text of the document in which it is required to be contained), *verbatim*, in any advertising and promotional materials (excluding labels) for "Instant Protein," excepting only those advertisements or promotional materials whose text relating to "Instant Protein" is

limited to the name and price of the product and a general description of the product of no more than one sentence or phrase:

NOTICE: Should not be used by infants under one year of age or persons with liver or kidney diseases without consulting a physician;

Provided, however, That the words "or persons with liver or kidney diseases" may be omitted unless the particular advertising or promotional material is directed in whole or in part, directly or by implication, toward promoting the use of "Instant Protein" by the elderly as a specific consumer age group; and *Provided further,* That, in any advertisement or promotional material (other than the kinds of limited advertising previously referred to in this paragraph of this order) consisting of no more than four sentences of text relating to "Instant Protein," and not directed, explicitly or by implication, to infants, young children or the elderly as users of the product, the notice may be limited to the following:

Use as directed by label.

D. Misrepresenting in any manner the percentage of protein in "Instant Protein."

E. Representing, directly or by implication, that health problems of the elderly, including but not limited to those involving lack of energy and desire to accomplish goals, can be alleviated by consumption of "Instant Protein;" *Provided, however,* That this provision shall not bar the representation that the use of "Instant Protein" may be helpful in combating protein deficiency in the elderly.

It is further ordered, That:

F. Respondent, which has heretofore recalled its IP-14 leaflet advertising "Instant Protein," take any and all actions necessary and available to it to obtain the return to it of all copies, if any, of said leaflet remaining in the possession of its distributors of which respondent's officers or counsel have or obtain actual knowledge.

G. Respondent shall not be in violation of this order as the result of actions of its distributors or franchisees, if any, unless respondent's officers or counsel obtain actual knowledge that an act, which would otherwise be a violation by the respondent of the other provisions of this order, has been committed by such distributor or franchisee and respondent has failed within a reasonable period to take such action as respondent deems appropriate to cause such acts to be terminated; *Provided,* That respondent shall be in violation of this order if respondent's officers or counsel obtain actual knowledge that an act which would otherwise be a violation by the

respondent of the other provisions of this order has been committed on more than one occasion (at least one of which occasions having occurred after respondent took appropriate action under the preceding clause) by such distributor or franchisee and respondent has failed within a reasonable period to take any and all actions, including but not limited to termination of such distributor or franchisee, necessary and available to it to cause such acts to be terminated.

H. Respondent shall be in compliance with any provision of this order which is the subject of any of the provisions of a Trade Regulation Rule hereafter adopted by the Commission regulating the advertising or labelling of concentrated protein products such as "Instant Protein," if respondent is in compliance with such provisions of such Trade Regulation Rule.

I. Respondent shall forthwith cease and desist from furnishing distributors or others with any means, instrumentalities, directions or instructions whereby the public may be misled or deceived as to any of the matters or things prohibited by this order.

J. Respondent shall notify the Commission at least 30 days prior to any proposed change in the respondent corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

K. Respondent shall forthwith distribute (1) a copy of this order to each of its operating divisions; and (2) a notice to each of its distributors and franchisees, if any, notifying them of the provisions of Paragraphs A, D, E and G of this order.

L. Respondent shall within sixty (60) days after service upon it of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

84 F.T.C.

IN THE MATTER OF

BEATRICE MAGGIE EDWARDS TRADING AS NEW FACES

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF SECS.
5 & 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2609. Complaint, Dec. 9, 1974—Decision, Dec. 9, 1974*

Consent order requiring an Atlanta, Ga., promoter of a medical process involving the use of certain caustic chemical solutions on the face or body for the removal of wrinkles and blemishes, among other things to cease misrepresenting the nature, safety and results of its skin peeling process. Further, respondent is required to have prospective customers consult a physician prior to signing any contracts and to allow customers who have signed a contract, 48 hours in which to cancel the contract with full refund rights. Further, respondents must devote 15 percent of its advertising and oral sales presentation to disclosures of the inherent dangers and other material facts involved with the treatment.

*Appearances*For the Commission: *Robert L. Osteen, Jr.*For the respondent: *Raymond Alhadeff, Atlanta, Ga.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Beatrice Maggie Edwards, an individual trading and doing business as New Faces, hereinafter referred to as the respondent, has violated Sections 5 and 12 of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Beatrice Maggie Edwards, is an individual trading and doing business as New Faces, with her office and principal place of business located at 1459 Peachtree Street, N.E., Atlanta, Ga.

Beatrice Maggie Edwards formulates, directs and controls the policies, acts and practices of her business, New Faces, including the acts and practices hereinafter set forth. She resides at 1700 Henderson Avenue, Long Beach, Calif.

PAR. 2. Respondent advertises, offers for sale and sells to the general public a medical process called the New Faces treatment, hereinafter sometimes referred to as the respondent's treatment, which involves

the application of a certain caustic chemical solution to the face, or various other parts of the bodies of her clients for the purported purpose of removing or diminishing manifestations of aging such as wrinkles, lines, folds and spots and undesirable features such as blemishes, large pores, and acne marks by peeling the upper layers of skin from the treated areas. After the solution is applied to the patient's skin, bandages are then applied to the treated areas and are allowed to remain for several days; after which time, the bandages are removed and the upper layers of skin, destroyed by the process, are peeled away.

PAR. 3. Respondent's medical treatment constitutes either a drug or a cosmetic, or both, as defined in Section 15(c) and (e) of the Federal Trade Commission Act, 15 U.S.C. Section 55(c) and (e).

PAR. 4. In the course and conduct of her business as aforesaid, respondent advertises in newspapers of general circulation which are distributed by mail in states other than the state in which they are printed. In addition, advertising materials, contracts and agreements, business correspondence, monies and other documents travel by mail between respondent's place of business in Georgia and patients in other states of the United States. By virtue of these activities, respondent has maintained a substantial business in commerce, as "commerce" is used in Section 5 of the Federal Trade Commission Act. Also, respondent has disseminated and caused to be disseminated advertisements by United States mails, and in commerce by other means, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, 15 U.S.C. Section 52(a)(1). Further, respondent's advertisements have the purpose of inducing, or are likely to induce, directly or indirectly, the purchase in commerce of the New Faces treatment, within the meaning of Section 12(a)(2) of said Act, 15 U.S.C., Section 52(a)(2).

PAR. 5. In the course and conduct of her business, and for the purpose of inducing the purchase of her New Faces treatment, respondent has made and is now making numerous statements and representations in advertisements in newspapers of general circulation, in other promotional materials and during oral sales presentations. In the said advertising during the oral sales presentations, and at other times the respondent has represented and is now representing directly or by implication that:

1. Respondent's treatment is merely a cosmetic process and is not medical or surgical in nature.
2. Respondent's treatment is generally painless and involves no abrasives or caustic chemicals.

