

or placing of advertising, and secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That each of the individual respondents named herein promptly notify the Commission of the discontinuance of his or her present business or employment and of his or her affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he or she is engaged as well as a description of his or her duties and responsibilities.

It is further ordered, That respondents shall, within sixty (60) days after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

BRIDGESTONE TIRE COMPANY OF AMERICA, INC.

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

Docket C-2734. Complaint, Sept. 30, 1975-Decision, Sept. 30, 1975

Consent order requiring a Torrance, Calif., distributor and seller of tires, among other things to cease misrepresenting the safety or performance characteristics of any automobile tires, and misrepresenting any generalized safety claims. Further, the respondent is required to have a "reasonable basis" in substantiation of claims regarding the safety performance characteristics of "any product."

Appearances

For the Commission: *Bruce J. Parker.*

For the respondents: *Anthony Liebig, Lillick, McHose & Charles,*
Los Angeles, 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 Bridgestone Tire Company of America, Inc., 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 Bridgestone Tire Company of America, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its principal offices and place of business located at 2160 W. 190th St., Torrance, Calif.

PAR. 2. Respondent Bridgestone Tire Company of America, Inc., is now, and for some time last past has been, engaged in the distribution, sale, and advertising of various rubber products including automobile tires.

PAR. 3. Respondent Bridgestone Tire Company of America, Inc., causes the said products, when sold, to be transported from its place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in or affecting commerce. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its said business respondent has disseminated and caused the dissemination of advertisements concerning the aforementioned products including automobile tires in or affecting commerce by means of advertisements printed in magazines and newspapers distributed by the mail and across State lines and transmitted by television and radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products including automobile tires.

PAR. 5. Among the advertisements so disseminated or caused to be disseminated by respondent is a print advertisement attached as Exhibit A.

PAR. 6. Through the use of the aforesaid statements and representations made in Exhibit A, respondent represented and is now representing, directly or by implication, that the RD-170V steel-belted radial tire is the best radial tire in America.

PAR. 7. At the time respondent made the representation as alleged in Paragraph Six, respondent did not possess and rely on a reasonable basis consisting of competent scientific tests which demonstrate that the RD-170V steel-belted radial tire is superior in terms of overall performance to all other radial tires in America. Therefore, the making of said representation as alleged in Paragraph Six constituted, and now constitutes, an unfair and deceptive act or practice in and affecting commerce.

PAR. 8. Further, through the use of the aforesaid statements and

representations made in Exhibit A, respondent represented and is now representing, directly or by implication, that the RD-170V steel-belted radial tire is superior to all other radial tires in America with respect to the following characteristics:

1. Puncture protection;
2. Cornering and stopping; and
3. Gas mileage.

PAR. 9. Further, through the use of the aforesaid statements and representations made in Exhibit A respondent represented and is now representing, directly or by implication, that the RD-170V steel-belted radial tire provides a degree of long-run security and comfort that is rare in all other radial tires in America.

PAR. 10. At the time respondent made the statements and representations as alleged in Paragraphs Eight and Nine, respondent did not possess and rely on a reasonable basis consisting of competent scientific tests for making said statements and representations. Therefore, the making of said statements and representations as herein alleged constituted, and now constitute, unfair and deceptive acts or practices in or affecting commerce.

PAR. 11. In the course and conduct of the aforesaid business, and at all times mentioned herein, respondent Bridgestone U.S.A. has been and now is in substantial competition in or affecting commerce with corporations, firms, and individuals engaged in the sale and distribution of automobile tires of the same general kind and nature as that sold by respondent.

PAR. 12. The use by respondent of the aforesaid false, misleading, deceptive or unfair statements and representations as alleged herein has had, and now has the capacity and tendency to mislead members of the consuming public into the purchase of substantial quantities of the RD-170V steel-belted radial tire sold and distributed by respondent Bridgestone Tire Company of America, Inc. Further, as a result thereof, substantial trade is being unfairly diverted to respondent Bridgestone Tire Company of America, Inc., from its competitors.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent Bridgestone Tire Company of America Inc.'s competitors, and constituted and now constitute, unfair and deceptive acts or practices and unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

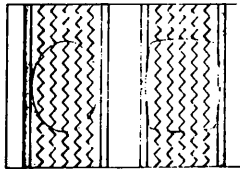
The best radial tire in America?

EXHIBIT A

Now that radial rather than ordinary bias ply tires are becoming the safer-driving standard for thoughtful motorists, just what does it take to be tops in this radial revolution?

Among other things, superior wear—up to 40,000 miles or better. First rate puncture protection. Superior cornering and stopping. A quiet, comfortable ride and noticeably better gas mileage. And a price that keeps the cost of a tire mile down in the mini-digits.

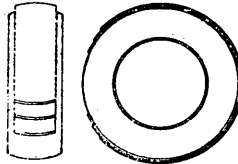
Bridgestone designed its RD-170V steel belted radial to meet all these requirements.



In our research laboratories, we found the right rubber compounds and tread to guarantee 40,000 easy-riding miles with a good

grip on all kinds of pavement. Then Bridgestone built a special radial tire factory.

For puncture protection we incorporated three steel belts (from our own steel cord



plant) instead of the usual two. They girdle the tire, hold the tread traction-firm and reduce tread-wearing squirm.



Additional fabric plies running straight across the



The time-honored quality tire.

bead at a 90 degree angle work in parallel to permit maximum flexing without sawing or grinding.

Bridgestone's special combination of resilient fabric plies with girdling steel belts provides a rare degree of long-run security and comfort.

Among 3,200 types of Bridgestone tires do we build the best radial in America? You be the judge. Visit your Bridgestone dealer today.



Check the Yellow Pages for your local Bridgestone Tire Dealer.

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 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 the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of such 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 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bridgestone Tire Company of America, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its principal offices and place of business located at 2160 W. 190th St., Torrance, 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

I

It is ordered, That respondent Bridgestone Tire Company of America, Inc., a corporation, its successors and assigns, officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any product in or affecting commerce as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any automobile tire has any safety or performance characteristic or is superior in quality or performance to other tires, either overall or with respect to any such characteristic, unless at the time such representation is first disseminated, the representation is fully and completely substantiated by competent scientific tests and respondent has relied upon such tests. *Provided, furthermore,* That with respect to any representation concerning the safety of automobile tires which representation is not expressly limited to a specific safety characteristic(s) the basis for such a representation shall include, at the minimum, tests for the following characteristics: (a) stopping; (b) cornering; (c) puncture protection; and (d) high speed performance.

2. Failing to provide for the maintenance of, in conjunction with Paragraph One of this order, the results of each test, the original test data collected in the course of each test, and a detailed description of how the test was performed, all of which shall be available in written form for inspection, upon reasonable notice, for at least three years following the final use of the representation.

3. Making any representation, directly or by implication, regarding the safety or performance characteristics of any product, unless at the time such representation is first disseminated there exists a reasonable basis for such representation and respondent relies upon such basis. *Provided, however,* That with respect to automobile tires, the only reasonable basis for such a representation shall be competent scientific tests as specified in Paragraph One of this order.

4. Failing to provide for the maintenance of, in conjunction with Paragraph Three of this order, all documentation in substantiation of any representation in advertising disseminated, by respondent, all of which shall be available in written form for inspection upon reasonable notice, for at least three years following the final use of the representation.

II

It is further ordered, That for the purpose of Paragraph One of Part I of this order:

1. A claim of "security" shall be construed as a safety claim.
2. A representation as to the quality or performance characteristics of any automobile tire implies that it is superior in quality or performance to any other automobile tire or all other automobile tires if it is phrased in the comparative or superlative degree, or if any

advertising containing such representation conveys a net impression of comparative superiority.

III

It is further ordered, That respondent Bridgestone Tire Company of America, Inc., shall forthwith deliver a copy of this order to each of its operating departments, divisions, and subsidiaries engaged in the advertising, offering for sale, sale, or distribution to the public at retail of automobile tires and to the manager of each present and every future retail outlet owned and operated by said respondent.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change 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 that may affect the compliance obligations arising out of the order.

It is further ordered, That 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 the order to cease and desist.

IN THE MATTER OF

GENERAL FOODS CORPORATION

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

Docket C-2733. Complaint, Oct. 1, 1975-Decision, Oct. 1, 1975

Consent order requiring a White Plains, N.Y., producer, distributor, and seller of food products, among other things to cease using depictions and descriptions, which have the capacity to influence children to engage in harmful activities—specifically, representing that a plant is edible in its raw state (1) where the visual impression is conveyed that the plant was not grown for human consumption; or (2) where a raw plant is shown being consumed and it is specifically described as a “wild” plant.

Appearances

For the Commission: *Stewart A. Block.*

For the respondent: *Bruce L. Bozeman, White Plains, N.Y. and John Kovin, Clifford, Warnke, Glass, McIlwain & Finney, Wash., D.C.*

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 the General Foods 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. For the purposes of this complaint, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "false advertisement" means false advertisement as defined by the Federal Trade Commission Act, as amended.

PAR. 2. Respondent General Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 250 North St., White Plains, N.Y.

PAR. 3. Respondent General Foods is now, and for all times relevant to this complaint has been, engaged in the production, distribution, and sale of a variety of food products, including but not limited to "Post Grape Nuts," a ready-to-eat breakfast cereal (hereinafter referred to as Post Grape Nuts). Said product is a "food" as defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, respondent General Foods Corporation causes Post Grape Nuts in its product package to be transported from its place of business to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent General Foods Corporation maintains and at all times mentioned herein has maintained, a substantial course of trade in said product in or affecting commerce. The volume of business in or affecting commerce has been and is substantial.

PAR. 5. In the course and conduct of its aforesaid business, respondent General Foods Corporation has disseminated, and caused the dissemination of, certain advertisements concerning the said product by the United States mails and by various means in or affecting commerce, including but not limited to, by means of television broadcasts transmitted by television stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of

inducing and which were likely to induce, directly or indirectly, the purchase of said product, and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in or affecting commerce.

PAR. 6. Among the advertisements disseminated by means of television, but not all inclusive thereof, are the following:

Complaint

B&B

BENTON & BOWLES
909 THIRD AVENUE
NEW YORK N.Y.
(212) 758-6200

Client: GENERAL FOODS CORP.
Product: GRAPE-NUTS
Length: 30 SECONDS - (GFGN-1502)
Title: "EUPELL GIBBONS"



1. (SFX)



2. EUPELL GIBBONS: I'm Euell Gibbons.



3. Many consider me an expert on natural foods...



4. I like cat-tails. Yes, they're edible!



5. I look for natural ingredients in my food.



6. That's why Grape-Nuts is part of my breakfast.



7. This is a wholesome cereal... made from wheat and barley.



8. These natural ingredients are baked into crunchy nuggets.



9. ...and fortified with eight essential vitamins.



10. It's naturally sweet and reminds me of wild nuts.



11. EUPELL GIBBONS: (VO) I call Grape-Nuts my back-to-nature cereal.

POST GRAPENUTS
 Benton & Bowles, Inc. 509 Third Avenue, New York, NY 10022 / 713-8200

Client:	GENERAL FOODS	Date:	AS FILMED OCTOBER 1972
Product:	POST GRAPE-NUTS	Station:	
Program:		Draft:	1-11-1-72 gs/

:30 COMMERCIAL #GFGN-3252
 ("EUELL GIBBONS PINE TREE")

PICTURE

OPEN ON EUELL GIBBONS IN FOREST
 OF TALL PINES. SUPER:
 EUELL GIBBONS AUTHOR OF
 "STALKING THE GOOD LIFE."

GIBBONS PULLS A BRANCH
 FROM PINE TREE.

AND HOLDS UP BRANCH.

GIBBONS SITS AT TABLE
 IN THE FOREST WITH BREAKFAST
 ITEMS.

GIBBONS POURS GRAPE NUTS
 INTO BOWL.

CONTINUE ACTION AS HE ADDS
 MILK TO CEREAL.

CONTINUE ACTION.

GIBBONS MIXES CEREAL AND
 THEN BEGINS TO EAT IT.

GO TO PRODUCT SHOT.
 SUPER: "BACK-TO-NATURE
 CEREAL."

SOUND

EUELL GIBBONS:

I'm Euell Gibbons.

I've spent years learning
 about natural foods.

Ever eat a pine tree?
 Many parts are edible.

Natural ingredients are
 important to me.

That's why Post Grape Nuts
 is part of my breakfast.

This wholesome cereal is
 made from wheat and barley.

These natural ingredients are
 baked into crunchy nuggets
 fortified with vitamins.

Its! naturally sweet taste
 reminds me of wild hickory

I call Grape-Nuts my back-t
 nature cereal.

Complaint

86 F.T.C.

WORLD TELEVISION

Denton & Bowles, Inc. 509 Third Avenue, New York, NY 10022 / 750-8200

C.B.C. Tuesday 10/9/73

Client: GENERAL FOODS CORP.

Date: AS FILMED
SEPTEMBER 1973

Product: GRAPE-NUTS

Station:

Program:

Draft: 1-9-20-73 vs/nz

1:30 COMMERCIAL #899X-3563
("WILD CRANBERRIES - COLD MILK")

PICTURE

OPEN ON EUELL GIBBONS IN SNOW-COVERED, WOODED SETTING.

SUPER: "EUELL GIBBONS - AUTHOR OF STALKING THE GOOD LIFE".

HE PICKS CRANBERRIES OFF OF A CRANBERRY BUSH.

TO TO CU OF EUELL'S HANDS HOLDING CRANBERRIES AND GRAPE-NUTS BOX.

REVEAL EUELL IN CABIN.

CU OF GRAPE-NUTS BEING POURED INTO BOWL.

SHOT OF HOT MILK BEING POURED OVER GRAPE-NUTS.

EUELL STIRS CEREAL AND THEN EATS IT.

GO TO COMPLETE GRAPE-NUTS BREAK-FAST.

SUPER: "BACK-TO-NATURE CEREAL".

SOUND

EUELL GIBBONS:

I'm Euell Gibbons. I'm gathering part of my breakfast.

These are high bush cranberries.

Delicious with Grape-Nuts.

As an author of five books on natural foods, I can recommend Post Grape-Nuts.

This crunchy cereal is made from natural ingredients - wholesome wheat and barley.

And it's fortified with Vitamins.

Its naturally sweet taste reminds me of wild hickory nuts.

I call Grape-Nuts my back-to-nature cereal.

POST TELEVISION

MAY 20 1974

Benton & Bowles, Inc. 609 Third Avenue, New York, N.Y. 10022/733-6200

Client: GENERAL FOODS CORP.

Date: AS FILMED
APRIL 1974

Product: GRAPE-NUTS

Station:

Program:

Draft: 1-4-24-74 of/112

30 COMMERCIAL #GFCOH-4022
(GIBBONS CACTUS REV. 1105)

PICTURE

OPEN WITH WIDE SHOT OF
EUELL GIBBONS IN THE DESERT.

SUPER:
"EUELL GIBBONS, AUTHOR OF
STALKING THE GOOD LIFE."

CONTINUE ACTION.

GIBBONS PICKS FRUIT OFF
OF A CACTUS. HE HOLDS
UP FRUIT.

TIGHT SHOT OF GIBBONS
HOLDING GRAPE-NUTS BOX.

POURING SHOT.

GIBBONS EATING GRAPE-NUTS
FROM BOWL.

PRODUCT SHOT.
SUPER:
"BACK-TO-NATURE CEREAL."

SOUND

EUELL GIBBONS:

I'm Euell Gibbons.

I'm gathering part of my breakfast
The fruit of this prickly pear
cactus will go well with Grape-Nuts.
Having spent years studying natural
foods, I can recommend Post Grape-
nuts.

It's a natural wheat and barley
cereal fortified with vitamins.
No artificial flavoring or pre-
servatives added.

Its naturally sweet taste reminds
me of wild hickory nuts.

I call Grape-Nuts my back-to-
nature cereal.

1st BROADCAST
ON CBS

SHOW # 6025
AIR DATE: 5/1/74
TIME: 10-10:30 AM

PAR. 7. The aforesaid advertisements have the tendency or capacity to influence children to eat plants or parts thereof which they find growing or in natural surroundings. Some plants or parts thereof are harmful if eaten. A substantial number of children do not have sufficient knowledge or experience to distinguish between those plants or parts thereof which are and those which are not harmful if eaten. Therefore the aforesaid advertisements have the tendency or capacity to influence children to engage in behavior which is harmful or involves the risk of harm, and were and are unfair or deceptive acts or practices.

PAR. 8. It is a commonly recognized safety principle that children should not eat any plants or parts thereof which they find growing or in natural surroundings except under adult supervision. The aforesaid advertisements have the tendency or capacity to influence children, when not under adult supervision, to eat plants or parts thereof which they find growing or in natural surroundings, which behavior is inconsistent with said safety principle. Therefore, the aforesaid advertisements were and are unfair or deceptive acts or practices.

PAR. 9. The aforesaid advertisements have the tendency or capacity to represent, directly or by implication, to children that they can eat plants or parts thereof which they find growing or in natural surroundings without harm or the risk of harm. In truth and in fact, children cannot eat plants or parts thereof which they find growing or in natural surroundings without harm or the risk of harm. Therefore, the aforesaid advertisements were and are unfair and deceptive acts or practices and false advertisements.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent General Foods Corporation has been, and is now, in substantial competition, in or affecting commerce, with other corporations engaged in the manufacture and sale of food products.

PAR. 11. The aforesaid unfair or deceptive acts or practices of respondent, as herein alleged, including the dissemination of false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or deceptive acts or practices in or affecting commerce, in violation of Sections 12 and 5 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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent 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, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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. Respondent General Foods Corporation is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 250 North St., White Plains, N.Y.

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 the purposes of this order, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "plant" means any whole plant or any constituent part thereof.

I

It is ordered, That respondent General Foods Corporation, a corporation, (hereinafter referred to as respondent), 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 advertising, offering for sale, sale or distribution in or affecting commerce of any product, forthwith cease and desist from, directly or indirectly:

A. Representing, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state in an advertisement containing a visual depiction of (1) the plant in its growing state or natural surroundings which depiction is not a clear portrayal of conditions of domestic cultivation for human consumption or (2) the consumption of a raw plant described in the advertisement as wild.

B. Representing through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state in an advertisement containing a visual depiction of the plant in its growing state or natural surroundings where said plant is not the advertised product or an ingredient, or a characterizing flavor, or source thereof, in the advertised product.

C. Representing, through depictions, descriptions, or otherwise, that any given thing or things, other than things that are commonly recognized as foods or lawful food additives, are suitable for human consumption as a food where it is reasonably foreseeable, through reasonable inquiry, that such representation has the tendency or capacity to influence members of the audience in reasonably good health to engage in behavior which creates an imminent risk of physical harm to those persons or to others.

II

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change 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.

It is further ordered, That 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.

IN THE MATTER OF
GER-RO-MAR, INC. T/A SYMBRA'ETTE, ET AL.

MODIFIED ORDER, IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8872. Decision, July 23, 1974-Modified Order, Oct. 2, 1975

Order modifying an earlier order dated July 23, 1974, 84 F.T.C. 95, 39 F.R. 35133, pursuant to order of the United States Court of Appeals for the Second Circuit dated June 16, 1975, Trade Reg. Rep. ¶ 60,368 at 66,588 (1975 Trade Cases), IX S&D —, by setting aside order paragraphs 1 and 2 proscribing an open-ended, multi-level (pyramid) marketing plan to recruit distributors for its products.

Appearances

For the Commission: *Jerome Steiner and Ralph E. Stone.*

For the respondents: *Rosenberg & Wiseman, San Jose, Calif.*

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Second Circuit on Oct. 11, 1974, a petition to review and set aside an order to cease and desist issued herein on July 23, 1974 [84 F.T.C. 95], and the court having rendered its decision and its judgment on June 16, 1975, affirming the order to cease and desist, except for numbered Paragraphs 1 and 2 of the order which it directed be set aside;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

It is ordered, That respondent Ger-Ro-Mar, Inc., a corporation doing business as Symbra'ette, whose corporate name is now Symbra'ette, Inc., and officers thereof, and respondent Carl G. Simonsen, individually and as an officer of said corporation, or corporations, and respondents' agents, representatives, employees, successors, and assigns, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of brassieres, girdles, lingerie, wigs, or of any other products, or of distributorships or franchises, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Operating any marketing or sales plan or program unless respondents agree to and notify participants that they will promptly

repurchase all or any part of any initial order of merchandise made by any participant, upon written request of the participant mailed within 30 days (or a greater period of time if respondents elect) of the receipt of the initial order by the participant, at the price actually paid by the participant for the merchandise; *Provided, however,* That respondents may insist that prior to making repurchase, the merchandise be returned to respondents' place of business, postage or shipping prepaid, in a resaleable condition, said merchandise to be shipped within 30 days (or a greater period of time if respondents elect) of the date on which written request for repurchase is received.

2. Representing, directly or by implication, or by use of hypothetical examples or representations of past earnings of participants, that participants in any marketing or sales program will earn or receive, or have the reasonable expectancy of earning or receiving, any stated gross or net amounts, unless in fact, a majority of participants in the community or geographic area in which such representations are made, have achieved the stated gross or net amounts represented, and the representations accurately reflect the amount of time required by such participants to achieve such gross or net amounts.

3. Misrepresenting in any manner, directly or by implication, or placing in the hands of others the means or instrumentalities for misrepresenting, the financial gains reasonably achievable by participants in any marketing or sales plan or program, or the commercial feasibility thereof.

4. Failing to maintain adequate records (a) which disclose the facts upon which any claims of the type discussed in paragraphs 2 and 3 of this order are based; and (b) from which the validity of any claim of the type discussed in Paragraphs 2 and 3 of this order can be determined.

5. Requiring that an individual pay a valuable consideration in return for the right to participate in any marketing or sales program, without first disclosing to such prospective participant in writing the number of other participants in the marketing area in which such prospect plans to operate.

6. Representing that the supply of available participants in respondents' marketing program is inexhaustible or virtually inexhaustible.

7. Entering into, maintaining or enforcing any contract, agreement, combination, understanding, or course of conduct which has as its purpose or effect to require any individual to resell at any particular price a product which he or she has purchased, *Provided,* That in those States having Fair Trade laws products may be marketed pursuant to the provisions of such laws.

8. Publishing or distributing, directly or indirectly, any resale price

