

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

BENTON & BOWLES, INC.

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

Docket C-2826. Complaint, July 6, 1976—Decision, July 6, 1976

Consent order requiring a New York City advertising agency for General Foods Corporation, among other things to cease misrepresenting that a plant, or any part thereof, is suitable for human consumption in its raw state, where the plant is depicted growing in its natural, uncultivated environment. Further, respondent is prohibited from representing, through depictions, descriptions, etc., anything commonly recognized as food or a lawful food additive which tends to influence behavior creating imminent risk or physical harm to viewers.

Appearances

For the Commission: *Steven D. Newburg-Rinn.*

For the respondent: *Bruce L. Bozeman, White Plains, N.Y. John Kovin, Clifford, Warnke, Glass, McIlwain & Finney, Washington, 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 Benton & Bowles, 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. 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 Benton & Bowles, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 909 Third Ave., New York, New York.

PAR. 3. Respondent Benton & Bowles, Inc., is now, and for some time

last past has been, the advertising agency of General Foods Corporation, and now, and for some time last past, has prepared and placed for publication, and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the 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 Benton & Bowles, Inc. causes various advertisements for Post Grape Nuts to be transported from its place of business to radio and TV stations located in various other States of the United States and in the District of Columbia. Respondent Benton & Bowles, Inc. maintains and at all times mentioned herein has maintained, a substantial course of trade in said advertising business 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 Benton & Bowles, Inc. has disseminated, and caused the dissemination of, certain advertisements concerning the said products by the United States mail 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



BENTON & BOWLES
909 THIRD AVENUE
NEW YORK, N.Y.
(212) 758-6700

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



1. (SFX)



2. EUELL GIBBONS: I'm Euell Gibbons.



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



4. 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 wholesome cereal... made from wheat and barley.



8. Those 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. EUELL GIBBONS: (VO) I call Grape-Nuts my back-to-nature cereal.

1

Complaint

100 COMMERCIAL AVENUE - NEW YORK, N.Y. 10010

General Foods Corp. 10/9/73

Client: GENERAL FOODS CORP.

Date: AS ORDERED
SCHEDULE 1973

Product: GRAPE-NUTS

Station:

Program:

Date: 1-9-20-73 vs/az

100 COMMERCIAL AVENUE - NEW YORK, N.Y. 10010
("WILD CRANBERRIES - GOOD MILK")

PICTURE

SOUND

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

SUPER: "EUELL GIBBONS -
AUTHOR OF STAMMING 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.

TO TO COMPLETE GRAPE-NUTS BREAK-
FAST.

SUPER: "BACK-TO-NATURE CEREAL".

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.

TELEVISION

Post-Net Television, Inc. 602 Third Avenue, New York, N.Y. 10022 / 733-6200

Client: GENERAL FOODS CORP. Date: AS FILMED
 Product: GRAPE-NUTS Station: APRIL 1974
 Program: Draft: 1-4-24-74 sf/hz

:30 COMMERCIAL #GFGN-4022
 ("GIBBON CACTUS REV. II")

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-Nut

Having spent years studying natura
 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: *That's Wild*
 AIR DATE: 5/7/74
 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 Benton & Bowles, Inc., has been, and is now, in substantial competition, in or affecting commerce, with other corporations and individuals in the advertising business.

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 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 that matter and having determined that it has 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 Benton & Bowles, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 909 Third Ave., New York, New York.

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.

3. The term "suitable for human consumption" shall not apply to the sole picking or sole act of picking a plant or any constituent part thereof in its raw state.

I

It is Ordered, That respondent Benton & Bowles, Inc., 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 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 and 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.

D. *Provided, however,* that paragraph B shall not prohibit the representation, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state where the provisions of paragraphs A and C are met, and said plant:

(1) is nontoxic in its raw state; and

(2) does not have the tendency and capacity to be confused with a plant, which if consumed in its raw state, is toxic.

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
RICHARD FOODS CORPORATION, ET AL.

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

Docket C-2827. Complaint, July 6, 1976—Decision, July 6, 1976

Consent order requiring a Melrose Park, Ill., manufacturer and seller of protein food supplements, among other things to cease misrepresenting the nutritional value and vitamin and mineral content of its soya powder baby formula; misrepresenting medical approval of its product and failing to disclose relevant facts concerning the treatment of symptoms listed in their advertisements without medical authorization by use of its formula. The order further provides for the immediate recall of all advertising materials and requires a warning on the label of its soya powder and all other protein supplements for infant use, that such products are not for infants under one year of age unless recommended by a physician.

Appearances

For the Commission: *Richard A. Palewicz.*

For the respondents: *James Van Vliet, Schiff, Hardin & White,*
Chicago, Ill.

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 Richard Foods Corporation, a corporation, and Louis P. Richard, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have 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 Richard Foods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4520 James Place, Melrose Park, Illinois.

Respondent Louis P. Richard is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are engaged in the advertising, offering for sale, and sale of food supplements and other food products. The products are

manufactured by respondents or by others according to their respective specifications and are marketed in all fifty States by businesses designated as retail "food stores" that sell to consumers and "distributorships" who sell to other retail food stores. In the course and conduct of the aforesaid business, respondents are now and for some time past have been engaged in the publishing, 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 their business, respondents have disseminated, and caused the dissemination of, certain advertisements, promotional literature and labels concerning their protein supplement, called "Fearn Natural Soya Powder" by the United States mail, and have distributed their protein supplements for the purpose of purchase and consumption by consumers, from their place of business in the State of Illinois to distributors in other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, and cause, and at all times mentioned herein have caused, the dissemination of advertisements by the United States mail, within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing others to purchase said protein supplements, respondents have made, and are now making, directly or by implication, in advertisements which they cause to be placed in promotional brochures and labels, various statements and representations concerning said protein supplements. Typical and illustrative of such statements and representations are the following:

Baby Formula — Add 1 cup Soya Bean Powder to two quarts water. Simmer 10 minutes and strain. Add 2 tsp dark molasses after cooling. Shake occasionally during feeding. If feeding is too slow, enlarge holes in nipples with heated needle. This formula should be supplemented with baby vitamins (Vit A, C, and D) at about one month or foods containing these vitamins. Although the calcium content of the above formula is lower than for cow's milk, it is well assimilated. This formula may be supplemented by adding 1 heap tsp bone meal, calcium lactate, Fearn's Wheat Germ Powder, or brewer's yeast. The calcium lactate and bone meal may be used for all ages, but the brewer's yeast and Wheat Germ Powder may cause digestive troubles if added before two months.

ENRICH BABY FOODS by mixing Soya Bean Powder into fruits, vegetables, and cereals.

ALLERGY AND DIGESTIVE PROBLEMS

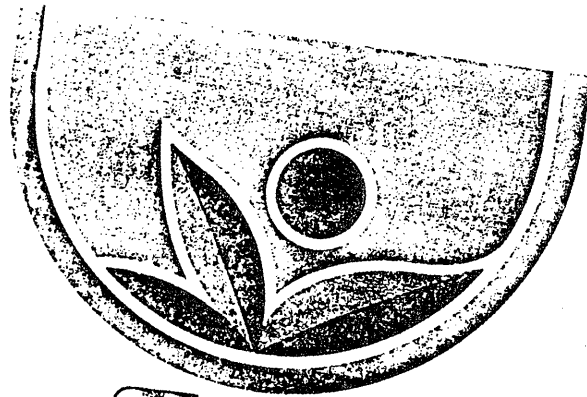
Food allergies are alarmingly high. One pediatrician reported that 38% of 1000 infants taken to him were allergic to various foods. The allergies in the order of their importance were cows milk, wheat, orange juice, vitamins, and eggs. Symptoms of food allergies include running noses, stomach ache, gas, and diarrhea. Because soya milk is much lower in allergenic properties than cows milk we recommend that a soya milk formula be used in preference to cows milk for infants. One formula for infants follows:

Add 1 cup Soya Bean Powder to two quarts water. Simmer 10 minutes and strain. Add 2 tsp dark molasses after cooling. Shake occasionally during feeding. If feeding is too slow, enlarge holes in nipples with heated needle. This formula should be supplemented with baby vitamins (Vitamin A, C, and D) at about one month of foods containing these vitamins. Although the calcium content of the above formula is lower than for cow's milk, it is well assimilated. This formula may be supplemented by adding 1 heaping tsp bone meal or calcium lactate.

Also you may enrich baby foods by mixing Soya Bean Powder into fruits, vegetables, and cereals.

In case of a severe attack of food allergies, an elimination period of about 4 days is recommended by many allergists. In this period very little is eaten and the food which is eaten must be low in allergenic properties. Some chronic sufferers of food allergies have advised that they are able to use soya powder in tomato juice during the elimination period. If a patient is able to tolerate a drink of 1 heaping tablespoon of soya powder in one eight ounce glass of tomato juice, this seems to help reduce the discomfortures of the elimination period considerably. This drink can be taken 3 times per day. Three glasses of this drink contain 260 calories, 22 grams of protein, more than the recommended amounts of Vitamin A and C and iodine and about half the recommended amounts of the B-complex Vitamins, phosphorus, and iron.

Charles E. Fearn, M.D. was recognized as the first to produce an edible soybean powder and his patented process is used in producing Dr. Fearn's Pure Soya Bean Powder used in other Dr. Fearn products. Dr. Fearn was recognized as the outstanding authority in the world and he was selected by President Wilson in 1917 to come to the United States and get the soybean started.



Team

**NATURAL
SOYA
POWDER**

CONTAINS ALL THE
NATURAL OIL OF THE SOYBEAN
USE IN BAKING AND FOR MAKING
SOYA MILK

NET WT. 1 OZ.

Complaint

NATURAL SOYA POWDER

Produced by the expeller process without the use of solvents or other additives. May be eaten as is or added to many recipes as a nutrition booster.

CALORIES
 8.2 per level tsp. 98 per ¼ cup
 25. per heaping tsp. 390 per 100 grams (1 cup)

LOW SODIUM DIETS
 NATURAL SOYA POWDER has less than 10 mg. sodium per 100 grams. (Typical analysis: 4 mg. sodium per 100 grams.)

ALKALINE
 NATURAL SOYA POWDER is one of the most alkaline foods in common use (contains about 26 cc 1.0 N alkali per 100 grams). Because it is alkaline NATURAL SOYA POWDER may help counteract the acidity caused by meats and grains.

APPROXIMATE ANALYSIS

| | |
|--------------------------|-------|
| Protein (N x 6.25) | 42. % |
| Dil | 24. % |
| Carbohydrate | |
| Available | 9. % |
| Not Available | 12. % |
| Lecithin | 2.4 % |
| Fibre | 2.1 % |
| Mineral Ash | 4.5 % |
| Moisture | 4. % |

100 grams of NATURAL SOYA POWDER (one cup) supply the following percentages of the adult minimum daily requirements:

| | |
|------------------|-----------|
| Phosphorus | 89% |
| Iron | 105% |
| Iodine | over 100% |
| Calcium | 27% |
| Thiamine | 82% |
| Riboflavin | 27% |
| Niacin | 48% |

MADE IN U.S.A.
 Distributed by
FEARN SOYA FOODS
 Div. of Richard Foods Corp.
 MELROSE PARK, ILL. 60160.
 U.S.A.

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

1. Fearn soya milk is an adequate nutritional replacement of human or cow's milk for infants under one year of age.
2. Fearn soya milk is adequate in protein content and availability to support normal cell and body growth in infants under one year of age.
3. Fearn soya milk with added molasses is nutritionally adequate in its caloric content to support daily energy requirements and to maintain an adequate rate of growth in infants under one year of age.
4. Fearn soya milk is nutritionally adequate in its vitamin content for normal growth and development of infants under one year of age.
5. Fearn soya milk is nutritionally adequate in minerals such as calcium and iodine for normal growth and development in infants under one year of age.
6. The calcium content of Fearn soya milk is well assimilated by infants under one year of age for normal growth and development of bones, teeth and muscle tissues.
7. Running noses, stomach ache, gas and diarrhea in infants under one year of age are symptoms that are due to food allergies.
8. Food allergies in infants under one year of age may be safely determined by anyone through the use of self-diagnosis and without the need of any professional consultation or advice from a pediatrician or physician.
9. Severe problems of food allergies in infants under one year of age can be alleviated by consumption of soya powder in tomato juice without the need of any medical advice or consultation.
10. Infants under one year of age are normally allergic to the vitamin content in natural foods.
11. Infants under one year of age could normally ingest enough of respondents' soya milk to satisfy daily energy requirements and maintain an adequate rate of growth and development.
12. Infants under one year of age could subsist on respondents' soya milk formula without other nutritional supplements for a significant period of time without suffering any risks to health or to normal growth and development.
13. Respondent's baby formula for the preparation of soya milk is approved by medical authorities for infants under one year of age.
14. The addition of "Fearn Soya Powder" to supplement the normal diet of infants in the United States from the first day such infants take

