

Subparagraph 1(h) is amended to read: "Requiring or inducing any dealer or distributor to resell to respondent any unsold stock of respondent's products in the event that business relations between respondent and the distributor or dealer are terminated, provided that respondent shall not be prohibited from repurchasing such unsold stock at the request of a distributor or dealer or from obtaining an option from a distributor or dealer to repurchase such unsold stock in the event that the distributor or dealer is unable to meet his financial obligations to respondent."

Subparagraph 3(a) is amended to read: "Issuing franchises or licenses to dealers or distributors for a period of two years following the effective date of this order; or".

Subparagraph 3(b) is amended to read: "Circulating lists of dealers or distributors of its products to such dealers or distributors; or".

Subparagraph 3(c) is amended to read: "Affixing to its products numbers or other identifying marks which designate specific wrapped rolls or other commercially sized items sold as individual units to distributors or dealers; or".

Subparagraphs 3(d) and 3(e) are deleted from the order.

Subparagraphs 3(f) and 3(g) are renumbered 3(d) and 3(e), respectively.

It is further ordered, That the proposed order, as amended, be, and it hereby is, entered and adopted as the Final Order of the Commission.

By the Commission, Commissioner MacIntyre agreeing in part and dissenting in part from this order of the Commission in keeping with his dissenting opinion to the original order of the Commission in this case.

IN THE MATTER OF

CLAUDE I. WOOLWINE DOING BUSINESS AS UNIVERSAL
TRAINING SERVICE ET AL.*

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

*Docket 8138. Complaint, Oct. 12, 1960**—Decision, Sept. 28, 1962*

Consent order requiring a San Francisco seller of a correspondence course purporting to prepare purchasers for U.S. Civil Service examinations and U.S. Government positions, to cease misrepresenting the availability of Government jobs and accompanying salaries, representing falsely connection with

* A desist order was issued against the other respondent, Grady L. Rushing doing business as Marcel Co., on Nov. 27, 1961, 59 F.T.C. 1182.

** Published in 59 F.T.C. 1182.

the U.S. Civil Service and prospective earnings of salesmen of the course, among other things, as set out in the order below.

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. Allan L. Sapiro, of San Francisco, Calif., for the respondent.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued October 12, 1960, the respondent, Claude I. Woolwine, an individual doing business under the firm name and style of Universal Training Service, located at 150 Powell Street, San Francisco, Calif., was charged with making misleading representations in connection with the sale and distribution in commerce of correspondence courses of study and instruction.

The respondent, by and with the advice of his attorney, and counsel supporting the complaint have entered into an agreement containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as in the complaint alleged.

By terms of the agreement, the respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By the agreement, the respondent expressly waives any further procedural steps before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all rights he may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondent further agrees that the order to cease and desist, to be issued in accordance with the agreement, shall have the same force and effect as if made after a full hearing.

It is further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order to be issued pursuant to said agreement; and that such order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The Hearing Examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and shall be filed upon becoming part of the Com-

mission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Claude I. Woolwine, doing business as Universal Training Service, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his course of instruction, relating to United States Civil Service positions, or any other course of instruction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Civil Service Examinations are imminent or had been announced for any of the positions listed in any particular area, unless such is the fact.
2. The completion of said course of instruction will enable a person to pass the Civil Service Examination for a selected job.
3. Their course of instruction provides training for Civil Service positions.
4. Qualifications are required in order to purchase the course.
5. Starting salaries for positions in Civil Service are in any amount that is not in accordance with the facts; or misrepresenting the amount of any salary for Civil Service positions.
6. Respondents will continue to instruct persons who have completed their courses of instruction until they are appointed to a Civil Service position; or misrepresenting in any manner the amount of instruction that they give to their purchasers.

It is further ordered, That respondent Claude I. Woolwine, trading as Universal Training Service, or under any other name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the solicitation for salesmen to sell his course of instruction relating to United States Civil Service positions, or any other course of instruction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the monthly earnings of salesmen selling his course of instruction average from \$1200 to \$1800; or average or amount to any sum that is in excess of the average or the amount actually earned.
2. Representing, directly or by implication, that persons selling said course operate a home study school.

ORDER WAIVING FILING OF NOTICE, DECISION OF THE COMMISSION AND
ORDER TO FILE REPORT OF COMPLIANCE

This matter having come before the Commission upon the certification by the hearing examiner, under Section 4.13(c) (9) of the Rules of Practice, of the question of acceptance of a duly executed consent agreement between respondent Claude I. Woolwine and counsel supporting the complaint; and

It appearing from the moving papers that it was through inadvertence that respondent failed to file timely notice of his desire to dispose of the proceeding by entry of a consent order; and

The Commission having concluded that, in the circumstances presented, it should exercise its discretion and waive the requirement for more timely filing of notice:

It is ordered, That the provision of the Commission's Notice of July 14, 1961, requiring the filing of notice by September 1, 1961, be, and it hereby is, waived in this case.

It is further ordered, That the initial decision of the hearing examiner accepting the consent agreement executed by the parties be, and it hereby is, adopted as the decision of the Commission; and, accordingly:

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

DANNON MILK PRODUCTS, INC., ET AL.

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

Docket 8232. Complaint, Dec. 27, 1960—Decision, Sept. 28, 1962

Order requiring Long Island City, N.Y., sellers of "Dannon Yogurt" to cease advertising falsely in magazines, circulars, etc., and by radio broadcasts,

Complaint

that their said product was "nature's perfect food", would correct poor eating habits, had reducing or antibiotic properties, or contained fewer calories than milk, except in the plain form.

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 Dannon Milk Products, Inc., a corporation, and Juan E. Metzger, Don L. Grantham, and John F. Hazelton, individually and as officers of said corporation, hereinafter 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 Dannon Milk Products, 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 place of business located at 22-11 38th Avenue, Long Island City 1, N.Y. Individual respondents Juan E. Metzger, Don L. Grantham, and John F. Hazelton are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of Yogurt which they sell under the name of Dannon Yogurt. Dannon Yogurt is a food product, as "food" is defined in the Federal Trade Commission Act. It is sold in plain, flavored and prune whip forms.

PAR. 3. Respondents cause and have caused said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, advertisements concerning the said product by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in magazines, brochures, circulars and pamphlets, and by radio broadcasts, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product; and have disseminated, and have caused the dissemination of, ad-

vertisements concerning the 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Why yogurt is so healthful. Dannon is known as nature's perfect food that science made better.

How Dannon yogurt can help you to a new, more glamorous figure and a smoother complexion, you'll learn how to grow young gracefully with yogurt. . . .

Keep young with yogurt.

Sometimes it's the lure of the trim new waistline or perhaps it's a nicer complexion . . . or just that young, glad-to-be-alive feeling you get with Dannon Yogurt.

Tingling new fitness, a glowing new complexion, a trim waist line.

Try yogurt and in a few weeks your mirror will show a new, more attractive you. Slim, trim 'n terrific. . . . a nicer complexion. . . . The glamorous reflection of an inward glow of fitness. Grow young with Dannon Yogurt. Because there is magic in those Dannon cultures. . . . magical goodness that can work more wonders for you than all the lotions and creams on your vanity table.

* * * Has far less calories * * * than the same amount of milk.

Remarkably effective, as well, in control of . . . amebic dysentery, shigellosis, ulcerative colitis and salmonellosis. The simple treatment for the usual case is one 8 ounce container of Dannon Prune Whip Yogurt at bedtime for a period of three weeks.

* * * * *
As a medicine . . . Dannon Yogurt is valuable, both prophylactically and therapeutically, in a variety of indications, including gastrointestinal disorders, diarrhea, autointoxication, flatulence, sub-optimal nutrition, obesity, in the correction of poor eating habits, and in chronic constipation (here try Dannon Prune Whip Yogurt for 30 days—it's dramatically effective.)

PAR. 5. By and through the statements made in said advertisements, disseminated and caused to be disseminated, as aforesaid, respondents represented, directly or by implication, that said product:

1. In all forms—

(a) Is nature's perfect food and is effective in the correction of poor eating habits.

(b) Is effective in maintaining youth, a youthful complexion, and in correcting skin disorders.

(c) Contains less calories than the same amount of milk.

(d) Has reducing properties.

(e) Is an adequate and effective treatment for gastrointestinal disorders, diarrhea, autointoxication, flatulence, sub-optimal nutrition.

2. In prune whip form, is an adequate and effective treatment for

diarrhea, amebic dysentery, shigellosis, ulcerative colitis, salmonellosis and chronic constipation.

PAR. 6. The advertisements containing the aforesaid statements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, said product:

1. In any form—

(a) Is not a perfect food, and is not effective in the correction of poor eating habits.

(b) Is not effective in maintaining youth, or a youthful complexion, or in correcting skin disorders.

(c) Has no reducing properties.

(d) Is not an adequate or effective treatment for gastrointestinal disorders, diarrhea, autointoxication, flatulence, sub-optimal nutrition, amebic dysentery, shigellosis, ulcerated colitis or salmonellosis and has no value in the treatment of chronic constipation except that the prune whip form provides temporary relief thereof.

2. Except as to the plain form does not contain less calories than the same quantity of milk.

PAR. 7. The dissemination by the respondents of the false advertisements, as aforesaid, constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson for the Commission.

Winston, Strawn, Smith & Patterson, by *Mr. Thomas A. Reynolds, Sr.*, *Mr. James L. Perkins*, and *Mr. Edward L. Foote*, of Chicago, Ill.; and *Mr. John P. Fox, Jr.*, of Chicago, Ill., for respondents.

INITIAL DECISION by LEON R. GROSS, HEARING EXAMINER

The hearing examiner finds and concludes from the evidence in this record that respondents' advertisements for Dannon Yogurt have a tendency and capacity to deceive as charged in the complaint filed herein on December 27, 1960. The representations in the advertisements violate the provisions of the Federal Trade Commission Act, as charged, and should be proscribed. They are so proscribed in the cease and desist order which is hereinafter entered. Counsel supporting the complaint have proven each and all of the material allegations of the complaint by reliable, probative, and substantial evidence. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding.

Respondent Dannon Milk Products, Inc., a New York corporation, has its offices and place of business at 22-11 38th Avenue, Long Island

