

Provided, however, That nothing contained herein shall be interpreted so as to prohibit respondent from entering into and enforcing in the manner authorized by law a "fair trade" resale price maintenance program, in accordance with the provisions of the Miller-Tydings Act and the McGuire Act.

It is further ordered, That respondent Yardley of London, Inc. furnish a copy of this order to all presently franchised retail outlets or other customers and to all employees, agents, or representatives engaged in sales activities, within ninety (90) days from the date hereof.

It is further ordered, That respondent Yardley of London, Inc., notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of 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 Yardley of London, Inc., 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

CARNATION COMPANY

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

Docket C-1833. Complaint, Dec. 8, 1970—Decision, Dec. 8, 1970

Consent order requiring a major seller of food products with headquarters in Los Angeles, Calif., to cease making unwarranted nutritional claims in advertising its "Carnation Instant Breakfast."

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 Carnation Company, 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 in-

terest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carnation Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 5045 Wilshire Boulevard, in the city of Los Angeles, State of California.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the advertising, offering for sale and sale of Carnation Instant Breakfast, a food product, as "food" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent causes the said product, when sold, to be transported from his place of business in the State of California to purchasers thereof 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 product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its business, respondent has disseminated, and caused the dissemination of, certain 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 newspapers, magazines and other advertising media, and by means of television and radio broadcasts 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 product; and has disseminated, and caused the dissemination of, advertisements concerning said preparation 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 preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

Now you can have new Carnation instant breakfast—makes milk a meal that's too good to miss. Each glass delivers as much protein as two eggs, as much mineral nourishment as two strips of crisp bacon, more energy than two slices of buttered toast, and even Vitamin C—the orange juice vitamin.

Now there's a new kind of balanced breakfast from Carnation, delicious Carnation *instant* breakfast. Give your family Vitamin C—the fresh orange juice vitamin . . . much protein as two fresh eggs . . . as much mineral nourishment as two strips of crisp bacon . . . plus more energy than two slices of buttered toast . . . all in a good-tasting, satisfying breakfast you drink. It's Carnation instant breakfast . . . the mix that makes milk a balanced breakfast you always have time for. Just made for those mornings when you . . . can't sit down to a big cooked breakfast.

PAR. 6. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent has represented and is now representing, directly and by implication, that:

1. Carnation Instant Breakfast is of as much or more nutritional benefit as a breakfast comprised of two fresh eggs, two slices of bacon, two slices of buttered toast and an orange or glass of orange juice.

2. Bacon is a good dietary source for mineral nourishment.

PAR. 7. In truth and in fact:

1. Carnation Instant Breakfast does not contain as much nutritive value as a breakfast comprised of two fresh eggs, two slices of bacon, two slices of buttered toast and an orange, or glass of orange juice.

2. No food is generally recognized as a good dietary source for all minerals and bacon is not generally recognized as a good source for calcium or iron, two of the minerals most commonly recommended for dietary supplementation.

Therefore, the advertisements referred to in Paragraph Five above, 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.

PAR. 8. Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons viewing, hearing or reading such advertisements that the regular use of Carnation Instant Breakfast as a "balanced breakfast" or "meal" is a good nutritional practice. In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute false advertisements, as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that for good nutrition persons should eat a variety of foods.

PAR. 9. Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons viewing, hearing or reading such advertisements that the nutritive values claimed for Carnation Instant Breakfast

result from those nutrients present in the product. In the light of such statements and representations said advertisements are misleading in a material respect and therefore constitute false advertisements as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that the nutritive values claimed for Carnation Instant Breakfast result from the nutrients contained in the liquid milk added to the product together with those present in the product itself.

PAR. 10. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and 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 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Carnation Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 5045 Wilshire Boulevard, Los Angeles, California.

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

It is ordered, That respondent Carnation Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Carnation Instant Breakfast, or any other product of similar composition or possessing substantially similar properties, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents directly or by implication that:

(a) A packet of Carnation Instant Breakfast with milk has as much or more of any specified nutrient or nutrients as is present in, or has the nutrient value of, any breakfast or any group of foods generally recognized as constituting a breakfast when such product in combination with milk does not contain as much or more of each nutrient for which a recommended dietary allowance has been established by the National Research Council as is present in such breakfast or group of foods;

(b) The amount of any nutrient or nutrients in a packet of Carnation Instant Breakfast, taken alone or in combination with milk, is comparable to the amount of such nutrient or nutrients in any food, when such food contains any other nutrient or nutrients for which a recommended dietary allowance has been established by the National Research Council, which is not present in as great or greater amounts in Carnation Instant Breakfast unless the advertisement discloses clearly, conspicuously and prominently in close proximity thereto, that such food contains other useful nutrients not present in Carnation Instant Breakfast, or, if present, in lesser amounts than contained in such foods;

(c) The presence of any single nutrient in a packet of Carnation Instant Breakfast, either alone or in combination with milk, is comparable to the presence of such nutrient in any food unless such food is a recognized good dietary source for that nutrient;

