

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...



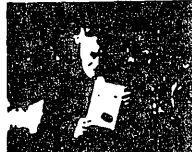
4. Like cat-tails. Yes, they're edible!



5. I look for natural ingredients in my food.



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



7. This is the 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. It reminds me of wild nut-nuts.



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

Complaint

GENERAL FOODS CORP. 10/9/73

Client: GENERAL FOODS CORP.

Date: AS VIEWED SEPTEMBER 1973

Product: GRAPE-NUTS

Station:

Program:

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

TO COMMERCIAL DEPT-3563 ("WILD CRANBERRIES - GOOD MILK")

PICTURE

SOUND

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

EUELL GIBBONS:

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

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

HE PICKS CRANBERRIES OFF OF A CRANBERRY BUSH.

These are high bush cranberries.

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

Delicious with Grape-Nuts.

REVEAL EUELL IN CABIN.

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

CU OF GRAPE-NUTS BEING Poured INTO BOWL.

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

SHOT OF HOT MILK BEING Poured OVER GRAPE-NUTS.

And it's fortified with Vitamins.

EUELL STIRS CEREAL AND THEN EATS IT.

Its naturally sweet taste reminds me of wild hickory nuts.

TO TO COMPLETE GRAPE-NUTS BREAKFAST.

SUPER: "BACK-TO-NATURE CEREAL".

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

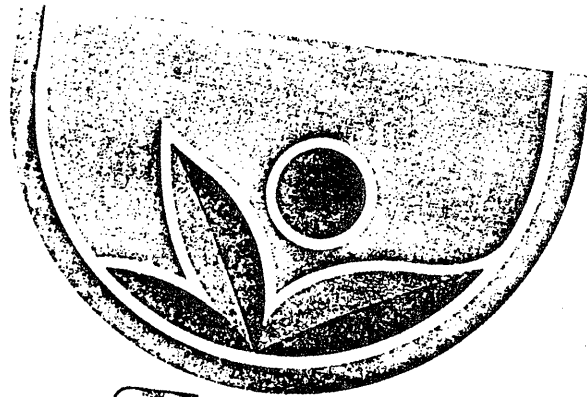
Food allergies are alarmingly high. One pediatrician reported that 38% of 1000 infants taken to him were allergic to various foods. The allergies in the order of their importance were cows milk, wheat, orange juice, vitamins, and eggs. Symptoms of food allergies include running noses, stomach ache, gas, 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

solid foods is desirable or recommended for sturdy growth and good health.

PAR. 6. In truth and in fact:

1. Fearn soya milk is not an adequate nutritional replacement for human or cow's milk for infants under one year of age.

2. Fearn soya milk is inadequate in protein content and availability to support normal cell and body growth in infants under one year of age. The protein content in soya milk could not be utilized effectively in the synthesis of tissue protein because the caloric content of soya milk is deficient.

3. Fearn soya milk with or without added molasses is nutritionally inadequate in its caloric content to support daily energy requirements and an adequate rate of growth in infants under one year of age.

4. Fearn soya milk is severely deficient in riboflavin and B-12 vitamins that are necessary for the normal growth and development of infants under one year of age.

5. Fearn soya milk is nutritionally inadequate in minerals such as calcium and iodine for normal growth and development in infants under one year of age. The severe deficiency in calcium requires necessary supplementation for adequate growth and development and cannot be left optional as implied by respondents.

6. The calcium content of Fearn soya milk is not well assimilated by infants under one year of age for normal growth and development of bones, teeth and muscular tissues. The absorption of calcium in infants would be seriously affected by the calcium-phosphorous ratio in the formula for Fearn soya powder and would seriously aggravate the already impaired bone development that would be caused by the low calcium content of the formula.

7. Running noses, stomach ache, gas and diarrhea in infants under one year of age are not symptoms that are confined to food allergies and may relate to more serious conditions in infants.

8. Food allergies in infants under one year of age cannot be safely determined by anyone through the use of self-diagnosis. The determination of food allergies in infants requires a medical diagnosis to insure that visible symptoms are the result of allergic conditions and to insure proper treatment for relief and to avoid aggravating the conditions that may be present.

9. Severe problems of food allergies in infants under one year of age cannot be alleviated by the consumption of soya powder in tomato juice or by any other treatment with soya powder. Problems of food allergies in infants are clinical in nature and should be properly diagnosed and treated by a pediatrician or physician.

10. Infants under one year of age are not normally allergic to the vitamin content in natural foods.

11. Infants under one year of age cannot normally ingest enough of respondents' dilute soya milk to satisfy daily energy requirements and maintain an adequate rate of growth and development.

12. Substantial risks to health and to normal growth and development would be caused by the use of respondents' soya milk formula without other nutritionally adequate foods for a significant period of time. Such a formula should not be given to infants at all except under highly qualified medical supervision.

13. Respondents' baby formula for the preparation of soya milk is not approved by medical authorities for infants under one year of age.

14. Without medical authorization, the addition of a concentrated protein product such as "Fearn Soya Powder" in unspecified amounts 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.

PAR. 7. Furthermore, respondents deceptively failed to disclose in advertising directed toward the use of their baby formula for infants, that running noses, stomach ache, gas and diarrhea are not confined to food allergies and should be properly diagnosed and treated by a physician and that treatment of such symptoms by respondents' soya milk formula without medical authorization can cause serious adverse effects in infants that could affect normal growth and development.

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 deceptive in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act, and the statements, representations, and failure 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 their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of protein supplements.

PAR. 10. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, have had, and now have, 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 respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public, and to respondents' 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted and 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. 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 office and principal place of business located at 4520 James Place, Melrose Park, Illinois.

Respondent Louis P. Richard is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

For purposes of this order, the term "Fearn Natural Soya Powder" refers to the product of that name presently marketed by respondents and any other protein supplement for infant use.

For purposes of this order, a "protein supplement for infant use" is any protein food product that is marketed, advertised or recommended, directly or by implication, for infant use as a protein dietary supplement.

For purposes of this order, the term "soya milk" refers to the mixture that is prepared according to respondents' formula for infant use.

It is ordered, That respondents Richard Foods Corporation, a corporation, its successors and assigns, and its officers, and Louis P. Richard, individually and as an officer of said corporation, and respondents' 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 and distribution of "Fearn Natural Soya Powder," or any other food 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 respondents' baby formula for soya milk or any other substantially similar formula for the preparation of soya milk, is an adequate nutritional replacement of human or cow's milk for the feeding of infants under one year of age.
2. Representing, directly or by implication, that soya milk is nutritionally adequate in protein content and availability to support normal cell and body growth in infants under one year of age.
3. Representing, directly or by implication, that soya milk is nutritionally adequate in its caloric content to satisfy daily energy requirements and maintain an adequate rate of growth in infants under one year of age.
4. Representing, directly or by implication, that soya milk is nutritionally adequate in its vitamin content to support normal growth and development in infants under one year of age.
5. Representing, directly or by implication, that soya milk is nutritionally adequate in mineral content, such as calcium and iodine, to support normal growth and development in infants under one year of age.
6. Representing, directly or by implication, that the calcium content

of soya milk is well assimilated in infants under one year of age for normal growth of bones, teeth and muscular tissue.

7. Representing, directly or by implication, that running noses, stomach ache, gas and diarrhea in infants under one year of age are symptoms that are confined to food allergies.

8. Representing, directly or by implication, that food allergies in infants under one year of age may be safely determined by anyone through self-diagnosis without the need for any medical consultation or advice.

9. Representing, directly or by implication, that attacks of food allergies in infants under one year of age may be adequately treated without medical authorization by adding soya powder to their diets.

10. Representing, directly or by implication that infants under one year of age are normally allergic to vitamins contained in natural foods.

11. Representing, directly or by implication, that infants under one year of age could normally ingest enough soya milk to satisfy daily energy requirements and maintain sufficient nutrition for adequate growth and development.

12. Representing, directly or by implication, that infants under one year of age may subsist on soya milk without other nutritional supplements for a significant period of time without suffering any nutritional risk to health, growth or development.

13. Representing, directly or by implication, that the soya milk formula is approved by medical authorities as being nutritionally adequate for consumption by infants under one year of age.

14. Representing, directly or by implication, that, in the absence of medical authorization "Fearn Soya Powder" should be added to the diets of infants under one year of age.

15. Failing to disclose the following warning clearly and conspicuously, *verbatim* on the label of "Fearn Natural Soya Powder" and on the label of any other protein supplement for infant use now or hereafter marketed by respondents.

NOTICE: Not for use in diets of
infants under one year of age unless
recommended by 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.

16. 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 "Fearn Natural Soya Powder," or any other protein supplement for infant use now or hereafter marketed by respondents, excepting only those advertisements or promotional materials whose text 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: Not for use in diets of infants
under one year of age unless recommended
by a physician.

Provided, however, 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 "Fearn Natural Soya Powder," or any other protein supplement for infant use now or hereafter marketed by respondents, and not directed, explicitly or by implication, to infants or young children as users of the product, the notice may be limited to the following:

Use as directed by label.

A. Respondents, which have heretofore recalled their promotional leaflets advertising their soya milk infant formula, take any and all actions necessary and available to them to obtain the return to them of all copies, if any, of said leaflets remaining in the possession of their distributors and retail store customers of which respondents' officers have or obtain actual knowledge.

B. Respondents shall not be in violation of this order as the result of actions of their distributors or franchisees, if any, unless, respondents' officers obtain actual knowledge that an act, which would otherwise be a violation by respondents of the other provisions of this order, has been committed by such distributor or franchisee and respondents have failed within a reasonable period to take such action as respondents deem appropriate to cause such acts to be terminated; *provided*, that respondents shall be in violation of this order if respondents' officers obtain actual knowledge that an act which would otherwise be a violation by respondents of the other provisions of this order has been committed on more than one occasion (at least one of which occasions having occurred after respondents took appropriate action under the preceding clause) by such distributor or franchisee and respondents have 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.

C. Respondents 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 labeling of protein supplements, such as "Fearn Natural Soya Powder" if respondents are in compliance with such provisions of such trade regulation rule.

D. Respondents 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.

E. Respondents 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 this order.

F. Respondents shall forthwith distribute (1) a copy of this order to each of their operating divisions; and (2) a notice to each of their distributors and franchisees, if any, notifying them of the provisions of paragraphs 1 through 16 of this order.

G. Respondents shall within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

88 F.T.C.

IN THE MATTER OF
UNITED AUDIO PRODUCTS, INC.

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

Docket C-2828. Complaint, July 12, 1976—Decision, July 12, 1976

Consent order requiring a Mount Vernon, N. Y., manufacturer, importer and distributor of high fidelity audio components, among other things to cease maintaining resale prices and engaging in restrictive trade practices. Further, the order requires respondent to maintain records; reinstate dealers terminated for non-conformance with previously required pricing schedules and to take appropriate action against those distributors found to be in violation of the order.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg*.

For the respondent: *Rudolph Taplitz, Taplitz & Taplitz*, New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appears that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent United Audio Products, Inc. is a corporation organized under the laws of the State of New York, with its principal office located at 120 South Columbus Ave., Mount Vernon, New York.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and

other products to be shipped from the State in which they are manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the prices suggested or established by respondent; or (2) sells respondent's products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested prices, or who advertise respondent's products at prices below the prices

established by respondent or who supply respondent's products to other dealers; and

(g) Regularly furnishing dealers with price lists and supplements thereto containing established or suggested prices for respondent's products.

PAR. 7. In the course and conduct of its business as aforesaid, respondent has entered into combinations, agreements, understandings, or arrangements which have the purpose or effect of prohibiting dealers from selling respondent's products to certain potential customers.

PAR. 8. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondent, as hereinabove alleged, are unfair methods of competition and unfair acts or practices because they have the tendency to, or the actual effect of:

(a) fixing, maintaining or stabilizing the prices at which respondent's products will be resold;

(b) suppressing or eliminating competition among dealers selling respondent's products;

(c) inflating the prices paid by consumers for respondent's products;

(d) depriving dealers of their freedom to select their customers and otherwise to function as free and independent businessmen; and

(e) depriving consumers of the benefits of competition.

PAR. 9. The aforesaid acts, practices and methods of competition, constitute unfair methods of competition and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 New York 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. Respondent United Audio 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 principal place of business located at 120 South Columbus Ave., Mount Vernon, 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

It is ordered, That respondent United Audio Products, Inc., a corporation, its successors and assigns and respondent's employees, agents, representatives, including sales representatives or other independent contractors, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, importation, distribution, offering for sale and sale of high fidelity audio components and other products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Establishing, continuing or enforcing any contracts, agreements, understandings or arrangements with distributors or retail dealers of respondent's products (hereinafter distributors and retail dealers are referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, or enforcing the prices at which respondent's products are to be resold.

2. Fixing, establishing, controlling or maintaining the prices at which dealers may advertise, promote, offer for sale or sell respondent's products.

3. Publishing, disseminating, circulating or providing by any other means, any suggested resale prices; *provided, however,* that subsequent to two (2) years after the date on which this order becomes final, respondent may suggest resale prices if it is clearly and conspicuously stated on each page of any pricelist, book, tag, advertising or promotional material or other document that the price is suggested.

4. Requiring any dealer to enter into written or oral agreements or

understandings that such dealer will adhere to established or suggested prices for respondent's products as a condition to receiving or retaining its dealership.

5. Refusing to sell or threatening to refuse to sell to any dealer who desires to engage in the sale of respondent's products for the reason that such dealer will not enter into an understanding or agreement with respondent to advertise or sell said products at respondent's established or suggested resale price.

6. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer because said dealer advertises respondent's products at retail prices other than that which respondent deems appropriate or has approved.

7. Disseminating or circulating any warranty registration form or any other document which requires or requests that the retail price paid by the ultimate consumer for respondent's products be stated and reported to respondent.

8. Securing or attempting to secure any promises or assurances from dealers or prospective dealers regarding the prices at which such dealers will advertise or sell respondent's products or requesting or requiring any dealer or prospective dealer to obtain approval from respondent for prices offered by said dealers in advertisements for respondent's products.

9. Requiring, soliciting or encouraging any dealer, person or firm either directly or indirectly to report the identity of any dealer, person or firm who does not adhere to any resale or retail price for any of respondent's products, or acting on reports so obtained by refusing or threatening to refuse sales to any dealer, person or firm so reported.

10. Terminating, threatening, intimidating, coercing, delaying shipments, or taking any other action to prevent the sale of respondent's products by a dealer because said dealer has advertised or sold, is advertising or selling, or is suspected of advertising or selling such products at other than prices that respondent may deem to be appropriate or has approved.

11. Establishing, continuing or enforcing, by refusal to sell, termination or threat thereof, delay in shipment or threat thereof, or in any other manner, any contract, agreement, understanding, or arrangement or method of doing business which has the purpose or effect of restricting or limiting in any manner the customers or classes of customers to whom dealers may sell respondent's products.

12. Convening or participating in any meeting for the purpose of undertaking or engaging in any of the acts or practices prohibited by this order.

In connection with the foregoing provisions under Part I of this

order, *it is further provided*, that after the expiration of five (5) years from the date this order becomes final, nothing contained in this order shall prohibit respondent from lawfully exercising such rights, if any, as it may have to distribute and establish resale prices for its products under fair trade laws then in effect.

II

It is further ordered, That respondent shall:

1. Forthwith upon this order becoming final, mail or deliver, and obtain signed receipts therefor, copies of this order to every present dealer, to every dealer terminated by respondent since January 1, 1972 and to every new dealer for period of three (3) years.
2. Forthwith distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel, sales agents, sales representatives and advertising agencies and secure from each such entity or person a signed statement acknowledging receipt of said order.
3. Within thirty (30) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, written notice to all of respondent's sales personnel, sales agents and sales representatives and advertising agencies informing such persons that their violation of any provision of this order may result in the termination of said employment or business relationship. Respondent shall obtain prior approval from the New York Regional Office of the Federal Trade Commission of said written notification.
4. Forthwith terminate the employment or business relationship with any person or firm willfully violating any provision of this order and take appropriate disciplinary and corrective action, which may include termination, for nonwillful violation.
5. Within sixty (60) days from the date on which this order becomes final, mail or deliver, and obtain a signed receipt therefor, a written offer of reinstatement upon the same terms and conditions available to respondent's other dealers, to any distributor or dealer located in an area where resale prices were not or could not be lawfully controlled who was terminated by respondent from January 1, 1972 to the effective date of this order unless respondent can establish that the dealer terminated does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling respondent's products, and forthwith reinstate any such distributor or dealer who within thirty (30) days thereafter requests, in writing, reinstatement.

III

It is further ordered, That respondent:

1. Notify the Commission at least thirty (30) days prior to any proposed change in the 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 such change in the corporation which may affect compliance obligations arising out of the order.

2. For a period of three (3) years from the date this order becomes final, establish and maintain a file of all records referring or relating to respondent's refusal during such period to sell its products to any dealer, which file shall contain a record of a communication to each such dealer explaining respondent's refusal to sell, and which file will be made available for Commission inspection on reasonable notice; and, annually, for a period of three (3) years from the date hereof, submit a report to the Commission's New York Regional Office listing the names and addresses of all dealers with whom respondent has refused to deal during the preceding year, a description of the reason for the refusal and the date of the refusal.

IV

It is further ordered, That in the event the Commission hereafter issues any order which is less restrictive than the provisions of Paragraphs I, II, or III, Sections 1 through 12, of this order, in any proceeding involving alleged resale price maintenance of a manufacturer or supplier of audio components subject to investigation by the Commission pursuant to File No. 741 0042, then the Commission shall, upon the application of United Audio Products, Inc., reconsider this order and may reopen this proceeding in order to make whatever revisions, if any, are necessary to bring the foregoing paragraphs into conformity with the less stringent restrictions imposed upon respondent's competitors.

IN THE MATTER OF
NIKKO ELECTRIC CORPORATION OF AMERICA

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

Docket C-2829. Complaint, July 12, 1976—Decision, July 12, 1976

Consent order requiring a Van Nuys, California, manufacturer, importer and distributor of high fidelity audio components, among other things to cease maintaining resale prices and engaging in restrictive trade practices. The order further requires respondent to maintain records; reinstate dealers terminated for non-conformance with previously required pricing schedules and to take appropriate action against those distributors found to be in violation of the provisions of the order.

Appearances

For the Commission: *Laura P. Worsinger* and *Elliot Feinberg*.

For the respondent: *H. David Schmerin, Rotkin, Schmerin & MacIntyre*, Los Angeles, California.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party identified in the caption hereof, and more particularly described and referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appears that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent Nikko Corporation of America is a corporation organized under the laws of the State of California, with its principal office located at 16270 Raymer St., Van Nuys, California.

PAR. 2. Respondent has been, and is now, engaged in the manufacture, importation, distribution and sale of high fidelity audio components and related products. Respondent distributes and sells these products to retail dealers.

PAR. 3. Respondent distributes and sells its products to distributors and to retail dealers (hereinafter distributors and retail dealers are referred to as dealers) located in all fifty States and in the District of Columbia, through salespersons and sales representatives who act under the direction and control and carry out the policies of respondent.

PAR. 4. In the course and conduct of its business as aforesaid, respondent causes and has caused, high fidelity audio components and other products to be shipped from the State in which they are

manufactured or warehoused to purchasers in other States. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondent has been and is in substantial competition in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, with persons or firms engaged in the manufacture, importation, distribution or sale of high fidelity audio components and related products.

PAR. 6. In the course and conduct of its business as aforesaid, respondent, in combination, agreement, or understanding with some of its authorized dealers, or with the cooperation or acquiescence of other of its dealers has engaged in a course of action to unlawfully fix, establish, stabilize or maintain the prices at which certain of its products are resold. In furtherance of said course of action, respondent has engaged in, and is now engaging in, the following acts and practices, among others:

(a) Establishing agreements, understandings, or arrangements with its dealers, as a condition precedent to the granting or retention of a dealership, that such dealers will maintain certain resale or retail prices;

(b) Informing its dealers, by direct and indirect means, that respondent expects and requires such dealers to maintain and enforce certain resale or retail prices, or such dealerships will be terminated or shipments will be delayed.

(c) Requiring its dealers to agree not to sell or otherwise supply or furnish its products to other dealers.

(d) Soliciting and obtaining from its dealers, cooperation and assistance in identifying and reporting any dealer who advertises, or offers to sell, or sells said products at prices lower than certain resale or retail prices.

(e) Directing, soliciting or encouraging salespersons, sales representatives, and other employees or agents of respondent to secure and report information identifying any dealer who (1) advertises, offers to sell or sells respondent's products at prices below the prices suggested or established by respondent; or (2) sells respondents' products to other dealers in high fidelity audio components;

(f) Threatening to terminate and terminating certain dealers who fail or refuse to observe and maintain respondent's suggested prices, or who advertise respondent's products at prices below the prices

