

IN THE MATTER OF

J. WALTER THOMPSON COMPANY

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

*Docket 9104. Complaint, Nov. 4, 1977 — Decision, Aug. 23, 1979*

This consent order, among other things, requires a New York City advertising agency to cease disseminating advertisements which contain unsubstantiated performance claims for any "product," as the term "product" is defined in the order.

*Appearances*

For the Commission: *Robert Barton, Ronald Bogard, L. Hahn, Louise Kotoshirodo and Mitchell Paul.*

For the respondent: *Arthur Medow, Chicago, Ill., Donald Green, Wald, Harkrader & Ross, Washington, D.C., Howard Abrahams, New York City and Burton Y. Weitzenseld, Arnstein, Gluck, Weitzenseld & Minow, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sears, Roebuck and Co., and J. Walter Thompson Company, 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 Sears, Roebuck and Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at Sears Tower, Chicago, Illinois.

PAR. 2. Respondent J. Walter Thompson Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 420 Lexington Ave., New York, New York.

PAR. 3. Respondent Sears, Roebuck and Co., now, and for some time last past has been, engaged in the distribution, sale, and advertising of portable and undercounter dishwashers and other consumer products to the public.

PAR. 4. Respondent Sears, Roebuck and Co. causes the said products, when sold, to be transported from its places of business in various

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

PAR. 5. Respondent Sears, Roebuck and Co. at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of dishwashers and other consumer products.

PAR. 6. Respondent J. Walter Thompson Co. is now, and for some time last past has been, an advertising agency of respondent Sears, Roebuck and Co., and now and for some time past has prepared and placed for dissemination, advertising material to promote the sale of various consumer products including Sears dishwashers.

PAR. 7. Respondent J. Walter Thompson Co. at all times mentioned herein has been, and is now, in substantial competition in or affecting commerce with other advertising agencies.

PAR. 8. In the course and conduct of their businesses, and for the purpose of inducing the sale of Sears dishwashers and other consumer products of respondent Sears, Roebuck and Co., respondents have disseminated and caused the dissemination of advertising in national magazines distributed by the mail and across state lines, and in 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. In addition, respondent Sears has disseminated across state lines advertising in newspapers and in catalogs distributed by the mail, and by other means, and through various other outlets including point of sale.

PAR. 9. Typical of advertisements so disseminated or caused to be disseminated by respondents are the advertisements attached as Exhibits A (print ad) and B (television ad).

PAR. 10. Said Exhibits A and B and others, represent, directly or by implication, that the Sears Lady Kenmore dishwasher will completely remove, without prior rinsing or scraping, all residue and film from dishes and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers, when such dishes, pots and pans are placed in the bottom rack of the dishwasher for one complete set of washing and rinsing cycles.

PAR. 11. At the time that respondents made the representations alleged in Paragraph Ten, they did not possess and rely on a reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 12. In truth and in fact, contrary to respondents' representations in Paragraph Ten, the Sears Lady Kenmore dishwasher will not completely remove, without prior rinsing or scraping, all residue and film from all dishes, and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers, when such dishes, pots and pans are placed in the bottom rack of the dishwasher for one complete set of washing and rinsing cycles. Therefore, said advertisements are deceptive or unfair.

PAR. 13. Said Exhibit A, and others represent directly or by implication, that dishes in the top rack of the dishwasher will get as clean as those on the bottom rack after one complete set of washing and rinsing cycles, without prior rinsing or scraping.

PAR. 14. In truth and in fact, at the time respondents made the representations as alleged in Paragraph Thirteen, the respondents had no reasonable basis for making said representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 15. Said Exhibit A and others, by stating that the "Sani-Wash" cycle gets dishes, pots and pans hygienically clean by giving them an extra hot 155° final rinse, represents, directly or by implication, that this cycle destroys all harmful and other bacteria and microorganisms on the dishes, pots and pans.

PAR. 16. At the time respondents made the representations alleged in Paragraph Fifteen, they did not possess and rely on a reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 17. In truth and in fact, contrary to respondents' representations in Paragraph Fifteen, the "Sani-Wash" cycle does not destroy all harmful and other bacteria and microorganisms on dishes, pots and pans. Therefore, the said advertisements are deceptive or unfair.

PAR. 18. Said Exhibits A and B and others represent directly or by implication, that the demonstrations depicted and referred to in Exhibit A and Exhibit B prove that Sears Lady Kenmore dishwashers will completely remove, without prior rinsing or scraping, all residue and film remaining on all dishes, pots and pans after cooking and baking according to normal consumer recipes and under other circumstances normally and expectably encountered by consumers.

PAR. 19. In truth and in fact, the said demonstrations do not prove that the Sears Lady Kenmore will completely remove, without prior rinsing or scraping, all residue and film from all dishes, and from pots and pans used in cooking and baking according to normal consumer recipes and under other circumstances normally and expectably

encountered by consumers. Therefore, the said advertisements are deceptive or unfair.

PAR. 20. As alleged in Paragraph Ten of this complaint, said Exhibits A and B and others represent, directly or by implication, that it is unnecessary to scrape or rinse dishes, pots or pans prior to washing them in the Sears Lady Kenmore. In contrast, the Sears owners manual, which is provided to consumers after they purchase a Sears dishwasher, instructed the user to pre-soak or scour firmly cooked or baked-on foods.

PAR. 21. (a) Such instructions are a material fact in light of the representation made in advertising as set forth in Paragraph Ten. Said advertisements fail to reveal a fact material in light of the representation made, and are therefore deceptive or unfair. (b) Such instructions are materially inconsistent with the advertising representation set forth in Paragraph Ten. Therefore, the said advertisements are deceptive or unfair.

PAR. 22. Said Exhibits A and B and others, represent directly or by implication, that respondent had a reasonable basis for making, at the time they were made, the representations as alleged in Paragraphs Ten, Thirteen and Fifteen whereas in truth and in fact respondent had no reasonable basis for such representations. Therefore, the said advertisements are deceptive or unfair.

PAR. 23. The use by respondents of the aforesaid false, misleading, deceptive or unfair statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of dishwashers sold by respondent Sears by reason of said erroneous and mistaken belief.

PAR. 24. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair or deceptive acts or practices in commerce and unfair methods of competition, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended.

Exhibit A

This demonstration represents the powerful cleaning capability of Sears Lady Kenmore Dishwasher. Certified by the National Consumer Testing Institute.



# Sears Lady Kenmore. The do-it-itself dishwasher.

No scraping. No pre-rinsing. Lady Kenmore has 6 powerful hot water jets for the bottom rack, surging hot water with enough force to scrub every dish, pot and pan really clean. Even baked-on food comes off.

And the dishes on top get as clean as those on the bottom. Because every cup and glass is scoured inside and out by a field of eight upper jets.

Then there's Lady Kenmore's protected pulverizer for leftovers. It's kind of a mini-grinder with 12 stainless steel teeth that grind soft foods into tiny particles that wash right down the drain. (Of course, water is always

fresh and clean—the water that rinses your dishes hasn't washed them.)

And our 8 different cycles include Sani-wash, which gives your dishes an extra-hot 155° final rinse. So everything is hygienically clean.

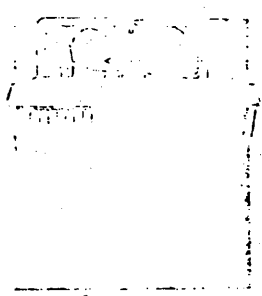
What's more, Sears Lady Kenmore is built to perform.

But if you ever do have a problem, you can rely on Sears service.

Sears Lady Kenmore does just about everything, itself. So you really do have freedom from scraping and pre-rinsing. That's why we call it The Freedom Maker. The

Freedom Maker, both built-in and portable, is

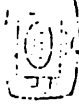
available at Sears, Roebuck and Co. stores and through the catalog.



**Sears**

The Freedom Maker

1. WALTER THOMPSON COMPANY  
675 NORTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60611



## TELEVISION COMMERCIAL

<p>FILE CODE: 2694 CLIENT: SEARS, ROEBUCK AND COMPANY PRODUCT: LADY KEMMERE DISHWASHER DATE: "A" 6/5/72</p>	<p>Exhibit B</p> <p>TITLE: "BIRTHDAY CAKE" LENGTH: 30 SECONDS STATUS: AS FILMED SEARS #: R6-1072-6530</p>
<p><u>VIDEO</u></p> <p>MOTHER FINISHES FROSTING A CAKE. LITTLE GIRL LICKS FROSTING FROM CU DISHES GOING INTO DISHWASHER.</p> <p>INSIDE SHOT OF DISHWASHER CLEANING. SUPER: DEMONSTRATION CERTIFIED BY NATIONAL CONSUMER TESTING INSTITUTE.</p> <p>CU DISHWASHER, SUPER: THE FREEDOM MAKER</p> <p>CU LOTHER, LITTLE GIRL AND CAKE.</p>	<p><u>AUDIO</u></p> <p>(MUSIC)</p> <p>ANNCR (VO): Sears Lady Kemmere Dishwasher gives you freedom from scraping and freedom from pre-rinsing. Because it has two hot water jets that scour dishes and a stainless steel pulverizer for soft food waste. We call Sears Lady Kemmere THE FREEDOM MAKER. Because it gives you freedom to do more important things.</p>

Complaint

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## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission issued, together with a proposed form of order; 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 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(c) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent J. Walter Thompson Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and a principal place of business located at 420 Lexington 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

## PART I

*It is ordered,* That respondent J. Walter Thompson Company (hereafter "J. Walter Thompson" or "JWT"), a corporation, its successors and assigns, either jointly or individually, and its officers, representatives, and agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with advertising, offering for sale, distribution or sale of the products as defined in Part II, paragraph 3 of this order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that any product will clean, without prior rinsing or scraping, all dishes, pots and pans used

in cooking and baking according to normal consumer recipes and under circumstances normally and expectably encountered by consumers, unless JWT has a reasonable basis for such representation.

2. Making any statement or representation directly or by implication concerning the performance of the product, unless JWT has a reasonable basis for such statement or representation.

*It shall be* an affirmative defense to any compliance action alleging a violation of paragraphs 1 or 2 of Part I of the order for JWT to show that, prior to disseminating an advertisement containing the statement or representation challenged in such compliance action, JWT submitted to its client in writing all the performance claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that the advertiser possessed and relied upon a reasonable basis for those claims.

3. Advertising any such product by referring to or presenting evidence, including a test, experiment, demonstration, study, survey or report, which evidence is represented, directly or by implication, as showing or proving the performance of the product, when such evidence does not show or prove such performance.

*It shall be* an affirmative defense to any compliance action alleging a violation of paragraph 3 of Part I of this order for JWT to show that, prior to disseminating an advertisement containing the reference or presentation of evidence challenged in such compliance action, JWT submitted to its client in writing all the performance claims which it reasonably believed were shown or proven by the reference or presentation of such evidence in advertising prepared by it and exercised due care to assure itself that this evidence did show or prove such performance claims.

4. Making any statement or representation, directly or by implication, in connection with the advertisement of any such product which it knows or has reason to know is inconsistent in any material respect with any statement or representation concerning the performance of the product made, directly or by implication, in post-purchase material(s) supplied to the purchaser of such product. For purposes of this order, post-purchase material(s) is defined as any product operating manuals and other written material typically made available by JWT's client to an individual who purchase the model of product identified in the advertising prepared by JWT; provided that this paragraph shall only appeal to JWT during the time the advertisement is created and first placed by JWT.

*Provided, however,* that nothing in this order shall be deemed to deny or limit JWT with respect to any right, defense, or other affirmative

defense to which JWT may otherwise be entitled by law in a compliance action or any other action; nor shall any inference adverse to JWT be drawn in any case from its failure to invoke the affirmative defenses provided in this Part or to rely on the procedures provided herein.

## PART II

For purposes of this order, each of the terms listed below, as applied to an advertising agency, is defined as follows:

1. A "reasonable basis" shall consist of a competent and reliable scientific test or tests, or other competent and reliable evidence including competent and reliable opinions of scientific, engineering, or other experts who are qualified by professional training and experience to render competent judgments in such matters.

2. A competent and reliable "scientific test" is one in which one or more persons, qualified by professional training, education and experience, formulate and conduct a test and evaluate its results in an objective manner using testing procedures which are generally accepted in the professions to attain valid and reliable results. The test may be conducted or approved by (a) a reputable and reliable organization which conducts such tests as one of its principal functions, (b) by an agency or department of the government of the United States, or (c) persons employed or retained by JWT's client if they are qualified (as defined above in this paragraph) and can conduct and evaluate the test in an objective manner.

3. The term "product" shall be defined as follows:

(a) dishwashers; and

(b) for paragraphs 2, 3 and 4 of Part I, and for Part II and Part III, the major home appliances identified in the Stipulation of Fact attached hereto, entered on June 7, 1978 (and incorporated herein by reference), but only in the event and to the extent that the Commission hereafter enters an order to cease and desist against Sears in this matter covering each of these products and said order becomes final.

4. The term "performance of the product" shall be defined as follows:

(a) cleaning performance; and

(b) for paragraphs 2, 3 and 4 of Part I, and for Part II and Part III, all other performance claims of the major home appliances identified in the Stipulation of Fact attached hereto, entered on June 7, 1978 (and incorporated herein by reference), but only in the event and to the extent that the Commission hereafter enters an order to cease and

Stipulation of Fact

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desist against Sears in this matter covering such other performance claims of these products and said order becomes final.

### PART III

*It is further ordered, That:*

For the period of three years after JWT last placed the advertisements for dissemination, JWT shall retain all tests results, data, and other documents on which it relied for advertisements of products covered by this order which were in its possession during either creation or placement by JWT of the advertisements.

JWT shall 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 or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

JWT shall forthwith distribute a copy of this order to each of its operating divisions, and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements of the products covered by this order.

JWT shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

### STIPULATION OF FACT

Undersigned complaint counsel and counsel for J. Walter Thompson Company ("JWT") stipulate as follows:

(1) Between January 1, 1971 and December 31, 1975 J. Walter Thompson prepared and disseminated advertisements for Sears, Roebuck and Co. ("Sears") featuring the following major home appliances: air conditioning units (room or built-in), disposers, dishwashers and trash compactors.

(2) JWT was not involved in the preparation or dissemination of any other advertisement featuring any other Sears major home appliance between January 1, 1971 and December 31, 1975.

(3) For purposes of Part II, paragraph 3(b) of the Agreement Containing Consent Order To Cease And Desist, covering JWT in this proceeding, the major home appliances are all makes of air conditioning units (room or built-in), disposers, dishwashers and trash compactors.

The above Stipulation Of Fact is entered solely and exclusively for purposes of this proceeding and for any Federal Trade Commission order that may issue in this proceeding.

*/s/ Robert Barton*  
Complaint Counsel

*/s/ Mark Schattner*  
Counsel for  
J. Walter Thompson Company

Dated: June 7, 1978

IN THE MATTER OF  
LONE STAR INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.  
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE  
CLAYTON ACT

*Docket 9122. Complaint, Jan. 25, 1979 — Decision, Aug. 23, 1979*

This consent order requires a Greenwich, Conn. manufacturer of portland cement and masonry cement, and the Keystone Portland Cement Co., an Allentown, Pa. competitor, among other things, to provide the Commission with evidence that their acquisition agreement has been terminated, and all non-public documents exchanged during negotiations returned. Respondents are also required to provide the Commission with 60 days' advance notice and liberal discovery rights, should merger plans be resumed before Dec. 31, 1981.

*Appearances*

For the Commission: *Bert L. Slonim* and *Nicholas P. Kostopoulos, Jr.*

For the respondents: *Melvin C. Garbow* and *D. Bonderman*, *Arnold & Porter*, Washington, D.C. for Lone Star Industries, Inc. and *Ralph W. Brenner* and *T. Michael Mather*, *Montgomery, McCracken, Walker & Rhodes*, Philadelphia, Pa. for Keystone Portland Cement Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into a merger agreement, which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that said agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

a. The term "portland cement" means Types I through V of portland cement as specified by the American Society for Testing Materials.

b. The term "masonry cement" means masonry cement as defined by the American Society for Testing Materials.

c. The term "three-state regional market" refers to Eastern Pennsylvania, New Jersey and Delaware.

d. The term "Eastern Pennsylvania" refers to that part of Pennsylvania identified by the Bureau of Mines as Eastern Pennsylvania.

## II. LONE STAR INDUSTRIES, INC.

2. Lone Star Industries, Inc. ("Lone Star") is a corporation organized and existing under the laws of the State of Delaware with its principal office at One Greenwich Plaza, Greenwich, Connecticut.

3. Lone Star manufactures and sells a variety of construction-related products, including cement, concrete, home improvement fixtures and lumber.

4. In 1977, Lone Star, the nation's largest cement producer, operated (domestically) nine cement production plants in eight states, including a plant in Nazareth, Pennsylvania.

5. In the fiscal year ending December 31, 1977, Lone Star had total assets of \$667,538,000 and total net sales of \$864,905,000, which generated a net income of \$29,710,000.

## III. KEYSTONE PORTLAND CEMENT CO.

6. Keystone Portland Cement Company ("Keystone") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office at 2200 Hamilton St., Allentown, Pennsylvania.

7. Keystone is a one-plant company with a 660,000-ton cement production facility located at Bath, Pennsylvania, which is four miles away from Lone Star's Nazareth plant. Keystone manufactures and sells cement and also sells construction aggregates and coal.

8. In the fiscal year ending December 31, 1977, Keystone had total assets of \$16,817,444 and total net sales of \$16,673,677, which generated a net income of \$176,992.

## IV. JURISDICTION

9. At all times relevant herein, Lone Star and Keystone have been engaged in the production and sale of portland cement and masonry cement in or affecting interstate commerce and said companies are engaged in or are affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affects commerce, as "commerce" is

defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

#### V. THE MERGER AGREEMENT

10. On or about October 20, 1978, Lone Star and Keystone entered into a merger agreement whereby Keystone's assets would be sold to Lone Star for \$7.5 million plus an assumption of Keystone's disclosed liabilities. The merger is scheduled for consummation on January 30, 1979.

#### VI. TRADE AND COMMERCE

11. The relevant lines of commerce are the manufacture and sale of portland cement and the manufacture and sale of masonry cement.

12. The relevant sections of the country are the areas of present competition between Lone Star and Keystone, including but not limited to the three-state regional market.

13. The manufacture and sale of portland cement is concentrated, with the combined market shares of the four largest firms estimated to be approximately 50.5%.

14. The manufacture and sale of masonry cement is concentrated, with the combined market shares of the four largest firms estimated to be approximately 68.8%.

#### VII. ACTUAL COMPETITION

15. Lone Star and Keystone are presently and have been for many years actual competitors in the manufacture and sale of portland cement and masonry cement within certain geographic markets and submarkets thereof, including but not limited to the three-state regional market.

#### VIII. EFFECTS: VIOLATIONS CHARGED

16. The effects of the agreement, if consummated, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. actual competition between Lone Star and Keystone in the manufacture and sale of portland cement and masonry cement will be eliminated;
- b. actual competition between competitors generally in the manu-

facture and sale of portland cement and masonry cement may be lessened;

c. Keystone will be eliminated as an actual substantial independent competitor in the manufacture and sale of portland cement and masonry cement;

d. concentration in the manufacture and sale of portland cement and masonry cement will be increased, and the possibilities for eventual deconcentration may be diminished; and

e. mergers or acquisitions between other portland cement and masonry cement producers may be fostered, thus causing a further substantial lessening of competition in the manufacture and sale of portland cement and masonry cement.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorneys, 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Lone Star Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Greenwich Plaza, in the City of Greenwich, State of Connecticut.

2. Respondent Keystone Portland Cement Co., is a corporation

organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 2200 Hamilton St., in the City of Allentown, Commonwealth of Pennsylvania.

3. 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

##### I

*It is ordered,* That Lone Star Industries, Inc. ("Lone Star") and Keystone Portland Cement Company ("Keystone") shall forthwith provide evidence that the acquisition agreement between them has been and is terminated and further, that any and all non-public documents provided by either Lone Star or Keystone to the other in connection with the acquisition agreement be returned. This paragraph shall not relieve any party from any obligation of confidentiality imposed by agreement between them or by operation of law.

##### II

*It is further ordered,* That until December 31, 1981 neither Lone Star nor Keystone shall acquire, directly or indirectly, all or any part of the assets (except in the ordinary course of business), or securities of the other until sixty (60) days following the receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition, which notice shall specifically refer to this order. If during the first thirty (30) days of the aforesaid sixty (60) day period, the Commission staff has issued any discovery request (including requests for the production of documents or witnesses) to either Lone Star or Keystone to which a complete response has not been made on or before the fiftieth (50th) day of the aforesaid sixty (60) day period, then the proposed acquisition shall not be consummated until ten (10) days after a complete response to such discovery request has been made. Neither the aforesaid sixty (60) day period nor the discovery provisions of this paragraph are in derogation of any of the rights conferred upon the Commission by statute or rule, and shall not be construed as supplanting any of these rights.

##### III

*It is further ordered,* That Lone Star and Keystone each shall notify the Commission at least (30) days prior to any proposed corporate

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, which may affect compliance obligations arising out of this order.

#### IV

*It is further ordered,* That Lone Star and Keystone each shall, within sixty (60) days after service upon it of this order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Commissioners Clanton and Pitofsky did not participate.

IN THE MATTER OF  
ITT CONTINENTAL BAKING COMPANY, INC.

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

*Docket C-2989. Complaint Aug. 24, 1979 — Decision, Aug. 24, 1979*

This order, among other things, requires a Rye, N.Y. manufacturer and seller of bakery products to cease disseminating advertisements which contain unsubstantiated comparative claims regarding the dietary fiber content of "Fresh Horizons" bread and other such food products; or which fail to include a statement disclosing that fiber ingredient in Fresh Horizons is derived from tree pulp. Such statement is required for two and one-half years in all advertisements for food products containing wood fiber. The order also prohibits the company from representing that an ingredient in Fresh Horizons or in other food products has been recommended or approved by a doctor or scientist unless that party has been fully informed of the ingredient's identity and derivation. Additionally, respondent is required to review and conform to the terms of the order all advertising claims for bakery and/or cereal-based products prepared or financed by its corporate parent.

*Appearances*

For the Commission: *Maryanne S. Kane, Robert L. Patterson and Sandra N. Hammer.*

For the respondent: *Gordon Thomas, Rye, N.Y.*

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 ITT Continental Baking Company, Inc. ("ITT Continental"), 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. ITT Continental is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located on Halstead Ave., Rye, New York.

PAR. 2. Respondent ITT Continental, a wholly-owned subsidiary of International Telephone and Telegraph Corporation, is now and has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a bakery product designated by the trade name,

"Fresh Horizons." This product as advertised, is a "food" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. In the course and conduct of its business, respondent ITT Continental causes its food product, Fresh Horizons when sold, to be transported from respondent's places of business located in various States of the United States to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent ITT Continental maintains, and at all times mentioned herein has maintained, a substantial course of trade in its bakery products, including Fresh Horizons. The volume of business for Fresh Horizons alone, in or affecting such commerce, has been and is substantial.

PAR. 4. In the course and conduct of its business, respondent has disseminated or caused the dissemination of various advertisements for Fresh Horizons by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements inserted in magazines and newspapers and also advertisements broadcast by television and radio stations located in various States of the United States and in the District of Columbia that have sufficient power to carry such broadcasts across state lines into other States of the United States. The purpose of all of these advertisements has been to induce, directly or indirectly, the purchase of Fresh Horizons and it is likely that these advertisements have succeeded in inducing consumers to purchase this product.

PAR. 5. Typical of the statements and representations in said advertisements are those found in Exhibits A-F attached to this complaint.

PAR. 6. Through the use of said advertisements referred to in Paragraphs Four and Five, and other advertisements not specifically set forth herein, and because of the nature of the Fresh Horizons product, respondent has represented and now represents, directly or by implication, that

a. Fresh Horizons is a product made only with ingredients commonly used in the manufacture of bread or that it does not contain any major ingredient not commonly used, or anticipated by consumers to be commonly used, in bread;

b. The fiber in Fresh Horizons is the same kind of fiber as that in whole wheat bread or 100% all-bran cereal.

PAR. 7. Through the use of said advertisements referred to in Paragraphs Four and Five, and other advertisements not specifically

set forth herein, respondent ITT Continental has represented and now represents directly or by implication, that

- a. Fresh Horizons, in a one slice serving, contains five times the amount of fiber contained in one slice of 100% whole wheat bread; and
- b. Fresh Horizons, in a one slice serving, contains as much fiber as one serving of 100% all-bran cereal.

PAR. 8. In truth and in fact:

- a. Fresh Horizons is not made only with ingredients commonly used in the manufacture of bread, but rather contains as one of its major ingredients fiber derived from wood, an ingredient not commonly used, nor anticipated by consumers to be commonly used, in bread;
- b. Fresh Horizons, in a one slice serving, does not contain five times the amount of fiber contained in one slice of 100% whole wheat bread; and
- c. Fresh Horizons, in a one slice serving, does not contain as much fiber as one serving of 100% all-bran cereal.

Respondent's statements and representations as set forth in Paragraphs Six and Seven are false, deceptive, and misleading. These representations, rendered and now renders the advertisements referred to in Paragraphs Four and Five false, deceptive, misleading and unfair. These advertisements constituted and now constitute false advertisements.

PAR. 9. Furthermore, respondent marketed and advertised Fresh Horizons without disclosing to the purchasing public through its advertising that the product is made with fiber derived from wood or that its extra fiber is fiber derived from wood.

PAR. 10. Respondent's failure to identify the fiber found in Fresh Horizons is misleading in a material respect, in that disclosure of this fact to consumers would be likely to affect their decisions of whether or not to purchase said product. Since consumers would not expect to find fiber derived from wood as an ingredient in a bread or bakery product, respondent's failure to disclose this material fact rendered and now renders, the advertisements referred to in Paragraphs Four and Five false, deceptive, misleading and unfair.

PAR. 11. Furthermore, through the use of said advertisements referred to in Paragraphs Four and Five and other advertisements not specifically set forth herein, respondent ITT Continental has represented directly or by implication, that three out of five doctors recommend Fresh Horizons for its fiber alone.

PAR. 12. At the time of the first dissemination of the representation

contained in Paragraph Eleven, respondent ITT Continental did not possess and rely upon a reasonable basis for making this representation. Therefore, the making and dissemination of this representation, as alleged, without a reasonable basis therefor, constituted and now constitutes unfair or deceptive acts or practices in or affecting commerce.

PAR. 13. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent ITT Continental has been, and now is, in substantial competition in commerce, with various corporations, firms, and individuals engaged in the sale of food products of the same general kind and nature as those advertised and/or sold by respondent.

PAR. 14. The use by respondent of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of said food product by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondent, as herein alleged including the dissemination of the aforesaid false advertisements, 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 practices in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Commissioner Clanton did not participate.

Complaint

**WED BATES & COMPANY**

*Advertising*

CLIENT: ITC CONTINENTAL BAKING CO.  
PRODUCT: FRESH HORIZONS  
AS FILMED TV COMM/L'NO: ITC-H050  
TITLE: "NEWS"

DATE: 5/7/76  
LENGTH: 30 SECONDS



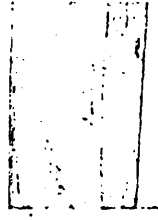
1. (SFX) SPOKESMAN:  
IT'S BEEN IN NEWS-  
PAPERS.



2. (SFX) medical publi-  
cations,



3. (SFX) and on TV news.

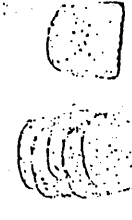


4. (DV) Now, it's here.  
(VO) New Fresh  
Horizons.



**30% fewer calories**

5. A major breakthrough  
in bread making. Fewer  
calories, 30% lower than  
white.



**5 times the fiber**

6. higher in fiber, 5 times the  
fiber than 100% whole  
wheat.



**7. As much fiber per ounce,  
as 100% all-bran cereal.**



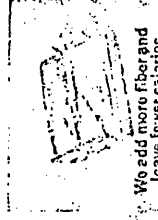
8. No other bread makes  
all these claims. Com-  
pare.



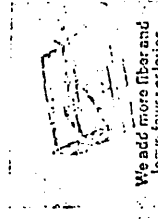
9. (VO) New Fresh Horizons,



10. White or Wheat.



**We add more fiber and  
leave fewer calories.**



**We add more fiber and  
leave fewer calories.**

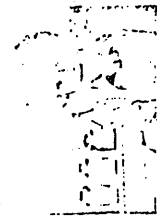
11. We add more fiber  
12. and leave fewer  
calories.

**TED BATES & COMPANY**

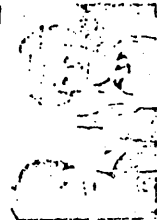
*Advertising*

CLIENT: ITT CONTINENTAL BAKING CO.  
PRODUCT: FRESH HORIZONS  
AS FILMED BY COMM. CO. ITB/C013  
TITLE: "TWO LADIES/NEW PACKAGE"

DATE: 8/4/76  
LENGTH: 30 SECONDS



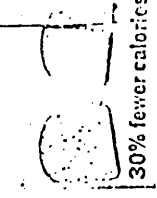
1. WOMAN 1: I won't give up bread, but I'd like one with fewer calories.



2. WOMAN 2: I don't eat bran cereal, but I do need more fiber.

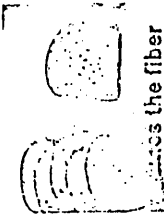


3. ANNCR: (VO) Introducing Fresh Horizons bread.

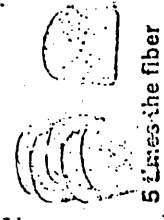


30% fewer calories

4. Lower in calories, 30% lower than white



5. 5 times the fiber



6. 5 times the fiber of whole wheat.



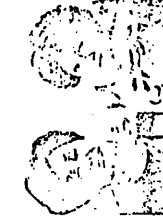
7. WOMAN 1: 30% fewer calories.



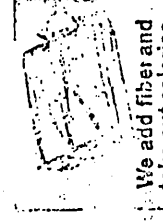
8. I just changed my bread.



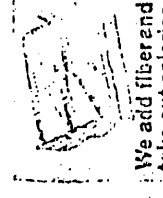
9. WOMAN 2: 5 times the fiber.



10. I just changed my bread.



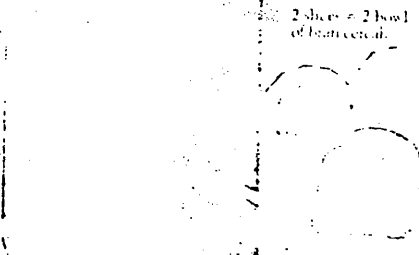
11. ANNCR: (VO) To new Fresh Horizons, white or wheat.



12. We add fiber and take out calories.

**Complaint**

Two slices of Fresh Horizons® have as much crude fiber or roughage as two bowls of 100% bran cereal.



David Shaub, North Truro, Mass.

Two slices of Fresh Horizons® have as much crude fiber or roughage as two bowls of 100% bran cereal. As much crude fiber as 6 cups of raw celery. Now your family can get the fiber you want them to have in a food they'll want to eat—delicious Fresh Horizons. Wheat and White.

**Fresh Horizons.**  
We add fiber and take out calories.

**SEAFARER'S SUPPER**

- 2 (10½-ounce) cans condensed Manhattan-style clam chowder
- 2 soup cans water
- ¼ pound fillet of white fish, cut in 2-inch pieces
- 1 (8-ounce) can whole kernel golden corn, undrained
- ¼ cup fine noodles
- ¼ cup green pepper strips
- ¼ teaspoon hot pepper sauce

In a saucepan, combine ingredients. Bring to a boil; reduce heat. Simmer for about 10 minutes, stirring occasionally. Serves 5.

**HEARTY VEGETABLE SOUP**

- 1 (10½-ounce) can condensed beef broth
- 1 (10½-ounce) can condensed vegetable soup
- 2 soup cans water
- 2 cups cabbage, cut in long thin shreds
- 1 cup cooked beef, cubed
- 1 (8-ounce) can tomatoes, cut up
- ½ cup small shell macaroni, uncooked
- 1 medium onion, sliced
- 2 tablespoons Parmesan cheese, grated
- 1 medium clove garlic, minced
- ¼ teaspoon caraway seeds

In a large saucepan, combine ingredients. Bring to a boil; reduce heat. Simmer for about 30 minutes, stirring occasionally. Serves 5.

30 FAMILY HEALTH

**GULF GUMBO**

- 1 (10½-ounce) can condensed chicken broth
- 1 (10½-ounce) can condensed turkey vegetable soup
- 2 soup cans water
- 1½ cups cooked chicken, cubed
- 2 cups raw potato, shredded
- 1 (10-ounce) package frozen mixed vegetables
- 1 large onion, chopped
- 1 medium green pepper, cut in 1-inch squares
- ¼ teaspoon dried savory leaves, crushed
- ¼ teaspoon pepper

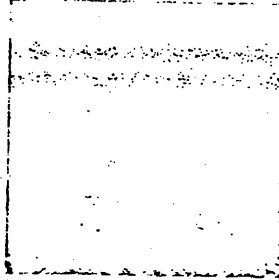
In a large saucepan, combine ingredients. Bring to a boil; reduce heat. Cover and simmer for about 20 minutes, stirring often. Serves 5.

**SOUTHERN POTPOURRI**

- 1 (10½-ounce) can condensed chicken broth
- 1 (10½-ounce) can condensed turkey vegetable soup
- 2 soup cans water
- 1½ cups cooked ham, diced
- 1 cup quick-cooking rice, uncooked
- 1 (10-ounce) package frozen peas
- 1 (2-ounce) can sliced mushrooms, drained
- ¼ teaspoon rubbed sage

In a large saucepan, combine ingredients. Bring to a boil; reduce heat. Simmer for about 5 minutes, stirring occasionally. Serves 5.

"Fewer calories than yogurt?  
I just changed my bread!"



2 slices of Fresh Horizons® have fewer calories than a cup of yogurt.

Judy Stewart, La Mesa, California

Two slices of Fresh Horizons® have fewer calories than a cup of unflavored, low-fat yogurt. Fewer than a cup of plain gelatin, or a half-cup of creamed cottage cheese. With Fresh Horizons you don't have to give up bread. All you give up is calories. Wheat and White.

**Fresh Horizons.**  
We add fiber and take out calories.

Complaint

94 F.T.C.

TED BATES & COMPANY

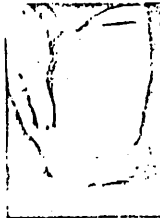
*Advertisement*

CLIENT: ITT CONTINENTAL BAKING  
PRODUCT: FRESH HORIZONS  
AS FILLED TO COMPL. LOG. ITBHC090  
TITLE: "TWO PERSONS"

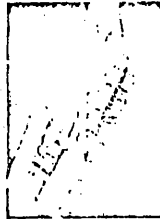
DATE: 6-9-77  
LENGTH: 30 SECONDS



1. WOMAN: A bread with fewer calories than yogurt.



2. ANNCR: (VO) Two slices of Fresh Horizons have fewer calories than a cup of plain yogurt.



3. ANNCR: (VO) Two slices of Fresh Horizons have fewer calories than yogurt.



4. WOMAN: A bread with fewer calories than yogurt.



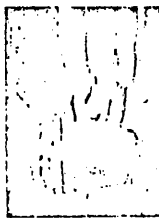
5. or gelatin.



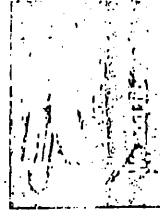
6. ANNCR: (VO) Two slices of Fresh Horizons have as much crude fiber as two slices of cereal.



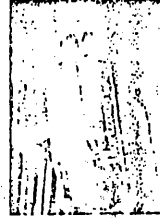
7. ANNCR: (VO) Two slices of Fresh Horizons have as much crude fiber as two slices of cereal.



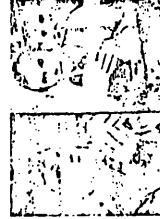
8. ANNCR: (VO) Two slices of Fresh Horizons have as much crude fiber as two slices of cereal.



9. or all this celery.



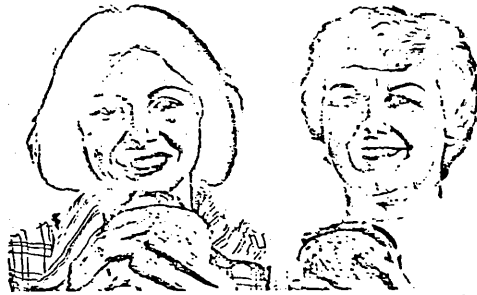
10. WOMAN: Fewer calories than yogurt. MAN: Fewer calories than yogurt. WOMAN: Fewer calories than yogurt. MAN: Fewer calories than yogurt.



11. ANNCR: (VO) Fresh Horizons, Wheat and White.



12. We add fiber and take out calories.



"30% fewer calories than white bread? I just changed my bread."

Sandra Baynard, St. Petersburg, Fla.

"Five times the fiber of whole wheat bread? I just changed my bread."

Beverly Sees, Independence, Mo.

## Why are so many women like these changing their family's bread to Fresh Horizons?

30% fewer calories than white bread.

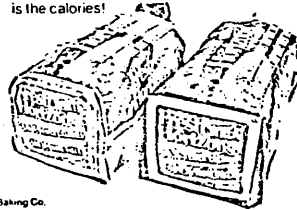
In fact, 2 full slices of Fresh Horizons<sup>®</sup> have fewer calories than a cup of gelatin or a cup of plain yogurt. Fewer than a half cup of creamed cottage cheese. Now you don't have to give up bread. With Fresh Horizons, all you give up is calories.

Five times the crude fiber of whole wheat bread.

You get as much crude fiber or roughage in 2 slices of Fresh Horizons as you get in 2 bowls of bran cereal. Now your family can get the fiber many authorities agree they need in a food they'll like to eat—delicious Fresh Horizons bread!

A taste the whole family likes.

The many women who bought Fresh Horizons for the calories and the fiber found their families liked Fresh Horizons for the taste. That goes for both wheat and white. With Fresh Horizons you get all the fiber, all the taste you want. All you give up is the calories!

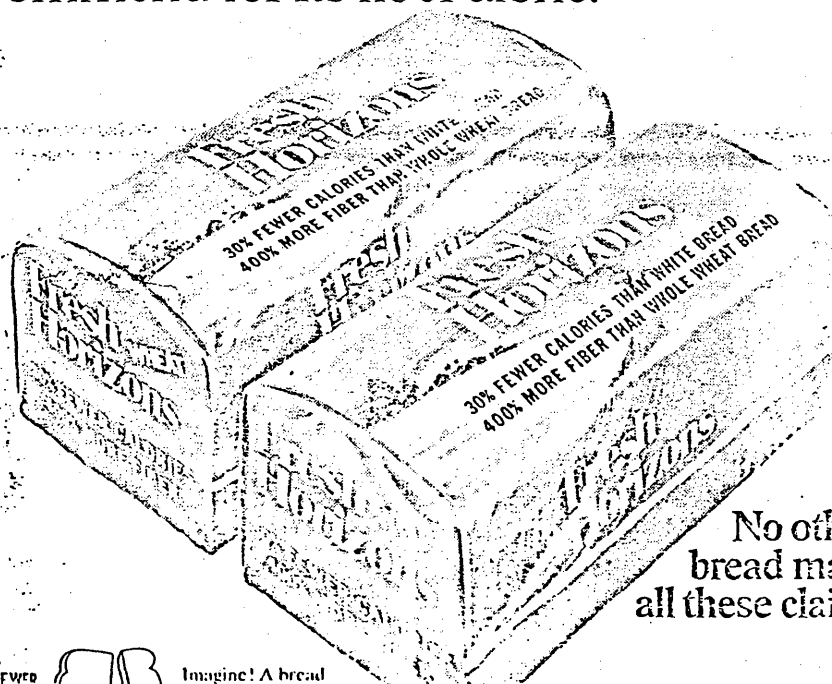


© 1977, Continental Baking Co.  
 ® Fresh Horizons is a registered trademark of ITT Continental Baking Co.

Introducing  
 the bread with 30% fewer calories than white,  
 and 400% more fiber than whole wheat.

**Fresh Horizons.**

A new kind of bread 3 out of 5 doctors  
 recommend for its fiber alone.



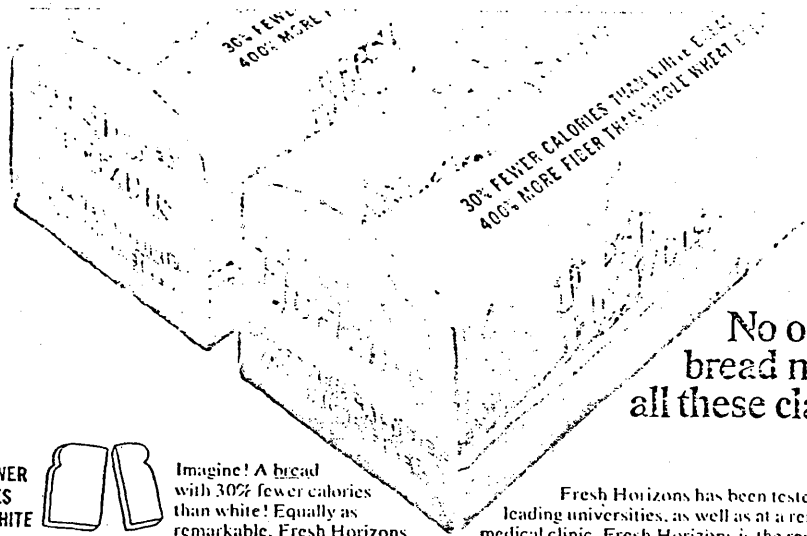
No other  
 bread makes  
 all these claims!

30% FEWER



Imagine! A bread

Complaint



No other bread makes all these claims!

NER  
ES  
HITE

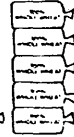


Imagine! A bread with 30% fewer calories than white! Equally as remarkable, Fresh Horizons has 400% more fiber than any other bread, almost any other food. It tastes delicious. Compared to whole wheat bread, Fresh Horizons has 30% less fiber — 400% more. One slice even has the fiber in a serving of 100% All-Bran Cereal. Yet Fresh Horizons gives you 30% fewer calories than whole wheat bread. Incredible? Yes! In a nationwide survey of doctors, 3 out of 5 said they would recommend Fresh Horizons bread for its fiber alone.

Fresh Horizons has been tested at two leading universities, as well as at a renowned medical clinic. Fresh Horizons is the result of a long search for a high-fiber food with reduced calories that looks and tastes good. And it's here now!

Now's the time to try it. With the store coupon below, you can save on your first loaf of white or wheat. Fresh Horizons. The bread with 30% fewer calories, 400% more fiber. A new kind of bread 3 out of 5 doctors recommend for its fiber alone.

400%  
MORE  
FIBER

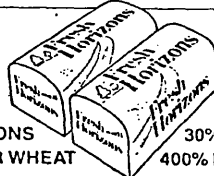


Save

15¢

STORE COUPON

15¢



FRESH HORIZONS  
— WHITE OR WHEAT

30% FEWER CALORIES  
400% MORE FIBER

Mr. Green: You are authorized as our agent to redeem this coupon for 15¢ on the purchase of new Fresh Horizons Bread. We will pay you 15¢ plus 5¢ handling charge for each of these coupons, redeemed in accordance with the terms of this offer. To obtain payment, send to Fresh Horizons, P.O. Box 1354, Clinton, Iowa 52733. Coupons will not be honored and will be void if presented through outside agencies.

brokers or others who are not retail distributors of our merchandise unless specifically authorized by us. Customer must pay any sales tax involved in purchase of sufficient stock to cover coupons presented for redemption must be shown on request. Coupon void where taxed, restricted or prohibited by law. Cash value — 1/20¢. Expires April 30, 1977.

A NEW KIND OF BREAD 3 OUT OF 5 DOCTORS RECOMMEND FOR ITS FIBER ALONE

Ad No. 206-16-001A REV. 1 8/13/76  
This ad prepared by  
GREY ADVERTISING, INC.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of each 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, *and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules*, 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 ITT Continental Baking Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located on Halstead Ave., Rye, 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

## I

*It is ordered*, That respondent ITT Continental Baking Company, Inc., a corporation, 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 of a bakery product called Fresh

Horizons or any other food product, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce which, directly or indirectly:

A. Makes any comparative claim regarding the amount of fiber in any such product, as compared with that in any other food product, unless the claim is based on measurement of "dietary fiber" by the neutral detergent fiber method with an amylase modification. The neutral detergent fiber method with an amylase modification shall be used until such time as the Food and Drug Administration officially adopts a method for measuring dietary fiber in foods. At that time, the officially approved method for measuring dietary fiber shall be used for comparative quantity claims.

B. Makes any representation regarding the fiber content of any such product, unless respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence for each such representation.

## II

*It is further ordered,* That respondent ITT Continental Baking Company, Inc., a corporation, 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 of a bakery product called Fresh Horizons or any other food product, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement by means of the United States mail or by any means in or affecting commerce which, directly or indirectly, makes any representation that any such product or any ingredient in such product has been recommended or approved by any doctor(s) or scientist(s), unless:

A. Before giving such recommendation or approval for such product, the doctor(s) or scientist(s) had been fully informed of the identity and derivation of all of the ingredients in such product, except those incidental ingredients which are added to assist in the food processing function which amount to less than 2% each of the final product on a weight basis, or

B. Before giving such recommendation or approval for any such ingredient, the doctor(s) or scientist(s) had been fully informed of the identity and derivation of that ingredient.

## III

*It is further ordered,* That 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 of the bakery product called Fresh Horizons or any other bread product containing alpha cellulose derived from wood, do forthwith cease and desist from disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce, which fails to disclose clearly and conspicuously in each advertisement in the *exact* language listed below for two and one-half years from the effective date of this order:

The source of (this/the) fiber is wood; or  
Contains fiber derived from pulp of trees.

Upon the expiration of this two and one-half year period respondent shall disclose clearly and conspicuously in each such advertisement for such bakery product in no more than ten (10) words that the source of the fiber in such product is wood or that such product contains fiber derived from the pulp of trees.

Either of these disclosures shall be required so long as wood continues to be a fiber component of such product.

Coupons without any advertising claims and point of purchase advertising without general text are exempt from the requirements of this provision. Advertisements which make advertising claims and also contain a coupon are subject to the requirements of this order.

## IV

*It is further ordered,* That 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 of any bakery product or cereal-based product do forthwith cease and desist from disseminating or causing the dissemination of any advertisement, by means of the United States mail or by any means in or affecting commerce, which represents directly or by implication that such product contains only ingredients commonly used, or anticipated\* by

\* An ingredient shall be considered "commonly used or anticipated" for purposes of this order:

(1) if it is enumerated under 21 C.F.R. 170.3(n) or,

(2) if it is included under 21 C.F.R. 170.3(o) and meets the requirements of the definition of common usage,

Provided that for substances containing an ingredient which is included under 21 C.F.R. 170.3(o) to be considered "commonly used or anticipated," such substances must be used in amounts which do not exceed levels of common usage when performing the same function in other foods.

(Continued)

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## Decision and Order

consumers to be commonly used, in the making of such a product, unless

- A. such is the case;
- B. the total of the unanticipated and uncommonly used ingredients in the final product is 4 percent or less by weight;\*\* or
- C. the presence, identity, and source of each unanticipated or uncommonly used ingredient is disclosed clearly and conspicuously when the total of the unanticipated and uncommonly used ingredients in the final product is greater than 4 percent of that product by weight.\*\*

## V

*It is further ordered,* That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device review and conform all advertising claims for any bakery and/or cereal-based product prepared and/or financed by the International Telephone and Telegraph Corporation, its subsidiaries or divisions, to the provisions of this order.

## VI

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

## VII

*It is further ordered,* That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate status such as dissolution, emergence of a successor corporation, the creation or dissolution of subsidiaries, and assignment or sale of the business, or any other change in the corporate respondent that may affect compliance obligations arising out of this order.

## VIII

*It is further ordered,* That the respondent shall within sixty (60) days after service of this order, submit to the Commission a report, in

For purposes of this order, common usage shall mean a history of consumption of a substance by a significant number of consumers in the United States.

\*\* For purposes of cumulating the 4% threshold:

(a) when a subsection (o) substance is used to perform a function for which there is no common usage of that substance for that function in foods, the entire amount of the substance shall be cumulated;

(b) when a subsection (o) substance is used to perform a function for which there is common usage of that substance for that function in foods, the amount which exceeds the highest previous level which has been commonly used to perform that function shall be cumulated.

writing, setting forth in detail the manner and form in which it has complied with this order. The effective date of Parts I-VI shall be the sixtieth day after service of this order.

### IX

*It is further ordered,* That the respondent maintain all files and records related to the requirements of Parts I-V of this order for a period of three (3) years after the dissemination of any advertisement of any product covered by this order, and that such material shall be made available to the Federal Trade Commission or its staff for inspection and copying upon reasonable demand.

Commissioner Clanton did not participate.

## IN THE MATTER OF

## BANKERS LIFE AND CASUALTY COMPANY, ET AL.

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

*Docket 9075. Complaint, Feb. 26, 1976 — Decision, Aug. 27, 1979*

This consent order, among other things, requires Bankers Life and Casualty Company (Bankers Life), an individual, and eleven corporate associates, all engaged in the advertising, promotion and sale of undeveloped land, to cease misrepresenting that undeveloped land purchase is a safe investment; involves little financial risk; and is a means of achieving financial security. The order requires that all advertising, promotional materials and sales contracts include specified disclosures regarding risks involved in undeveloped land investment; the advisability of consulting with a real estate specialist prior to contracting; the availability and cost of utilities; and the identity of lots in flood plain areas. Respondents must provide purchasers with cooling-off periods and information regarding their right to cancellation and refund. The firms are also prohibited from mortgaging any subdivision in the future, without ensuring that paid-up purchasers of lots in that subdivision will receive their warranty deeds, and be permitted to retain their rights. Additionally, the order requires respondents to make prescribed restitution to eligible purchasers who defaulted on their payments; and provide all active and paid-in-full purchasers, who had contracted for land at particular subdivisions during a certain time period, with an opportunity to cancel their contracts and receive specified refunds. The order holds Bankers Life responsible for assuring that proper restitution is made.

*Appearances*

For the Commission: *Gerald H. Jagers, William K. Hickey, John T. Hankins and Jay W. Madden.*

For the respondents: *William T. Kirby and James T. Griffin, Hubachek, Kelley, Rauch & Kirby, Chicago, Ill. for Bankers Life and Casualty Company, Robert D. Inman, Inman & Flynn, Denver, Colo. for San Luis Valley Ranches, Inc., Larwill Costilla Ranches, Inc., Rio Grande Ranches of Colorado, Inc., Top of the World, Inc., Materic, Inc., G-R-P Corporation, and Richard Greenberg, Alan H. Bucholtz, Quiat, Bucholtz, Bull & Laff, Denver, Colo. for Colorado Properties, Inc. and Milco Associates, Inc., J. Wallace Adair and John F. Bruce, Howrey & Simon, Washington, D.C. for Southern Realty & Utilities Corporation, Hartsel Ranch Corporation and Estates of the World, Inc. and Jeffrey P. Berg, Berg & Spire, Beverly Hills, Calif. for Alice Holguin.*

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as

amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties as set forth in the caption hereof, hereinafter sometimes referred to as respondents, have violated 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 in the enumerated paragraphs below.

Allegations in the enumerated paragraphs of respondents' present acts and practices include respondents' past acts and practices. Allegations in said paragraphs of respondents' representations include such representations in advertising, promotional materials or sales communications made orally, visually or in writing, directly or by implication.

PARAGRAPH 1. Respondent Bankers Life and Casualty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 4444 West Lawrence Ave., Chicago, Illinois. It also conducts business at 1001 Park Ave., Lake Park, Florida. Respondent Bankers Life and Casualty Company dominates and controls the acts and practices of respondents Southern Realty & Utilities Corp., Hartsel Ranch Corporation and Estates of the World, Inc.

Respondent Southern Realty & Utilities Corp. 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 1001 Park Ave., Lake Park, Florida. Respondent Bankers Life and Casualty Company has a majority ownership interest in respondent Southern Realty & Utilities Corp.

Respondent Hartsel Ranch Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 1001 Park Ave., Lake Park, Florida. It is a wholly-owned subsidiary of respondent Southern Realty & Utilities Corp.

Respondent Estates of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Hawaii, with its principal place of business located at 4810 North Kenneth Ave., Chicago, Illinois. Respondent Bankers Life and Casualty Company has a majority ownership interest in respondent Estates of the World, Inc.

Respondent John D. MacArthur is an individual and an officer, former officer or Chairman of the Board of Directors of corporate respondents Bankers Life and Casualty Company, Southern Realty & Utilities Corp., and Hartsel Ranch Corporation. He owns all of the outstanding stock of Bankers Life and Casualty Company. He

dominates and controls the acts and practices of the said corporate respondents and their subsidiaries. His address is 101 Ocean Ave., Palm Beach Shores, Florida.

Respondent Larwill Costilla Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Rio Grande Ranches of Colorado, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is a wholly-owned subsidiary of respondent Larwill Costilla Ranches, Inc.

Respondent Trustees of Colorado Properties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida.

Respondent Top of the World, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is a wholly-owned subsidiary of respondent Trustees of Colorado Properties, Inc.

Respondent Milco Associates, Inc. is a corporation organized, existing and doing business under and by virtue of the the laws of the State of Florida, with its principal place of business located at 2601 Biscayne Boulevard, Miami, Florida. It is the sales agent or broker for respondents Hartsel Ranch Corporation and Estates of the World, Inc.

Respondent Irving E. Miller is an individual and an officer of Milco Associates, Inc. He owns all of the stock in respondents Milco Associates, Inc., Trustees of Colorado Properties, Inc., and Larwill Costilla Ranches, Inc. He formulates, directs and controls the acts and practices of the said corporate respondents and their subsidiaries. His address is 2601 Biscayne Boulevard, Miami, Florida.

Respondent San Luis Valley Ranches, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located at 201 Carson Ave., Alamosa, Colorado. It is the sales agent or broker for respondent Larwill Costilla Ranches, Inc.

Respondent G-R-P Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business located in Blanca, Colorado. It is the sales agent or broker for respondents Rio Grande Ranches of Colorado, Inc. and Top of the World, Inc.

Respondent Materic, Inc. is a corporation organized, existing and

