

IN THE MATTER OF
CALIFORNIA MILK PRODUCERS ADVISORY BOARD, ET
AL.

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

Docket 8988. Complaint, Aug. 1, 1974 — Final Order, Sept. 21, 1979

This order dismisses a complaint issued against a Modesto, Calif. milk producers association and its New York City advertising agency, on grounds that it was unreasonable to condemn advertising claiming that "Every body needs milk" because of the small fraction of allergic people.

Appearances

For the Commission: *Gerald E. Wright, Jerome M. Steiner, Peter C. Lagarias and Michael C. Weisberg.*

For the respondents: *William A. Wineberg, Jr., Thomas Paine and Ross H. Schulz, Broad, Khourie & Schulz, San Francisco, Calif. and Harvey B. Sindle, Katz, Leavy, Rosenzweig & Sindle, New York City.*

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 the California Milk Producers Advisory Board, an unincorporated association, and Cunningham & Walsh, Inc., a corporation, hereinafter referred to as "respondents", have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For purposes of this complaint, the following definitions shall apply:

1. "Advisory Board" means respondent California Milk Producers Advisory Board.
2. "Marketing Act" means The California Marketing Act of 1937, as amended, Agricultural Code of the State of California, Para. 58,601, *et seq.*
3. "Marketing Order" means the Marketing Order for Research, Education, and Promotion of Market Milk and Dairy Products In California, promulgated by Jerry W. Fielder, Director of Agriculture, October 9, 1969, as amended.

PAR. 2. Respondent Advisory Board is an unincorporated association organized, existing and doing business under and by virtue of the Marketing Order, under the authority of the Marketing Act, with its principal office and place of business located at 1213-13th St., Modesto, California. [2]

PAR. 3. Respondent Cunningham & Walsh, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 260 Madison Ave., New York, New York.

PAR. 4. Respondent Advisory Board is now and has been engaged in the development, implementation, and administration of advertising programs relating to milk. Said programs are operated for the pecuniary benefit of producers and producer-handlers of milk located in the State of California, and inure to the pecuniary benefit of producers and producer-handlers of milk located in the State of California, and in other states. The members of the Advisory Board are producers and producer-handlers of milk located in the State of California. Said producers and producer-handlers are persons, partnerships or corporations operating for profit or for the profit of their members.

Said advertising programs include, and have included, but are not and have not been limited to the dissemination, publication, and distribution of advertisements, including but not limited to the advertising referred to herein, to promote the sale of milk, which comes within the classification of "food", as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent Cunningham & Walsh, Inc. is now, and for some time last past has been, an advertising agency for the Advisory Board and is now preparing and placing, and 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 milk, which comes within the classification of "food", as said term is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their said activities and/or businesses, respondents have disseminated, recommended and/or caused the dissemination of certain advertisements concerning milk by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in magazines and other periodicals of general circulation, and by means of television and radio broadcasts transmitted by television and radio stations located in the State of California, 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 products; and have disseminated, recommended and/or caused the dissemination of, advertisements concerning said products 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 products in commerce as "commerce" is defined in the Federal Trade Commission Act. [3]

PAR. 7. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are a number of television and radio commercials featuring endorsements of famous celebrities, and print media advertisements. These commercials and promotional materials contain messages concerning the uses, purposes, utility, characteristics and effects of milk. As representative of the aforementioned commercials, several such television, radio and print media advertisements are set forth in printed form in subparagraph A-E below:

A. One such television commercial, using a close-up of Mark Spitz, a well-known Olympic swimmer, states the following:

VIDEO:

1. OPEN ON CU OF MARK SPITZ.

AUDIO:

MARK No, I don't get embarrassed ordering milk. As a matter of fact I order it all the time. I think ordering milk whether you're 10 years old or 100. . . I think uh, it's something that your body really needs. An uh I — I wouldn't get embarrassed at all.

2. DISS TO TITLE: MILK HAS SOME- ANNCR: Milk has something for every
THING FOR EVERYBODY body.

3. DISS TO TITLE: Even Mark Spitz's. Even Mark Spitz's.

4. DISS TO CU OF MARK SPITZ. ADD ANNCR: You know, I say "two glasses
SUPER: CALIFORNIA-OREGON- please". (LAUGH) I wouldn't try to hide
WASHINGTON DAIRYMEN. it and say, "I'll have a small" (LAUGHS)

B. Another such radio commercial, using Vida Blue, a well-known baseball player, states the following:

AUDIO:

VIDA: I do coach a Little League team, and it's in this same pasture that I used to play ball in. We'd come out after school

Complaint

94 F.T.C.

and we play a little ball, and we have fun. And naturally I'll take 'em to my house afterwards, and I'll treat 'em to, uh, cookies and milk. So I try to influence kids about growing up and just, [4] uh, knowing the difference between right and wrong. And, uh. . . I've never told my Little League team that I drink two and a half gallons of milk, but I've just told them that I drink a lot of milk, and that it's good for you, and it's good for your body. And I'm just waiting for the day that I can see one of my little kids become a great professional athlete.

AUDIO

VO: Every body needs milk. Even Vida Blue's.

VIDA: . . . Try to stress to the kids, living a clean life and keeping your body in top physical condition and just growing up. . . an American. A *true* American.

C. Another such television commercial, using a closeup of Ray Bolger, a well-known dancer, states the following:

VIDEO:

1. OPEN ON CU OF RAY BOLGER.

AUDIO:

RAY: The big important thing in our business—the movement of the body—is to keep your calcium balance. The extremities, for instance; the hands. We use our hands in dancing, see? We must have a facility of having freedom of the hands. The hands are a beautiful thing when used properly. I mean when they're, ah. . . but they shouldn't look like your playing Dracula, you know. And so therefore you want them sort of free and easy and you can't have arthritic little joints. As a matter of fact, a person who does strenuous exercise. . . milk is, is. . . it's terribly important that you have your proper intake of milk. I suppose it would be obvious for me to say that I drink milk. But it's more than obvious; it's an absolute necessity for me

2. DISS TO TITLE. *ANNCR*: Every body needs milk.
3. DISS TO TITLE. Even Ray Bolger's.
4. DISS TO CU OF BOLGER. *RAY*: I never saw a ballet dancer that didn't drink milk. [5]

D. Another such radio commercial, using Dear Abby, a famous newspaper columnist states:

AUDIO:

ABBY: I'm only in daily newspapers, and I'm published around the world. . .Ireland, Buenos Aires. Fifty-Five million daily. . .That's a lot of people, really. People tell me things they wouldn't tell anybody else. Kids tell me things they wouldn't tell their parents; husbands tell me things they wouldn't tell their wives; vice versa. And it, I imagine it's a great outlet. . .people being able to. . .well, make a wailing wall out of me. When you know that fifty-five million eyes are on you every day, you are very careful of what you. . .what you say. And, uh, I have to keep my energy up. I have a lot of vitality; I always have. Thank heavens, I have very good health; I'm very seldom sick; I very seldom have a cold. . .and I think I probably can attribute that to the fact that I have been a milk drinker all my life. And I still am.

VO: Every body need milk.

Even Dear Abby's.

ABBY: I'm a really good ad for dairy products, because. . .I love cheese, whipped cream, milk. . .Milk goes with everything.

E. One such print media advertisement is the following: [6]

“Whether you're 10 years old or 100,
I think it's something your body needs.
In fact, I say: 'Two glasses, please!'”



Milk has something for every body. Even Mark Spitz.

California - Oregon - Washington - Dairymen

Ad No. 55-5 (33)-D-300 lines 22x7, 3 col. x 100 lin
Newspaper
CUNNINGHAM & WALSH • 503 SAHARA ST. N.Y.C.

[7] PAR. 8. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication that:

A. The consumption of milk is essential, necessary and needed by all individuals irrespective of the state of their health.

B. The consumption of milk is beneficial for all individuals.

C. The consumption of milk is beneficial in large or unlimited quantities.

D. The consumption of milk will prevent or will lessen the probabilities of contracting colds or arthritis.

PAR. 9. In truth and in fact:

A. The consumption of milk is not essential, necessary or needed by individuals with health problems such as certain allergies and symptomatic lactose intolerance.

B. The consumption of milk is detrimental to individuals with health problems such as certain allergies, and symptomatic lactose intolerance.

C. The consumption of milk in large or unlimited quantities is detrimental to individuals with health problems such as certain allergies, and symptomatic lactose intolerance.

D. The consumption of milk will not prevent and will not lessen the probabilities of contracting colds or arthritis.

Therefore, the statements and representations in said advertisements referred to in Paragraph Seven, and others similar thereto not specifically referred to herein, were and are misleading in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act, and the statements, representations, and failure to disclose material facts set forth in Paragraphs Seven and Eight were, and are, unfair, false, misleading and deceptive.

PAR. 10. The use by respondents of the unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, 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 purchase of substantial quantities of milk.

[8]

PAR. 11. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," as herein alleged, were

Initial Decision

94 F.T.C.

and are all to the prejudice and injury of the public and constituted, and now constitute, unfair or deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE
LAW JUDGE

JULY 31, 1979

I

STATEMENT OF THE CASE

Allegations of Complaint

The complaint charged the California Milk Producers Advisory Board, an unincorporated association formed pursuant to the California Marketing Act of 1937, as amended, and a Marketing Order issued thereunder by the Director of Food and Agriculture of the State of California on October 9, 1969, and its advertising agency, Cunningham & Walsh, Inc., with the dissemination of misleading representations and false advertisements in the promotion of milk. More specifically, the complaint charged the Milk Advisory Board and Cunningham & Walsh with having disseminated advertisements over television, radio, in print media, by billboard, and otherwise, which represented that:

- A. The consumption of milk is essential, necessary and needed by all individuals irrespective of the state of their health.
- B. The consumption of milk is beneficial for all individuals.
- C. The consumption of milk is beneficial in large or unlimited quantities.
- D. The consumption of milk will prevent or lessen the probabilities of contracting colds or arthritis.

According to the complaint these alleged representations were misleading and false because "in truth and in fact":

- A. The consumption of milk is not essential, necessary or needed by individuals with health problems such as certain allergies and symptomatic lactose intolerance.
- B. The consumption of milk is detrimental to individuals with health problems such as certain allergies, and symptomatic lactose intolerance. [2]
- C. The consumption of milk in large or unlimited quantities is

detrimental to individuals with health problems such as certain allergies, and symptomatic lactose intolerance.

D. The consumption of milk will not prevent and will not lessen the probabilities of contracting colds or arthritis.

The complaint charged that the advertisements disseminated by the Milk Advisory Board and Cunningham & Walsh constituted "false advertisements" as defined in the Federal Trade Commission Act, and further that the use by the Board and Cunningham & Walsh of "unfair, false, misleading and deceptive statements" in the promotion of milk, and the "failure to disclose material facts," had the tendency and capacity "to mislead members of the consuming public into the purchase of substantial quantities of milk."

Procedural History

Injunction Against Commission

The complaint issued August 1, 1974, and was served on respondents August 14. A prehearing conference was scheduled to be held September 23 to discuss the issues, to determine the state of preparations of each side for trial, to organize the case generally, and to set a target date for hearings on the merits. On September 11, the State of California and its Director of Food and Agriculture, the California Milk Producers Advisory Board and Cunningham & Walsh, obtained a temporary restraining order from the U.S. District Court for the Northern District of California enjoining the Commission from further proceedings in this case. The prehearing conference scheduled by the law judge had to be cancelled. A preliminary injunction issued on September 23, CCH 1974-2 Trade Cases ¶ 75,328 (N.D. Cal. 1974), and nine months later on June 25, 1975, after briefing and argument, the District Court issued a permanent injunction against further Commission proceedings.

The decision of the District Court to issue a permanent injunction was grounded on the determination that the California Milk Producers Advisory Board was an agency of the State of California and that the Commission had no jurisdiction to proceed "with respect to the matters complained of by the FTC in Docket No. 8988." *State of California ex rel. Christensen v. Federal Trade Commission*, 9 S&D 1373 (N.D. Cal. 1975). [3]

The Commission appealed. After briefing and argument the Court of Appeals for the Ninth Circuit issued a decision on March 3, 1977, which vacated the injunction. Expressing no opinion on the merits of the jurisdictional question other than to note that the question was a

"close one," the Court of Appeals concluded that the Commission "should have the opportunity to make the initial determination of its own jurisdiction" on the basis of a "full factual development" and a "solid factual record." *State of Cal. ex rel. Christensen v. F.T.C.*, 549 F.2d 1321 (9th Cir. 1977). The State of California, the Milk Board and Cunningham & Walsh petitioned for certiorari and the Court of Appeals stayed its mandate. The U.S. Supreme Court denied the petition for certiorari on October 3, 1977. On October 17, the mandate of the Court of Appeals was received by the District Court freeing the law judge and the Commission from the injunction.

Resumption of Commission Proceedings

On November 1, 1977, respondents were ordered to file their answers to the complaint and on November 4, 1977, an order was issued convening a pretrial conference November 30 to review the status of the case, and the ability of each side to go to trial in view of the three year interruption.

On November 17 the State of California by its Director of Food and Agriculture, represented by its Attorney General, filed a motion to intervene as a respondent in this proceeding. On November 25 the law judge denied intervention "as a respondent," but granted the State of California "permission to intervene for the limited purpose of raising, presenting, and arguing matters of fact or law on the issue of whether the California Milk Producers Advisory Board is subject to the jurisdiction of the Federal Trade Commission with respect to the advertising disseminated and challenged in the Commission's complaint."

A prehearing conference lasting most of the day was held on November 30. The possibility of eliminating by stipulation or otherwise all the issues with respect to respondents' advertising promoting the consumption of milk, except the question of jurisdiction, was explored in detail, but without success. The possibility of an agreement by both sides on the terms of an order which would issue by consent if, after trial, the jurisdictional question was resolved against respondents was raised by the law judge. [4] Notwithstanding subsequent discussion and negotiations, the parties advised the law judge on December 9, 1977, that they could not agree on the terms of such an order.

The parties being unable to agree on any basis for settlement or stipulation of the case in whole or in part, resolution of all issues on the merits by hearings became the only alternative. A timetable for pretrial procedures including discovery, and commencement of

hearings was worked out by counsel for both sides and accepted by the law judge. It provided for commencement of trial on June 5, 1978.

Hearings on the Merits

The proceeding proved to be far more complex and lengthy than the law judge had anticipated. The case-in-chief required about eight weeks of hearings which, following three weeks in June, were completed in sessions in August, September and October. The case-in-defense began November 2 and proceeded with minor interruption to completion on November 29. Complaint counsel offered two and one-half days of rebuttal, completing this on December 4th. Neither the Milk Advisory Board nor Cunningham & Walsh desired to offer surrebuttal.

Inasmuch as thousands of exhibits, many of them medical studies, were offered over the course of the lengthy trial, in many instances being rejected initially but later being received after a proper foundation had been laid, and in many other instances being received only for a limited purpose, the law judge directed counsel for both sides to prepare a joint statement relating to all exhibits. The joint statement lists all exhibits offered in evidence, each page of the transcript where a ruling on the admissibility of an exhibit was made, and the nature of the ruling. In this manner the evidentiary status of every exhibit has been made clear at a glance to counsel, to the law judge and to the Commission for review. The joint statement was filed January 30 together with a statement of rejected exhibits and a stipulation of substantive corrections to the record. On February 8 the evidentiary phase of this proceeding was ruled by the law judge to have been completed.

Proposed findings and supporting material by both sides were directed to be filed by March 16 and reply memoranda, if any, were ordered filed by April 16. Permission was later granted both sides to file their proposed findings and supporting material by Friday, March 23. The date for submission of reply memoranda was extended to May 25 on application of respondents, the law judge having concluded that filing by [5] that date would not delay the Initial Decision which in the interim would be in the process of preparation. The State of California filed its brief as intervenor on the "jurisdictional" issue March 29 and its reply brief June 11.

It was clear at the time the foregoing extensions of time were granted to counsel that the size of the record and the complexity of the issues raised by this proceeding would necessitate more time than the 90 day rule permitted for the undersigned to write the

Initial Decision. The time for this was extended by the Commission to June 29, and later to July 31.

The hearings were attended throughout by a representative from the California Attorney General's office.

The following were among the issues raised by this proceeding and pursued in depth during the evidentiary hearings: the jurisdiction of the Commission to challenge the advertising of the Milk Advisory Board, involving a detailed inquiry into the nature and operations of the Board and its relation to the California Department of Food and Agriculture and to the State of California, the advertising disseminated by the Board and Cunningham & Walsh, the representations contained in the advertising disseminated by the Board and Cunningham & Walsh, the review of that advertising by the Department of Food and Agriculture, the need for milk in the diet, lactose intolerance and milk allergies, the medical and scientific knowledge concerning lactose intolerance and allergies, the development and the state of medical and scientific knowledge when the challenged advertising was being disseminated, the review of the claims in the advertising by scientific experts, the significance of lactose intolerance and milk allergy and the bearing thereof on milk consumption by persons with lactose intolerance or milk allergy, the dietary advice concerning milk consumption disseminated over the years by federal and state governments, and questions of relief. These were not the exclusive issues, but are stated only to give an indication of the scope of matters covered in the hearings.

The record numbers 12,919 transcript pages and 14 volumes of exhibits. Thirty-five witnesses testified, including fourteen experts from medical, scientific and other fields, many of whom were of national and international reputation.

The proceeding is now before the undersigned for decision based upon the allegations of the complaint, the answer, the evidence and the proposed findings of fact, conclusions and legal authority filed by the parties and the State of [6] California. All proposed findings of fact, conclusions and arguments not specifically found or accepted herein, are rejected. The undersigned law judge, having considered the entire record, and all the contentions of respondents, complaint counsel and the State of California on the jurisdictional issue, makes the following findings and conclusions, and issues the order at the end hereof dismissing the complaint.

II

FINDINGS OF FACT

Respondents

1. The California Milk Producers Advisory Board (hereinafter sometimes referred to as the "Milk Advisory Board," the "Milk Board" or the "Board") is an advisory board appointed by the Director of Food and Agriculture of the State of California. The Board, which consists of 24 dairy farmers and, more recently, one public member, was created pursuant to a "Marketing Order for Research, Education and Promotion of Market Milk and Dairy Products in California" promulgated by the state Director of Food and Agriculture on October 9, 1969, after an affirmative vote in favor thereof by California milk producers. This marketing order was issued pursuant to the California Marketing Act of 1937, as amended, (Cal. Agri. Code § 58,601, *et seq.*, CX 1135, 1146). The Advisory Board maintains an office in Modesto, California (Complaint, ¶¶ 1 and 2 and Answer, ¶¶ 1, 2 and 4).

2. Respondent Cunningham & Walsh, Inc., (hereinafter sometimes referred to as "Cunningham & Walsh," the "advertising agency," or the "agency"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 260 Madison Ave., New York, New York. Cunningham & Walsh maintains offices in a number of cities including San Francisco, California (Complaint, ¶ 3 and Answer, ¶ 3).

Intervenor for a Limited Purpose

3. The State of California, by order of November 25, 1977, was permitted by the law judge to intervene in this action for the limited purpose stated earlier herein. [7]

The Advertising of Respondents and the Representations Made

Background

4. During the period from 1955 to the time the California Milk Producers Advisory Board was organized in 1969, there had been steady decline in the per capita consumption of milk, both nationally and in the State of California, although gross sales of milk in California increased due to population growth of the state. By the end of the 1960's, however, overall population growth in California no longer compensated for the per capita decline in milk consump-

tion. The dairymen of California became concerned. Under the leadership of a voluntary organization, the American Dairy Association of California, the dairymen sought the issuance of a marketing order for milk which would permit mandatory assessments on all dairy farmers to create a fund for the promotion of milk to stem, if possible, the sales decline. At a hearing held by the California Department of Food and Agriculture in connection with the proposed marketing order and advisory board, the state's milk producers indicated that they wanted a campaign of strong commercial advertising (CX 1119(b)). The marketing order was approved. Pursuant to it the California Milk Producers Advisory Board came into being to conduct the promotional activities authorized by the marketing order. Upon formation of the Board an assessment of 1/2 of one percent of sales was levied on each milk producer in California. In 1971 this assessment was increased to one percent of sales.

5. With the substantial promotional funds thus generated the Milk Board hired a leading advertising agency, Cunningham & Walsh, and an advertising and promotional campaign for milk using television, radio, newspapers, magazines, billboards, and point of sale materials, was begun. The Milk Board and Cunningham & Walsh spent the following amounts for the advertising of milk after formation of the Board. [8]

<i>Period</i>	<i>Advertising Expenditure</i>
December 1969 to June 1970 (half-year)	\$ 491,575.
July 1970 to June 1971	1,645,753.
July 1971 to December 1971	1,541,510.
January 1972 to December 1972	4,258,886.
January 1973 to December 1973	4,368,921.
January 1974 to December 1974	5,637,199.
(CX 1380, CX 1386-90).	

“Essential, Necessary and Needed”

6. The advertising of the Milk Advisory Board and Cunningham & Walsh, particularly the advertising which utilized the “Every Body Needs Milk” theme, had the capacity to convey, and conveyed the representation that milk was essential, necessary and needed by all individuals for a nutritionally adequate diet and good health. There was no representation that milk was essential for life or that one would become ill if one did not drink milk. The representation conveyed to the public, however, went far beyond the message that “Milk is good for you,” “healthful” or “nutritious,” or “that milk is a highly recommended and desirable product for good nutrition and that it is ‘good for you’ ” (RPF 856, 870).

7. The message “Every Body Needs Milk” was conveyed to the California populace for almost three years by hundreds, if not thousands of advertisements using all channels of communication, television, radio, billboards, newspapers, magazines, and point of sale material (CX 2425-2441). This message was not communicated in isolation, but was almost invariably, except perhaps where it was printed on the sides of milk tank trucks, part of a larger advertisement which enhanced and reinforced the representation stated in the preceding finding, in both subtle and overt ways. [9]

Examples

8. *“Beautiful People”* — CX 1 and 2.

These were among the first advertisements disseminated. Both CX 1 and 2 were newspaper and billboard ads (Tr. 151-52; CX 30, 2425(a), 2426(c)). They displayed “Every Body Needs Milk” in context with two handsome young models, a young man and a young woman, both in bathing attire. In each ad the model’s body is emphasized, being placed intentionally between the words “Every” and “Body” (Manley, Tr. 11435; Crandall, Tr. 4919-20). The models are visible magnificent physical specimens radiating good health, quintessentially “beautiful people.” The ads strongly convey, directly and by unstated suggestion, that milk is a dietary essential for the human body, including beautiful bodies. CX 1 is reproduced herein.

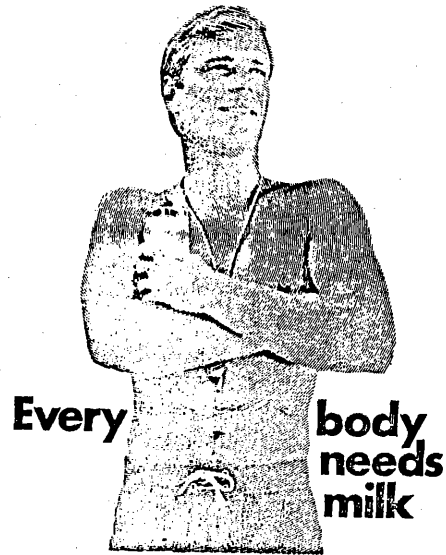
9. *“Every Body Needs Milk” 1970 Billboards* — CX 31, 33, 2426(a), 2427(d), 2428(a) and (b), 2429(a).

Following dissemination of CX 1 and 2, and the billboard versions (CX 30, 2426(c)), respondents created a series of billboards which were erected throughout California in 1970 at strategic high traffic

locations (CX 2426(b) and (c), 2427(d), 2428(a) and (b), 2429(a)). Like CX 1 and 2, these featured "Every Body Needs Milk" with healthy young models participating in outdoor activities and sports (CX 31, 33, 2427(d)). Dates of dissemination and planned dissemination are shown in CX 852(a) and CX 2426(b); (Bier, Tr. 1618-21). There were "Bikini Girl" in April 1970, "Lifeguard" in May, "Karate Fighter" in June, "Bikini Girl with Kitten" in July, "Dune Buggy" in August, "Surfer" in September, "Football Player" in October, "Sky Diver" in November and "Girl on Exercise Rings" in December. Cunningham & Walsh described these in the following manner (CX 3000, p. 95; see also Bier, Tr. 1623): [10]

Initial Decision

MILK ADVISORY BOARD



Ad No. SF-3500-A—150 lines B&W, 2 col. x 75 lines
 California Newspapers—1970
 CUNNINGHAM & WALSH • 500 SANSOME STREET
 SAN FRANCISCO, 94111 (415) YUKON 1-7850
 5-13-70-3

FEDERAL TRADE COMMISSION		
Docket No. <u>8788</u>	COMMISSION	Exhibit No. <u>L</u>
In the Matter of: <u>CMFAB</u>		
Date <u>6/6/78</u>	Witness _____	Reporter <u>Walt</u>

[11] The outdoor billboards were directed towards a more general audience; young and old, male and female. They were meant to tell every body that they needed milk. The boards attempted to convey that milk provides health and vitality, that it makes people *look* great and *feel* great. These billboards were put up throughout the state of California beginning in April and a new design was used every month.

Concerning the exposure of the California public to these billboards the dairymen were told by the Milk Board (CX 2427(d), 2428(b)):

Milk Advisory Board billboards, featuring a different model and activity each month, have attracted extremely high interest on the part of Californians. Following a survey on billboard effectiveness, Haug Associates, Inc., of Los Angeles, reported that the "Every Body Needs Milk" billboards, particularly the Bikini board, are among the top 10% of all boards they have measured.

* * * * *

The new November milk board is now up featuring the Sky Diver. For December, it will be the Girl on Rings, and for January, the Dune Buggy. All feature the theme "Every Body Needs Milk." The 30-sheet billboards, all located in high traffic areas, are now being rotated on a regular basis so as to reach increasing amounts of people. Nearly all markets in California are covered by the billboard postings, with hundreds of boards installed throughout the state.

In addition to the regular 30-sheet billboards, spectacular or painted boards are featured in Los Angeles, San Diego and San Francisco-Oakland. Locations are changed each month, and all are on heavily travelled freeways or major streets in the cities. The painted boards alone, exclusive of the regular boards, reach an average of from 14 to 15 million viewers each month with the milk message.

[12] According to the Milk Advisory Board, the billboards were "seen," "understood," and the "Every Body Needs Milk" message was "believable and easy to absorb" (CX 2427(d)).

10. "Cow Jokes" — radio commercials, CX 78-83.

These were among the early commercials disseminated by the Milk Board and Cunningham & Walsh. They were broadcast on radio stations throughout California from March to July 1970 (Bier, Tr. 1672; Manley, Tr. 11439; RX 1843). These ads captured the attention of the listening audience with a "cow joke," and then conveyed the message through a female voice "Twinkle Star" singing at two or more points in the commercial "Every body needs milk." Just before the end of the commercial "Twinkle Star" states "And now the Milk Advisory Board who reminds you everybody needs milk * * *." The Milk Board's publication circulated to California milk producers described these commercials (CX 2426(b)):

Humorous, catchy, ear-appealing. . . these are the radio spot announcements for milk, also carrying the "Every body Needs Milk" theme, now on 38 California radio stations. Using the Cow Joke approach, the milk announcements have been so successful radio

station operators report they are the most provocative commercials they have ever presented. Audience listenership is rated extremely high.

11. "*Milkmaid*," "*Milkmom*," "*Milkman*," - TV ads CX 140-41, 143-45.

These were disseminated commencing in October 1970 and continued until February 1971 (RX 1843). In "*Milkmaid*" a disheveled teenage girl sips milk and is transformed in appearance into a sophisticated young lady as she tells the TV audience "everybody needs milk!" "to keep growing," "and feel good" "and loook good" . . . "Cause milk's got calcium and vitamins and many things I can't even remember—and who stops needing them." In "*Milkmom*" a care-worn "mom" holds a glass of milk in her hand and tells the TV audience "I mean, absolutely everybody needs milk." As she sips she also is transformed in appearance into a "high style" matron. In "*Milkman*" a crochety 70-year old sips milk and becomes a dapper, elderly gentleman with a walking stick as he advises that if milk can help "a body when its young" it can go right on helping "to keep it young," [13] and "at whatever your age — to feel good — and look good — everybody needs milk." At the end of all the commercials, the TV screen displayed "Every body needs milk" followed by "Milk Advisory Board." As many references as possible to "Every Body Needs Milk" were worked into the commercials, and at the end that slogan "Every Body Needs Milk" was kept on the screen longer than would have been the normal practice (Manley, Tr. 11449). These TV ads were estimated to reach 92% of Southern California households 13 times or more a month and 92% of Northern California households over 4 times monthly (CX 2427(b)). Underneath the nonsense there was a serious message conveying that milk was a dietary essential for all ages for good health.

12. "*Strobe*" *Billboards* — a slide RX 1837; CX 32, 2429(a), 2432(b), 2433(c) and 2434(c).

These were a second series of billboard advertisements created by Cunningham & Walsh and the Milk Board, and published January through December 1971, using "stroboscopic" photographs of activities such as bicycling, skating, drumming, fencing, a girl on a swing, man doing pushups, and track and field activities (Manley, Tr. 11445; Bier, Tr. 1733). Some of these ads were published as newspaper ads (Bier, Tr. 1623-24). Again, they all featured "Every Body Needs Milk" in dominating type, and the sales message conveyed was that everyone, no matter their activity, needed milk for adequate nutrition and good health.

13. "*Calcium Ads*" — newspapers CX 3, 4 and 5; magazines CX 20, 21 and 22.

These ads, published between October 1971 and April 1972 (RX 1843(c)), conveyed that calcium was an essential for the body to stop bleeding when cut, for the heart to beat, and for sight. The text stated "you need calcium throughout your life to keep your bones strong and healthy. Too little over a long period of time is one cause of *osteoporosis* — weak and brittle bones — which is all too common among the elderly" (CX 3 and 5). The ads then point out that the National Research Council recommended 800 milligrams of calcium a day "about as much as you get in a normal diet *if it includes two glasses of milk.*" The text then asks "Can you get enough calcium from other foods" and answers "Not easily" because "two glasses of milk give you as much calcium as each of the following" (CX 3):

20 eggs, 14 sweet potatoes,
20 cups of oatmeal, 1 1/2 pints
of ice cream, 16 cups of cabbage,
2 1/2 cups of cottage cheese.

[14] The ad concludes "When it comes to calcium, there's no real substitute for milk. Every body needs calcium. Every body needs milk." The representation that milk was "essential, necessary and needed" for nutritionally adequate diet and good health was clear. The calcium ads, however, did not make the representation that milk drinking was essential for life in the sense that one had to drink milk to obtain the calcium necessary to continue living (CPF 74). The ads stated that *calcium* was essential to stop bleeding, for the heart to beat, and for sight, not *milk*. The ads did not convey in their overall "net impression" that if one did not drink milk one would not stop bleeding if cut, one's heart would stop beating, or one would go blind.

14. 1972 *Billboards* — "Every Body Needs Milk," CX 175-79, 2436(b), 2437(a), 2438(a), 2439(b), 2440(b), and CX 2441(b).

All of these ads emphasized in strong print "Every Body needs Milk" in context with visibly healthy, handsome, young people of impressive physical appeal. The January and February 1972 "Every Body Needs Milk" billboards were posted in over 700 locations statewide in California (CX 2436(b)). As in the case of the "Beautiful People" ads, CX 1 and 2, the message was unmistakable that every "body" needed milk as a dietary essential for vigor, good health and beauty.

15. *"Celebrity" ads* — Using "Every Body Needs Milk," TV, CX 100 and 100(a), 101(a) and (b), 102, 103(a), 104(c) and (d), 105(a) and (b), 106(a) and (c), 192; radio, CX 51-63, 84-88 91-93, 95; newspaper, CX 9.

At a meeting of the Advertising Committee of the Milk Board and executives of Cunningham & Walsh held May 27, 1971, the results of the Board's advertising for milk and its "past and current program" were discussed (CX 860). A new program to involve the use of celebrities was described by Cunningham & Walsh's Senior Vice-President and Senior Creative Officer. According to the minutes of this meeting the following was to be the message and method (CX 860(b)): [15]

Message? — with a quiet persuasive way, using high degree truth in advertising, give reasons why milk is needed by everybody. Break down the prejudice that milk can be dropped when a teenager.

How? — use celebrities with honest, direct testimonials. Get respected, thoughtful people to say that they believe in milk. The creative staff presented a set of four simulated commercials for radio and TV using Pat Boone.

This was the genesis and theme of the so-called celebrity campaign, which aimed to present celebrities in an informal and sincere atmosphere, and have them in unrehearsed discussion state their reasons for drinking milk (Manley, Tr. 11453; Holm, Tr. 4683-85; Bier, Tr. 1745-46). Credibility was enhanced in the initial celebrity series by announcing at the conclusion of the commercial that the celebrity's fee, or a portion thereof, was being donated to charity (see CX 100(b), 101(b), and 104(b)).

16. Once the concept of the celebrity campaign was approved, Cunningham & Walsh proceeded to sign Pat Boone, Vikki Carr, columnist Abigail Van Buren ("Dear Abby"), and Vida Blue, baseball star, all well-known personalities, as the first four "celebrities" (Manley, Tr. 11455, 11475; CX 2435(c); RX 1843(b)). The celebrity ads were not limited to TV, but also were presented on radio, in newspapers and magazines, and on billboards, the commercials being edited to suit the medium. As indicated, the commercials did not employ a prepared script delivered by the celebrities as a "sales pitch," but instead the celebrity was filmed during an interview as someone off-camera carried on a dialogue, steering the conversation into areas desirable for milk advertising purposes (Manley, Tr. 11474). The interview was then edited by splicing together various statements of the celebrity and leaving out the off-

stage interviewer's part of the dialogue (Manley, Tr. 11457-58). This technique created the appearance of spontaneity (Manley, Tr. 11457). Quotations from the TV and radio celebrity ads were later used as headlines in newspaper and billboard advertisements (CX 4241(a)).

17. The celebrity campaign began over radio in July 1971 and was expanded to TV in September 1971 using the four nationally known personalities named earlier to promote milk. "The Milk Advisor" issue of September 1971 stated (CX 2434(a)): [16]

Each star is a personal believer in and user of milk, and their candid statements for milk are the backbone of each commercial. Stars in the current "Every Body Needs Milk" campaign include pitching sensation, Vida Blue, singers Pat Boone and Vikki Carr and nationally known columnist Abigail Van Buren, of "Dear Abby" fame.

18. In her TV ad "Dear Abby" told the viewing audience that she could probably attribute the fact that she had good health, was seldom sick, and seldom had a cold to milk drinking all her life. As "Dear Abby" finished informing the audience of this the screen displayed "Every body needs milk" and the announcer repeated that statement (CX 100(a) and (b)). The TV screen then displayed the message "Dear Abby's services donated to Mt. Sinai Free Bed Fund." See CX 100 for video tape.

19. Radio commercials featuring "Dear Abby" were also broadcast as part of the celebrity campaign. One of these was known as "Young Girls" (CX 86 and 87), and another as "55 Million Readers" (CX 55). In "Young Girls" Abby recited how young girls with appearance problems wanted to become attractive and that she encouraged them "to eat good, nourishing food" and to drink milk. The commercial ended with the theme "Every Body Needs Milk . . . Even Dear Abby's." In "55 Million Readers," Abby basically repeated the message in her TV commercial that she had very good health, was very seldom sick, very seldom had a cold and "probably can attribute that to the fact that I have been a milk drinker all my life," as the commercial ends with a voice announcing "Every Body Needs Milk . . . Even Dear Abby's" (CX 55).

20. Vida Blue, the baseball pitching star, after telling the TV audience that he tried to teach kids "the difference between right and wrong," states that kids should drink milk, and adults, also. The viewing audience was then told in words on the screen and by voice that "Every body needs milk . . . Even Vida Blue's" (CX 101(a) and (b)). At the conclusion, similar to the "Dear Abby" ad, the message was displayed on the screen "A portion of Vida Blue's services

donated to The Sickle Cell Disease Research Foundation . . . Milk Advisory Board.”

21. In a radio commercial entitled “Little League” Vida Blue reported drinking enormous amounts of milk (CX 56(a) and CX 57): [17]

I've never told my Little League team that I drink two and a half gallons of milk, but I've just told them that I drink a lot of milk, and that it's good for you, and it's good for your body. And I'm just waiting for the day that I see one of my little kids become a great professional athlete.

In another radio commercial “Two and One Half Gallons” Vida Blue suggested that his milk drinking played a vital part in his baseball development (CX 58(a) and 59(a)):

I couldn't tell you how much milk I used to drink. Uh, I'll take a rough estimate: maybe . . . uh gallon and a half a day. That's quite a bit, but I . . . I think I deserved to have that much in my body because, uh, even when I left school and I would go home, I would go back and play ball. And I think milk played a vital part in that also. 'N still have that love for milk, that love for milk. Maybe two and a half gallons per day now.

At the end of both commercials a “voice over” announced “Every body needs milk . . . Even Vida Blue's.”

22. In “Advice for Kids,” Vida Blue advised (CX 84 and 85):

Only advice I can have for a kid who, uh, doesn't have a very good body is, uh, just get on the ball and drink a lot of milk and—I think it's important that you get the proper diet; you get your vegetables, your meats, your breads and, uh . . . I think last but not least you should get plenty of milk; as much as possible. And, uh, I think this will help to prepare you to become a good physical person.

If someone approaches me, I mean, like I say, I can only give my honest opinion of what I think is right. And, uh, I think kids should drink milk. Uh, well, adults also. I mean, it's good for you, and it's good to you. So my advice now is, uh, yeah, sure, drink as much as you can.

[18] This commercial ended with “Every body needs milk . . . Even Vida Blue's” as Vida announced “Those are my personal feelings about it, and I would — could only advise them on doing what I thought was right.”

23. In a commercial known as “Teeth” (CX 104), Vikki Carr told the TV audience that milk was not only a great summer cooler, but “it's good for you. You don't have to worry about your teeth being rotted away, you know.” Again, print and voice admonished “Every body needs milk” as Ms. Carr told the audience that she didn't have a cavity in her mouth, and that “maybe loving milk had something to do with it” besides her “beans and tortillas.” At the end of the ad

the TV screen carried the message "Miss Carr's services donated to the Vikki Carr Scholarship Fund. Milk Advisory Board."

24. Another of the celebrities featured by the Milk Board and Cunningham & Walsh was singer Pat Boone who told the radio audience in an "Every body needs milk" commercial entitled "Rosemary-the Cow" that when growing up he drank "a quart of milk per day per meal" (CX 52; Tr. 6202). This was broadcast in the latter part of 1971 (RX 1843(b)). In another "Every body needs milk" radio commercial "44.50 a week," Pat Boone told the audience that at the beginning of his career he did a TV show for a dairy and "I'd drink normally a quart of milk during the course of the program" (CX 51). In a print ad, reproduced herein, "I'm 38 now," again over the slogan "Every body needs milk," Mr. Boone suggested that milk drinking is "bound to affect the way you look" (CX 9).

25. Twenty-four "Every body needs milk" TV celebrity commercials and thirty-five "Every body needs milk" celebrity radio commercials featuring "Dear Abby," Vida Blue, Pat Boone and Vikki Carr were broadcast beginning in middle and late 1971 (RX 1843(b); Manley, Tr. 11459). All these commercials were broadcast on a rotating basis to avoid repetition and to achieve spontaneity (Manley, Tr. 11462-63). As already found, these commercials represented to the viewing and listening public that the drinking of milk was essential for all individuals for good health, good looks, and optimum physical vigor and energy.

26. In February 1972, two additional celebrities, Ray Bolger, a musical comedy star and dancer, and Phyllis Diller, comedienne, were added to the Milk Board's TV campaign (Manley, Tr. 11477; RX 1843(b) and (c)). In July 1972, Karen Valentine, a television actress, was added (CX 62(a), 63; RX 1843(b)), and in August 1972, Bill Graham, an entertainer, was included (CX 88, 91-93, 95; RX 1843(b)).

[19]

Initial Decision

RECEIVED
 FEDERAL TRADE COMMISSION
 DEPT. OF JUSTICE
 IN THE MATTER OF
 C.M.P.A.B.
 Docket No. 8468
 FEDERAL TRADE COMMISSION
 RECEIVED
 6-5-75
 EX-9

"I'm 38 now. But what you eat
 and drink is bound to affect the way you look.
 And I sure have drunk a lot of milk!"



Milk Advisory Board
 -19-
 Every body needs milk. Even Pat Boone.
 Los Angeles Times Home Magazine, November 12, 1972
 EX-9

[20] 27. In his commercial, Ray Bolger described for the TV audience the need of a dancer to have free movement of his body, particularly the extremities, noting that a dancer "can't have arthritic little joints." He then advised "it's terribly important that you have your proper intake of milk" adding "it's an absolute necessity for me." Both print and voice reinforced the theme "Every body needs milk" as Mr. Bolger concluded saying "I never saw a ballet dancer that didn't drink milk" (CX 103(a)).

28. In her commercial, Phyllis Diller advised the TV audience that she was having her teeth straightened, that if she hadn't drunk a lot of milk as a child and as an adult her "teeth would not be worth straightening," that her bones "would not be what they call young at [her] age, but they are," and that she attributed "all this elasticity and bone health to the use of milk; the consumption of large amounts of milk" (CX 102). The audience was then informed as in all these commercials, in print and by voice that "Every body needs milk . . . Even Phyllis Diller's."

29. Karen Valentine told the TV audience that dancers "tend to drink a lot of milk," that milk "builds you up, and it's good for the bones; it makes your legs strong," as the screen and announcer advised "Every body needs milk." Ms. Valentine concludes by saying "I've never had anything broken except for a fingernail . . . Really . . . I don't know if that has anything to do with drinking milk, but it sure saved a lot of doctor bills" (CX 106(c)). Again, the net impression created by the foregoing advertisements was that milk was indispensable for all individuals for good health, good bodies, good looks and optimum vigor and energy.

30. In August 1972 the Milk Board and Cunningham & Walsh decided to drop the theme "Every Body Needs Milk" in view of adverse publicity arising from the "Baltimore study" by Johns Hopkins medical personnel relating to lactase deficiency in some members of the public and the opening of the Commission's investigation in this matter (see RPF 335), and to replace it with "Milk Has Something for Every Body." All new commercials prepared after that month used the latter theme although the "Every Body Needs Milk" ads then in use continued to be run concurrently with ads featuring "Milk has something for every body" until around January 1973 when the last of them was supplanted by ads with the new slogan (Manley, Tr. 11527-28; see RPF 350). [21]

31. In and by itself, and as a theme for advertising, the slogan "Milk has something for every body" does not convey the representation that milk is "essential, necessary and needed by all individuals."

The slogan "Milk has something for every body" does convey the representation that milk contains substances nutritionally valuable for all individuals and is beneficial for all individuals.

32. The advertising of the Milk Board and Cunningham & Walsh using "Milk has something for every body," however, was disseminated concurrently during the closing months of 1972 with ads featuring "Every body needs milk," and followed over two and one-half years of intensive "Every body needs milk" advertising disseminated throughout California via billboards, TV, radio, print and point of sale material, even including use of "Every body needs milk" on the sides of milk tank trucks. Under these circumstances, and particularly in view of the intensity and the deep penetration achieved by respondents' "Every body needs milk" advertising (CX 3067(g)), the "Milk has something for every body" advertising had the capacity to evoke in the viewing, listening and reading public the message and representation that milk is "essential, necessary and needed by all individuals" (RX 1797; CX 3001; Dr. Aaker, Tr. 5297-5300). Additionally, some of the advertisements of the Milk Board and Cunningham & Walsh using "Milk Has Something for Every Body" in their net impression specifically did convey the representation that milk was "essential, necessary and needed by all individuals" for good health. Examples of such commercials were by Diahann Carroll, a TV singer and actress celebrity who was added to the Milk Board's celebrity group in January 1973 (CX 109, 110), two commercials by Mark Spitz (CX 7, 65), and a commercial featuring Karen Valentine which was first produced using "Every body needs milk" and later disseminated using the new theme "Milk has something for every body" (CX 106(a), and CX 106(b), (c)).

33. In "Skinny Girl" Diahann Carroll recounted to TV viewers (CX 109):

Oh, I was a skinny little girl and I had to be nagged to do anything that had to do with eating or drinking anything but uh. . . the milk, was three times a day. It was insisted upon by my Mom. It seems she knew what she was talking about because when I went into a very strenuous uh, business, I found that I was a very strong, very healthy person and I think it had to [22] do with, what I call, a very well balanced, very well thought out diet, by my mother that included a glass setting right by that plate every time we sat down.

Print and voice announced "Milk Has Something For Every Body. . . Even Diahann Carroll's." In "My Teeth Are My Own" Ms. Carroll advised TV viewers (CX 110):

My daughter's teeth are very good, so milk must have some calcium in it that is doing the trick 'cause we are. . . uh *always* complimented. . . uh. . . people usually think my teeth are not my own. Uh. . . they are all mine. I don't mean I pay for them, I

mean I was born with them. We can attribute it, I think, t'amounts of milk that I . . . drink.

Again the "voice over" ad screen stated "Milk has something for every body . . . Even Diahann Carroll's." Both ads had the tendency and capacity to convey the message that milk was essential to good health.

34. In a newspaper ad and a TV commercial using "Milk has something for every body" Mark Spitz conveyed the advice that milk was something your "body needs" (CX 7), that milk was something your "body really needs" (CX 65). In the overall context these ads, like the "Every body needs milk" ads, conveyed the impression that milk drinking was indispensable for good health.

35. In the "Milk has something for every body" version of "Ballerinas," Karen Valentine told the viewing audience, as she did in the "Every body needs milk" ad, that dancers "drink a lot of milk" that it was "good for the bones—it makes your legs strong, and concluded after the "Milk has something for every body . . . Even Karen Valentine's" announcement by the "voice over" and the screen, by stating (CX 106(c)):

KAREN: I've never had anything broken except for a fingernail. Really. I don't know if that has anything to do with drinking milk, but it sure saved a lot of doctor bills!
[23]

"Beneficial For All Individuals"

36. The advertising of the Milk Board and Cunningham & Walsh represented to the public that milk drinking was "essential, necessary and needed by all individuals" for good health. It follows that respondents' advertising represented that the consumption of milk is beneficial for all individuals. If the foregoing finding were disregarded, it nevertheless is obvious that the "Every body needs milk" and "Milk has something for every body" advertising conveyed to the public that milk drinking was beneficial for all individuals.

"Beneficial In Large Or Unlimited Quantities"

37. The Milk Board and Cunningham & Walsh created and published a number of advertisements which portrayed celebrities consuming very large amounts of milk, or in which celebrities recounted the large amounts of milk they drank. These commercials conveyed the representation that the consumption of milk is beneficial in large or unlimited quantities (CX 6, 51(a), 52, 57(a), 58(a), 59(a), 63, 64, 105(a), (b), 111). Recounting by successful athletes and entertainers of the large quantities of milk they drank, and the

benefits they felt they gained therefrom, conveyed the implicit message that members of the public would receive similar benefits. All the testimonials were made in conjunction with the theme "Every Body Needs Milk" or "Milk Has Something For Every Body" reinforcing the message that consuming large or unlimited quantities was beneficial for bodily health.

**Allegation that Advertising Represented that Milk Consumption
Would Prevent or Lessen the Probabilities of Contracting
Colds or Arthritis**

38. A TV commercial disseminated in the latter part of 1971, already described, featuring "Dear Abby" contained the following sequence (CX 100(a), (b)): [24]

Initial Decision

94 F.T.C.

VIDEO	AUDIO
<p>VEN ON CU DEAR ABBY.</p> <p><i>110-440</i></p>	<p>ABBY: I've got my hand on the pulse of the public really. People tell me things they wouldn't tell anybody else. Kids tell me things they wouldn't tell their parents, husbands tell me things they wouldn't tell their wives, and vice versa, and I imagine it's a great outlet. I'm only in daily newspapers and I publish around the world, Ireland, Buenos-Aires -- 55 million dailies a lot of people read. I travel quite a bit in my work. I go on speaking engagements when I do I have to keep my energy up. I have a lot of vitality, I always have, thank heavens. I have very good health, I'm seldom sick, I very seldom have a cold and I think I probably could attribute that to the fact that I have been a milk drinker all my life, and I still am.</p>
<p>NO TITLE: EVERY BODY NEEDS</p> <p>NO TITLE: Even Dear Abby's.</p>	<p>ANNCR: Every body needs milk.</p> <p><i>CX 100(a)</i></p> <p>Even Dear Abby's.</p>
<p>NO CU OF ABBY. SUPER TITLE:</p> <p>Abby's services donated to the Free Bed Fund, Polis, Minnesota. Milk by Board.</p>	<p>ABBY: That sounds like an ad for milk doesn't it? And you know something? It is!</p> <p><i>CX 100(b)</i></p>

[25] A radio commercial broadcast at the same time contained the same continuity (CX 55).

39. A dancer, Ray Bolger, appeared in a TV commercial disseminated between February 1972 and July 1972 with the following sequence (CX 103(a)):

RAY: The big important thing in our business — the movement of the body — is to keep your calcium balance. The extremities, for instance; the hands. We use our hands, in dancing, see? We must have a facility of having freedom of the hands. The hands are a beautiful thing when used properly. I mean when they're, ah . . . but they shouldn't look like you're playing Dracula, you know. And so therefore you want them kind of free and easy and you can't have arthritic little joints. So, one has to have sufficient calcium intake to have that calcium distributed properly . . . it's terribly important that you have your proper intake of milk. I suppose it would be obvious for me to say that I drink milk. But it's more than obvious; it's an absolute necessity for me.

The same continuity in substance was broadcast over radio (CX 61).

40. There was no representation in the "Dear Abby" commercial that milk would specifically prevent an individual from catching a cold or that milk had specific medicinal properties that would materially lessen the "probabilities" of catching a cold. Nor was there a representation in the Ray Bolger commercial that milk would specifically prevent arthritis or that it had specific medicinal properties which would materially lessen the "probabilities" of becoming arthritic. Milk has an image in the American culture of being the "perfect" food and exceptionally nutritious. And, in fact, milk is exceptionally nutritious. These commercials conveyed the message that a well-nourished body was less likely to "catch a cold" or suffer from arthritis, and that "Dear Abby" and Ray Bolger emphasized milk in their diets so their bodies would be well nourished, to provide their bodies with an abundance of necessary nutrients in which milk is unquestionably unusually rich. To read into these commercials the communications "If you drink milk you will not catch cold" or "If you drink milk you will not contract arthritis" is [26] unreasonable. But even if these communications were read into these commercials, they did not have the ability to mislead. Not even "the ignorant, the unthinking and the credulous" in today's world would believe that drinking milk will prevent colds or will prevent arthritis.

Respondents' Market Research

In the preceding findings the undersigned concluded that the advertisements disseminated by the Milk Board and Cunningham & Walsh featuring "Every body needs milk," and some of those

featuring "Milk has something for every body," made the representations alleged in the complaint, except those relating to the prevention of colds and arthritis. This conclusion was based upon an examination and viewing of the ads themselves, and is sufficient for the purposes of this decision. However, that conclusion is confirmed by market research conducted by respondents, or at their direction. Such market research disclosed, among other things studied, the messages and representations conveyed to the public. Contrary to respondent's contention (see, *e.g.*, RPF 831), the fact that the particular studies involved did not have the specific purpose of ascertaining the representations made by the advertising does not necessarily invalidate a showing of those representations when such emerged from the research.

41. On September 24, 1971, Cunningham & Walsh reported on an "on-air" test of three 60 second TV commercials (RX 1454), two of which, "Dear Abby" (CX 100(a) and (b)) and Vikki Carr's "Milk-a-holic" (CX 105(a) and (b)), have already been discussed. The audio portion of the Pat Boone commercial is set out in RX 1454(k). All three of these commercials were broadcast within a half hour period on August 10, 1971, in Fresno, San Diego and Bakersfield. The evening following the broadcast, telephone interviews were conducted with men and women (18 years and older) who had been watching the program on which the test commercials were aired (RX 1454(c)). Out of 9007 dialings, contacts were made with a total of 465 persons who were viewing when the commercials appeared over TV. These persons were asked questions designed to elicit the person's recall of the commercials, what was shown and said, and what the person interviewed thought "they were trying to tell you about milk" (RX 1454(z)90, 1454(c)). The responses of those interviewed were recorded in a series of "verbatim" (RX 1454(z)(4) through RX 1454(z)(84)).

42. The "verbatim" were coded in the report to group them in accordance with the ideas or portions of the ad recalled, and "played back" to the interviewer in response to questions. According to the report, the commercials communicated very well even though, in contrast to most commercials, they [27] depended almost entirely on the audio portion to convey their message (RX 1454(i)). The percentage of commercial recallers who played back each segment of the "Dear Abby" ad was set out in a tabulation (RX 1454(j)). Forty-seven percent of the male and twenty-one percent of the female recallers played back "Every body needs milk" or "everybody needs milk," two versions being stated here because by telephone it is clearly impossible to tell if a person intended to say "every" "body" or "everybody" (see RPF 834). Nineteen percent of males and

