

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

Commissioners: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of _____)
INTERSTATE BAKERIES CORPORATION, _____)
a corporation. _____)
_____)

DOCKET NO. C-4042

DECISION AND ORDER

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

The respondent, its attorney, 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 complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Interstate Bakeries Corporation is a Delaware corporation with its principal office or place of business at 12 East Armour Boulevard, Kansas City, Missouri, 64111.
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

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. Unless otherwise specified, "respondent" shall mean Interstate Bakeries Corporation, its successors and assigns, and its officers, agents, representatives, and employees.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of Wonder Bread, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication that:

- A. As a good source of calcium, Wonder Bread helps children's minds work better, or
- B. As a good source of calcium, Wonder Bread helps children remember things,

unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any bread, bread product, rolls, or muffins, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product or any of its ingredients, helps brain function or memory, or can treat, cure or prevent any disease or related health condition, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation;

provided, however, that a mere statement that the product contains a particular vitamin or mineral shall not, without more, be considered for purposes of this order a representation that the product can treat, cure or prevent any disease or related health condition.

III.

Nothing in this order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, and any such representation shall not be covered by this order.

IV.

IT IS FURTHER ORDERED that the provisions of this order shall not apply to any label or labeling printed prior to the date of service of this order and shipped by respondent's bakeries to distributors or retailers prior to January 16, 2003 .

V.

IT IS FURTHER ORDERED that respondent Interstate Bakeries Corporation, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation including videotape recordings of all such broadcast advertisements;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis

relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Interstate Bakeries Corporation, and its successors and assigns, shall, within thirty (30) days after service upon it of this order, deliver a copy of this order to all executive officers, managing employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall secure from each such person a signed and dated statement acknowledging receipt of the order pursuant to this paragraph. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and, for a period of three (3) years, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent Interstate Bakeries Corporation, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance obligations arising under this order, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other corporate change that may affect compliance obligations. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent Interstate Bakeries Corporation, and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate on April 16, 2022, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying

consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Anthony recused.

Donald S. Clark
Secretary

SEAL:

ISSUED: April 16, 2002