

I prohibits the proposed respondents from misrepresenting that an advertisement is an independent article or review or is not a paid advertisement. The proposed order also contains standard recordkeeping and reporting requirements, including a provision sunsetting the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

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[File No. 952-3014]

Mrs. Fields Cookies, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Salt Lake City, Utah-based corporation from misrepresenting the amount of fat, saturated fat, cholesterol, or calories in any bakery food products. The consent agreement settles allegations that Mrs. Fields touted a cookie line as "low fat" in advertising and promotional materials when the fat content of two cookies in the line exceeded the amount of fat that qualifies as "low fat" under Food and Drug Administration regulations.

DATES: Comments must be received on or before May 6, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe D. Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, Massachusetts 02114-4719, (617) 424-5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of: Mrs. Fields Cookies, Inc., a corporation. File No. 952 3014.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Mrs. Fields Cookies, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Mrs. Fields Cookies, Inc., by its duly authorized officer and attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Mrs. Fields Cookies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 462 West Bearcat Drive, Salt Lake City, UT 84115.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and

decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Mrs. Fields Cookies, 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 manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of

any food in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any bakery food product, whether cooked or uncooked. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any food by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

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

V

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating

divisions, to each manager of its company-owned and franchised stores, and to each of its officers, agents, representatives, and employees engaged in the preparation or placement of advertisements or promotional materials covered by this Order.

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VII

This Order will terminate twenty (20) years from the date of its issuance, 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 paragraph of 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 paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that 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 paragraph as though the complaint was never 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

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Mrs. Fields Cookies, Inc. ("Mrs. Fields").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should

withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Mrs. Fields in its advertising for three new cookies it introduced in 1994. The Commission's complaint charges Mrs. Fields with engaging in unfair or deceptive practices in connection with the advertising these cookies. According to the complaint, Mrs. Fields falsely represented that all three of the new cookies are low fat.

The consent order contains provisions designed to remedy the violations charged and to prevent Mrs. Fields from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Mrs. Fields from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories in any bakery food product, whether cooked or uncooked. Part I also requires that any representation covered by this Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration ("FDA") must comply with the qualifying amount set forth in that regulation.

Part II of the order provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

Part III of the order requires Mrs. Fields to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires Mrs. Fields to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order requires Mrs. Fields to distribute copies of the order to its operating divisions and to various officers, agent and representatives of Mrs. Fields.

Part VI of the order requires Mrs. Fields to file with the Commission one or more reports detailing compliance with the order.

Part VII of the order is a "sunset" provision, dictating that the order will terminate twenty (20) years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,
Secretary.

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OFFICE OF GOVERNMENT ETHICS

Proposed Extension of Collection; Comment Request for the SF 278 Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics plans to submit the Standard Form (SF) 278 which it sponsors for a three-year extension of approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The SF 278 is henceforth to be accompanied by agency notification to filers of certain modified reporting requirements not yet incorporated into the form itself; OGE also intends to work on a future modified form to eventually replace the existing SF 278.

DATES: Comments on this proposed extension should be received by May 20, 1996.

ADDRESSES: Comments should be sent to William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Comments may also be sent electronically to OGE's Internet E-mail address at oge@attmail.com (for E-mail messages, the subject line should include the following reference—"SF 278 paperwork comment").

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202-523-5757, ext. 1110; FAX: 202-523-6325. A copy of a blank SF 278 form may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period, the SF 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209-0001) for a three-year extension of approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The current paperwork approval for the SF 278 is scheduled to expire at the end of September 1996. Since, for now (see discussion below), no modification to the standard form is being proposed, OGE will not need to seek General Services Administration (GSA) clearance for the future request

for extension of OMB paperwork approval.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the "Ethics Act"), is the sponsoring agency for the SF 278, the most recent edition of which is that of June 1994. The prior January 1991 edition also remains usable until supplies are exhausted. In accordance with section 102 of the Ethics in Government Act, 5 U.S.C. app. § 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over \$5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The SF 278 is completed by candidates, nominees, new entrants, incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. This group of nominee reports forms the basis of OGE's paperwork estimates. In light of OGE's experience over the past three years (1993-1995), the estimate of the total number, on average, of such nominee's SF 278 forms expected to be filed annually at OGE by members of the public (as opposed to current Federal employees), primarily by private citizen nominees and private representatives (lawyers, accountants, brokers and bankers) of both private citizen and Federal employee nominees, remains 280.

The estimated average amount of time to complete the report form, including review of the instructions, is also the same—three hours. Thus, the overall estimated annual public burden for the SF 278 for the nominee report forms processed at the Office of Government Ethics will stay at 840 hours. Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1994 (the most recent survey available), that some 22,500 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those

executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,125 to 2,250 at most.

As noted above, the Office of Government Ethics is asking executive branch departments and agencies to notify filers of the SF 278 of certain recent changes in the reporting law as regards higher-category (over \$1,000,000) assets, income and liabilities. In addition, OGE itself will notify concerned filers holding qualified blind trusts of a modification as to reportable trust interests. See sections 20 and 22 of the Lobbying Disclosure Act of 1995, Public Law 104-65, which amended the Ethics in Government Act. There may also be a need to modify the gifts/reimbursement reporting thresholds if the "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, is raised by GSA to over \$250 (the Ethics Act reporting thresholds are pegged to any increase over that amount of "minimal value"). If so, this change would likewise be handled for now by OGE and agency notification to filers. In the next year or two, OGE intends to begin work on an eventual successor form to the current version of the SF 278 that would reflect these recent changes as well as add express mention, on the public burden information block, of a statement pursuant to the 1995 amendments to the paperwork law to the effect that "an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number," together with a parenthetical mention that such number is displayed in the upper right-hand corner of the front page of the form. Serious consideration will also be given to any other appropriate changes, including possible redesign of the form at that time. That future form may either be a modified standard form or a new OGE form and will be subject to appropriate clearances before issuance. Again, for now, OGE is not proposing to modify the SF 278 report form itself, but rather will ask that departments and agencies notify their filers of the modifications to the reporting requirements and new paperwork statement when the existing SF 278 forms are provided for completion (OGE will notify concerned filers of the changes as to qualified blind trust interests).