

**B211223**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**In the Matter of  
ABBOTT LABORATORIES,  
a corporation.**

**FILE NO. 962 3069**

**AGREEMENT CONTAINING  
CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of Abbott Laboratories, a corporation ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Abbott Laboratories, by its duly authorized officer, and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Abbott Laboratories is an Illinois corporation with its principal office or place of business at One Abbott Park Road, Abbott Park, Illinois 60064.
2. Proposed respondent admits all the jurisdictional facts set forth in the 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 a 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 draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify 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 draft complaint, or that the facts as alleged in the draft complaint, other than the 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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1)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 in disposition of the proceeding, and (2) make information about it public. When so entered, the order 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 of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

## **ORDER**

### DEFINITIONS

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

1. Unless otherwise specified, "respondent" shall mean Abbott Laboratories, a corporation, its successors and assigns, and its officers, agents, representatives and employees.
2. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

- A. That one serving of such product provides vitamins in an amount comparable to typical vitamin supplements; or

employees, agents, and representatives having responsibilities with respect to the subject matter of this order; and

- B. For a period of five (5) years after the date of service of this order, deliver a copy of this order to all future principals, officers, directors, and managers, and to all employees, agents, and representatives having responsibilities with respect to the subject matter of this order, within thirty (30) days after the person assumes such position or responsibilities.

## **VI.**

**IT IS FURTHER ORDERED** that respondent, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor

- 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

---

Michael Ostheimer  
Counsel for the Federal Trade  
Commission

---

Michelle Rusk  
Counsel for the Federal Trade  
Commission

APPROVED:

---

C. Lee Peeler  
Associate Director  
Division of Advertising Practices

---

Joan Z. Bernstein  
Director  
Bureau of Consumer Protection

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

**In the Matter of  
ABBOTT LABORATORIES,  
a corporation.**

**DOCKET NO.**

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Abbott Laboratories, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Abbott Laboratories ("Abbott") is an Illinois corporation with its principal office or place of business at One Abbott Park Road, Abbott Park, Illinois 60064.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed nutritional products to the public, including Ensure products. Ensure products are marketed through Abbott's Ross Products Division and include Ensure, Ensure High Protein, Ensure Plus, Ensure With Fiber, Ensure Pudding, and Ensure Light. These products are "foods" and/or "drugs" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or has caused to be disseminated advertisements for Ensure, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A.

**VIDEO**

Close-up of a graduation photograph of man and woman.

**AUDIO**

Man: For 15 years, we've taken



Man

Can of Ensure being poured into glass.

supplement, Ensure is a delicious

Man and woman jogging in a park.

energetic.

Cans of Ensure. Super: RECOMMENDED  
#1 BY DOCTORS.

number one by doctors as a source  
of complete balanced nutrition.

Man: Drink Ensure as a meal.

Woman: Or in between meals.  
Ensure, to your health dad.

Mother: Uh, uh, to our health.

Three cans of Ensure. Super:  
RECOMMENDED #1 BY DOCTORS.

Announcer: Ensure, doctors  
recommend it number one.

(Exhibit B, television advertisement entitled “Father/Daughter”).

C. Wife: Oh boy, that water felt great!

Husband: Sure did. I always feel so good after a swim.

Wife: For 15 years, we’ve shared a pretty active life.

Husband: I’ve loved every minute.

Wife: And to help make sure we stay active, one thing we’ve done lately is to drink Ensure.

Husband: Hm Hmm. See, our doctor told us that a key to being energetic and in good health is good nutrition.

Wife: Right. And one way to help guarantee that you’re getting the nutrition you need, is by drinking Ensure.

Husband: More than a vitamin supplement, Ensure is a delicious drink that provides complete balanced nutrition.

Wife: It’s got the protein, carbohydrates, minerals and vitamins your body needs everyday to help you stay healthy, active, be energetic.

Husband: Drink Ensure anytime.

Wife: I like it as a delicious meal.

Husband: I like it in between meals. Ensure is even recommended number one by doctors and nutritionists for complete balanced nutrition.

Wife: So make sure the ones you love get the nutrition they need. Ensure. To your health, dear.

Husband: Uh, uh, to our health.

(Exhibit C, radio advertisement entitled “Younger Husband/Wife”).

- D. Depiction: Snapshots of a young man and a young woman. *“Back then we promised to make the most out of life...today we’re enjoying every moment.”*

**DRINK TO YOUR HEALTH WITH ENSURE.**<sup>®</sup> Depiction: Man and woman who appear to be in their thirties holding glasses of Ensure.

**The #1 Doctor Recommended Source of Nutrition.**

Most doctors will tell you that a key to good health is good nutrition. But even if you’ve improved your diet by eating more lean meats, fruits and vegetables, you still may not be getting the balanced nutrition you need.

So how can you help guarantee that you and the ones you love get the right nutrition?

With Ensure and *New* Ensure High Protein.

Ensure is more than a vitamin supplement. It’s complete balanced nutrition in a delicious ready-to-serve drink that provides an excellent balance of protein, carbohydrate, vitamins, and minerals. In addition, *New* Ensure High Protein is low in cholesterol and low in saturated fat while being high in the nutrients you need everyday to help stay healthy, be energetic and more active. Drink your favorite Ensure anytime. Enjoy it as a healthy meal by itself or as a healthy between-meal snack. Ensure is even recommended #1 by doctors as a complete source of nutrition.

So make sure the ones you love get the right nutrition. Drink Ensure and drink to your health.

(Exhibit D, print advertisement).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that many doctors recommend Ensure as a meal supplement and as a meal

nutritional deficiencies. The survey merely asked doctors to assume that they would recommend a supplement for adults who were not ill, and then to select the brand they would most recommend. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that one serving of Ensure provides vitamins in an amount comparable to typical multivitamin supplements.

9. In truth and in fact, one serving of Ensure does not provide vitamins in an amount comparable to typical multivitamin supplements. While the typical multivitamin supplement provides at least 100% of the recommended daily intake (RDI) of vitamins for which RDIs have been established, at the time the advertisements were first disseminated, one serving of Ensure provided 62% of the RDI of Vitamin C and between 12% and 26% of the RDIs of the other vitamins for which RDIs have been established. Ensure has been reformulated and currently one serving provides 50% of the RDI of Vitamin C and 25% of the RDIs of the other vitamins for which RDIs have been established. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this        day of        ,        ,  
has issued this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibits A-D attached to paper copies of complaint, but not available in electronic form.]

## **ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Abbott Laboratories. This matter concerns advertising for Ensure nutritional products.

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.

Ensure is a canned beverage which contains carbohydrates, protein, fat, vitamins and minerals and is formulated so that the very elderly and others who have difficulty obtaining sufficient nutrition from regular food can subsist on it, for example through tube feeding. The Ensure product line includes not only Ensure, but also Ensure High Protein, Ensure Plus, Ensure With Fiber, Ensure Pudding, and Ensure Light.

According to the Commission's complaint, Abbott advertisements made the unsubstantiated representation that many doctors recommend Ensure as a meal supplement and replacement for healthy adults, including those in their thirties and forties. The complaint explains that, among

Part II prohibits Abbott from misrepresenting that one serving of any Ensure product, or any other product advertised, marketed or sold as a meal replacement or supplement for healthy adults, provides vitamins in an amount comparable to typical vitamin supplements. It also prohibits Abbott from misrepresenting the absolute or comparative amount of any vitamin or any other nutrient or ingredient provided by such products. Part II also requires that any representation covered by that 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 III 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.

The proposed order also requires Abbott to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain current and future officers and employees, to notify the Commission of any changes in corporate structure that