

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	FILE NO. 912 3336
)	AGREEMENT CONTAINING
CONOPCO, INC. doing business as)	CONSENT ORDER TO
VAN DEN BERGH FOODS COMPANY,)	CEASE AND DESIST
a corporation.)	
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The Federal Trade Commission having initiated an investigation of certain acts and practices of Conopco, Inc. doing business as Van Den Bergh Foods Company, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into 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 Conopco, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Conopco, Inc. is a New York corporation with its office and principal place of business located at 390 Park Avenue, New York, New York 10022. Van Den Bergh Foods Company is an unincorporated operating division of Conopco, Inc. Conopco, Inc. is a wholly-owned subsidiary of

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 of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.
6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1)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 draft complaint here attached 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.

ORDER

I.

IT IS ORDERED that Conopco, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (including but not limited to Van De Bergh Foods Company), in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale or distribution of Promise spread, Promise Extra Light margarine, Promise Ultra (26%) spread, or any other margarine or spread in or affecting commerce, as "commerce" is defined in the Federal

fat, cholesterol or calories in any such product. 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.

III.

IT IS FURTHER ORDERED that respondent Conopco, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device (including but not limited to Van Duzend Foods Company), in connection with the manufacturing, advertising, labeling, promotion, offering for sale, sale or distribution of Promise spread, Promise Extra Light margarine, or any other margarine or spread that contains a total fat disclosure amount as defined in Part V of this Order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in any advertisement or promotional material that refers, directly or by implication, to the absolute or comparative amount of cholesterol in such food:

- A. The total number of grams of fat per serving; and
- B. For three (3) years from the effective date of this Order, any advertising or promotion of any margarine or spread advertised, promoted, offered for sale, sold or distributed under the Promise brand name that contains a total fat disclosure amount as defined in Part V of this Order shall also disclose the percentage of calories derived from fat or a statement that the margarine or spread is not a "low fat" food.

IV.

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

V.

FOR PURPOSES OF THIS ORDER, the following terms and definitions shall apply:

- A. The term "spread" shall mean any spread that has organoleptic properties similar to butter or margarine;
- B. The term "margarine" or "spread" shall not include:
 - 1. Any foodservice margarine or spread sold in bulk sizes for use by restaurants or foodservice establishments or sold in individual portion packs for table service use by restaurants or foodservice operators,

provided that said products bear no nutrient content or health benefit claims in any context on any such product package and provided further that respondent, its successors or assigns, does not advertise, promote, offer for sale, sell or distribute any such product to consumers; or

2. Any margarine or spread sold or distributed to consumers by third parties under private labeling agreements with respondent, its successors or assigns, provided respondent, its successors or assigns, does not participate in the funding, preparation or dissemination of any advertising of said products to consumers; and
- C. For purposes of Part III of this Order, the term "total fat disclosure amount" shall mean the disclosure level of fat as set forth in final regulations concerning cholesterol content claims as promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VI.

IT IS FURTHER ORDERED that for five (5) 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 tests, 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.

VII.

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

VIII.

IT IS FURTHER ORDERED that respondent shall, within thirty (30) days after service upon it of this Order, distribute a copy of this Order to its Van DeBergh Foods Company division and any other operating division engaged in the sale or marketing of margarine or spreads, to each of its managerial employees in its Van DeBergh Foods Company division and any other operating division engaged in the sale or marketing of margarine or spreads, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this Order.

IX.

IT IS FURTHER ORDERED that this Order will terminate twenty years from the date of its issuance, or twenty 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 in this Order that terminates in less than twenty 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 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 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.

X.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service upon it 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.

Signed this _____ day of _____, 1996.

CONOPCO, INC.

By: _____
Patrick J. Cescau
Vice President of Conopco, Inc. and
Chief Executive Officer of Van De Bergh
Foods Company

Arnold I. Friede
Assistant Secretary of Conopco, Inc. and
General Counsel of Van Den

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	
)	DOCKET NO.
CONOPCO, INC. doing business as)	
VAN DEN BERGH FOODS COMPANY,)	
a corporation.)	
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COMPLAINT

The Federal Trade Commission, having reason to believe that Conopco, Inc. doing business as Van Den Bergh Foods Company ("respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent is a New York corporation with its office and principal place of business located at 390 Park Avenue, New York, New York 10022. Van Den Bergh Foods Company is an unincorporated operating division of Conopco, Inc. Conopco, Inc. is a wholly-owned subsidiary of Unilever United States, Inc., a Delaware corporation with its office and principal place of business also located at 390 Park Avenue, New York, New York 10022.

PARAGRAPH TWO: Respondent, through its operating division known as Van Den Bergh Foods Company, has manufactured, advertised, labeled, offered for sale, sold and distributed margarines and spreads, including Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread (hereinafter sometimes collectively referred to as "Promise margarines and spreads") and other foods to consumers. Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PARAGRAPH THREE: 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.

PARAGRAPH FOUR: Respondent has disseminated or has caused to be disseminated advertisements for Promise margarine and spreads, including but not necessarily limited to the advertisements attached as Exhibits A through E. These advertisements contain the following statements and depictions:

A. **"HEART DISEASE: NATION'S #1 KILLER"**

[Depiction of Newspaper Headline]

[SFX: Dramatic Tone]

MUSIC: YOU MAKE ME FEEL SO YOUNG. YOU MAKE ME FEEL
THERE ARE SONGS TO BE SUNG.

[Depiction of an adult male with two young children, one child male and the other female]

[Depiction of a plate of pancakes with two heart-shaped pats of margarine on the pancakes; behind the plate is a package of Promise spread (stick form), with the following statements on the package label: "Low in Saturated Fat" and "NO CHOLESTEROL"]

[Depiction of adult male smiling and looking down, moving to depiction of the young girl smiling and looking up]

"HEALTH TODAY

Serum Cholesterol: the warning is real.

[Depiction of Newspaper Headline]

[SFX: Dramatic Tone]

MUSIC: AND EVERY TIME I SEE YOU GRIN ...

[Depictions of the adult male with the two children]

"FIT -OR- FAT"

[Depiction of Newspaper Headline, shown several times]

MUSIC: YOU MAKE ME FEEL SO YOUNG

[Depiction of the adult male with two children at a table moving to screen depicting the female child eating and then to a depiction of the male child eating and then to the adult male eating]

VOICEOVER: "Promise. Get Heart Smart."

[Depiction of packages of Promise spread (tub form), Promise spread (stick form) and Promise Extra Light margarine in top third of screen] A super in large caps in the center of screen reads: "PROMISE. GET HEART SMART" [Depiction of the male adult with the two children in the bottom of the screen]

(Exhibit A).

B. "GET HEART SMART."

(Exhibits A through E).

C. Depiction of Heart-Shaped Pat[s] of Margarine in conjunction with depictions of packages of Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread.

(Exhibits A through E).

D. "Low in Saturated Fat." [Depiction of package of Promise spread (stick form)]

(Exhibit B).

E. " **ZERO**
FAT
BREAKTHROUGH"

[Depiction of Headline]

[SFX MUSICAL/ELECTRONIC]

* * * * *

"EXCLUSIVE
THE FIRST
Fat Free
MARGARINE"
[Depiction of Headline]
SFX COMPUTER PRINTER

* * * * *

VOICEOVER: "Discover Fat Free Promise Ultra." [Depiction of plate with two muffin halves with heart-shaped pats of margarine on the muffins; behind the plate is a package of Promise Ultra Fat Free spread]

"Zero Fat with ...just five delicious calories a serving." [Depiction of young girl with three adults, moving to depiction of a knife spreading margarine on a muffin half]; a super at the bottom of the screen states: "Include Promise Ultra as part of a low saturated fat, low cholesterol diet."]

[Depiction of adults and young girl at a table; a super at the bottom of the screen states: "Include Promise Ultra as part of a low saturated fat, low cholesterol diet."]

* * * * *

VOICEOVER: It's the first fat free ... margarine. Definitely one of a kind."
[Depiction of people at table moving to male adult eating muffin with margarine on it]

"SPREAD THE FAT FREE NEWS"
SFX ELECTRONIC

* * * * *

VOICEOVER: "Regular or Fat Free Promise Ultra ... " [Depiction of packages of Promise Ultra (26%) spread and Promise Ultra Fat Free spread in top third of screen]

VOICEOVER: "Get Heart Smart." [Depiction of packages of Promise Ultra (26%) spread and Promise Ultra Fat Free spread in top third of screen; a super in large caps in the center of screen reads: "GET HEART SMART"]

(Exhibit D).

PARAGRAPH FIVE: Through the use of the statements and depictions contained in the

advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that eating Promise spread, Promise Extra Light margarine or Promise Ultra (26%) spread helps reduce the risk of heart disease.

PARAGRAPH SIX: Through the use of the statements and depictions set forth in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representation set forth in PARAGRAPH FIVE, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PARAGRAPH SEVEN: In truth and in fact, at the time it made the representation set forth in PARAGRAPH FIVE, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to

PARAGRAPH TWELVE: Through the use of the statements and depictions contained in the advertisements referred to in PARAGRAPH FOUR, including but not limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Promise spread and Promise Extra Light margarine have no dietary cholesterol. Respondent has failed to adequately disclose that Promise spread and Promise Extra Light margarine contain a significant amount of total fat. In light of respondent's representation that Promise spread and Promise Extra Light margarine have no dietary cholesterol, the significant total fat content of the products would be material to consumers and the failure to adequately disclose this fact is deceptive.

PARAGRAPH THIRTEEN: The acts or 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.

For these reasons, the Federal Trade Commission, on this _____ day of _____, 1996, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

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

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Conopco, Inc. ("Conopco"), a wholly-owned subsidiary of Unilever United States, Inc., doing business as Van DerBergh Foods Company.

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 (60) 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.

The Commission's complaint in this matter charges Conopco with engaging in deceptive advertising of the "Promise" line of margarines and spreads, which are marketed by Van Den Bergh Foods Company, an operating division of Conopco. The complaint challenges television and print advertisements for Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread (hereinafter sometimes referred to as "Promise margarines and spreads"). According to the complaint, television and print advertisements for Promise margarines and spreads represented that eating these products would help reduce the risk of heart disease. According to the complaint, at the time it made the representation, Conopco neither possessed nor relied upon a reasonable basis that substantiated such representation.

The complaint also alleges that advertisements for Promise margarines and spreads represented that these foods are low in total fat. This representation is alleged to be false and misleading. At the time the advertisements were disseminated, Promise spread contained 9.5 grams of fat per 14 gram serving and 34 grams of fat per 50 grams, Promise Extra Light margarine contained 5.6 grams of fat per 14 gram serving and 20 grams of fat per 50 grams, and Promise Ultra (26%) contained 3.64 grams of fat per 14 gram serving and 13 grams of fat per 50 grams.

The complaint also alleges that advertisements for Promise spread represented that Promise spread is low in saturated fat. This representation is also alleged to be false and misleading. At the time the advertisements were disseminated, Promise spread contained 1.6 grams of saturated fat per 14 gram serving with 17 percent of calories derived from saturated fat.

The complaint also alleges that advertisements for Promise spread and Promise Extra Light margarine represented that Promise spread and Promise Extra Light margarine have no dietary cholesterol. According to the complaint, Conopco failed to adequately disclose that Promise spread and Promise Extra Light margarine contain a significant amount of total fat. In light of the representation that Promise spread and Promise Extra Light margarine have no dietary cholesterol, the total fat content of the products would be material to consumers and the failure to adequately disclose total fat content is alleged to be deceptive.

The consent order contains provisions designed to remedy the violations charged and to

prevent Conopco from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Conopco from misrepresenting that eating Promise margarine and spreads or any other margarine or spread will help to reduce the risk of heart disease or that any margarine or spread has the ability to cause or contribute to any risk factor for a disease or any health-related condition unless at the time of making such representation Conopco possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation. Under the order, any representation relating to the ability of any margarine or spread to reduce the risk of heart disease or to cause or contribute to any risk factor for a disease or any health-related condition that is specifically permitted in labeling by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to have a reasonable basis.

Part II of the order prohibits Conopco from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories of any margarine or spread. Part II also provides that if any representation covered by this Part 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.

Part IIIA of the order requires Conopco, in any advertisement or promotional material for any margarine or spread that contains the disclosure level of fat as set forth in final regulations concerning cholesterol content claims as promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990, that refers, directly or by implication, to the amount of cholesterol in such food, to disclose clearly and prominently the total number of grams of fat per serving. Part IIIB of the order requires that for three years Conopco also disclose, in any advertisement or promotional material for any margarine or spread sold under the Promise brand name that contains the aforementioned disclosure level of fat, the percentage of calories derived from fat or a statement that the margarine or spread is not "low fat" food.

Part IV provides that the order shall not prohibit representations specifically permitted in labeling for any margarine or spread by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Part V defines the terms used in the order. Part VI requires Conopco to maintain copies of all material relating to advertisements covered by the order and all documents relating to substantiation of advertising claims covered by the order. Part VII requires Conopco to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Part VIII requires Conopco to distribute copies of the order to certain company officials and employees and certain other representatives and agents of the company. Part IX provides that the order will terminate after twenty years under certain circumstances. Part X requires Conopco to file with the Commission one or more reports detailing compliance with 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 in any way their terms.