

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
BY ERNEST D. PREATE, JR.	:	
ATTORNEY GENERAL	:	CIVIL ACTION - EQUITY
Plaintiff	:	
v.	:	NO. 257 M.D. 1991
	:	
PEPPERIDGE FARM, INCORPORATED	:	
Respondent	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

COUNSEL FOR PLAINTIFF

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PEPPERIDGE FARM, INCORPORATED	:	
Respondent	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

WHEREAS, the Commonwealth of Pennsylvania, acting by Attorney General Ernest D. Preate, Jr., through the Bureau of Consumer Protection, has caused an investigation to be made into the business practices of Pepperidge Farm, Incorporated, (hereinafter Respondent);

WHEREAS, Respondent, a Connecticut corporation, is engaged in trade and commerce within the Commonwealth of Pennsylvania, as a general baking business, particularly the manufacturing and selling of bread, rolls, stuffing, and such other foodstuffs and products as may be produced or marketed conveniently in connection therewith.

WHEREAS, Respondent is registered as a Foreign Corporation with the Pennsylvania Department of State and was issued a Certificate of Authority by the Pennsylvania Department of State on June 6, 1949.

WHEREAS, based on its investigation, the Commonwealth alleges Respondent has engaged in conduct violative of the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, as amended and re-enacted by the Act of November 23, 1976, P.L. 1166, 73 P.S. Section 201-1 et seq. (hereinafter "Consumer Act"), by engaging, inter alia, in the following acts or practices:

1. Respondent produces and sells numerous baked goods products including stuffing mix under the label "Distinctive Stuffing Mix."

2. Respondent has in the past, prior to May, 1991, produced and sold, Distinctive Stuffing Mix with the designation DOES NOT CONTAIN MSG imprinted on the product box.

3. Respondent represents that it has not produced Distinctive Stuffing Mix with the designation DOES NOT CONTAIN MSG imprinted on the product box since May, 1991, and Respondent represents it is making diligent effort to have removed any of the aforesaid product that still remains on the shelves in some retail facilities.

4. One or more of the Distinctive Stuffing Mix flavors (i.e., Classic Chicken, Harvest Vegetable & Almond, Apple & Raisin, Country Herb, Wild Rice & Mushroom) produced by Respondent prior to January, 1990, contained the ingredient hydrolyzed vegetable protein.

5. One or more of the Distinctive Stuffing Mix flavors (i.e., Harvest Vegetable & Almond, Classic Chicken, Country Garden Herb, and Wild

Rice & Mushroom) produced by Pepperidge Farm after January, 1990 contained "chicken stock" as an ingredient. The chicken stock contained, as an ingredient, inter alia, hydrolyzed vegetable protein.

WHEREAS, THE COMMONWEALTH ALLEGES that as a result of the process of hydrolyzing a substance to create a hydrolyzed protein, a certain amount of monosodium glutamate (MSG) is produced, and that Respondent did not specifically remove MSG from the hydrolyzed protein used in the aforementioned products, and, therefore, that MSG remained a component of the hydrolyzed protein used in the products; and

WHEREAS, the Commonwealth further alleges that Respondent's act of imprinting the designation DOES NOT CONTAIN MSG on its product or products when the product or products did, in fact, contain MSG, was in violation of the Consumer Act; and

WHEREAS, the Commonwealth alleges that the Distinctive Stuffing Mix with the designation DOES NOT CONTAIN MSG, and which contained "chicken stock" as an ingredient, contained MSG as a result of the presence of hydrolyzed vegetable protein as a component of the "chicken stock"; and

WHEREAS, the Commonwealth alleges that the Distinctive Stuffing Mix with the designation DOES NOT CONTAIN MSG, and which contained hydrolyzed vegetable protein as an ingredient, contained MSG as a result of the presence of the hydrolyzed vegetable protein.

AND,

WHEREAS, RESPONDENT REPRESENTS that on or about January, 1990, on its own initiative and prior to the Commonwealth's involvement in January, 1991, Respondent removed hydrolyzed vegetable protein as a discreet ingredient in the aforementioned products; and

WHEREAS, Respondent represents that after January, 1990, it purchased certain "chicken stock" for use as an ingredient in the aforementioned products, which "chicken stock" Respondent believed did not contain MSG or hydrolyzed vegetable protein; and

WHEREAS, Respondent represents that it deleted the DOES NOT CONTAIN MSG designation from all packaging of its Distinctive Stuffing Mix products produced after May, 1991; and

WHEREAS, Respondent represents that it has begun the process of removing hydrolyzed vegetable protein as a component of the "chicken stock" ingredient of the aforementioned products; and

WHEREAS, Respondent denies that any of the aforementioned products now contain, or ever contained, MSG; and

WHEREAS, Respondent denies that it has violated the Consumer Act; and

WHEREAS, this Assurance of Voluntary Compliance shall not be considered an admission of a violation for any purpose.

AND,

WHEREAS, THE PARTIES believe this is a fair and equitable nationwide settlement that will have a positive impact on consumers throughout the fifty states;

NOW THEREFORE, while operating the above described business or any other business, Respondent agrees for itself, individually and for its successors, agents, representatives, employees and all other persons acting on its behalf, directly or through any corporate device as follows:

A. Respondent shall give each Officer and Director, and General Manager of Business Units and the Manager, Public Relations, for Respondent Pepperidge Farm, Incorporated, a copy of this Assurance of Voluntary Compliance, which copy can be retained by each person identified above. This requirement shall be effective for the term of this Assurance of Voluntary Compliance as set forth herein.

B. Upon execution of this Assurance of Voluntary Compliance, Respondent shall not imprint the designation DOES NOT CONTAIN MSG, on any of Respondent's packaging or advertising for any product which is sold, distributed or offered for sale in any of the fifty states, if the product contains MSG or contains any hydrolyzed protein of which MSG is a component, or contains any other manufactured substance of which MSG is a component.

C. When responding to consumer inquiries, Respondent shall not make statements to consumers which are untrue or misleading, and which Respondent knows to be false or misleading, or which by the exercise of reasonable care Respondent should know to be false or misleading, regarding the presence or absence in any of Respondent's products of MSG, hydrolyzed protein, or other manufactured substances of which MSG is a component.

D. Respondent shall make every reasonable effort either to have distributors remove the Distinctive Stuffing Mix products with the designation DOES NOT CONTAIN MSG (and which products do contain MSG, hydrolyzed protein, or other manufactured substance which contains MSG), from the stream of commerce, or to have distributors relabel, obliterate, or otherwise cover the designation DOES NOT CONTAIN MSG on the aforesaid products, within ninety (90) days of the date of execution of this document.

E. Prior to the filing of this Assurance of Voluntary Compliance, Respondent shall pay to the Commonwealth of Pennsylvania by corporate check, certified check, attorney's check, or money order a payment of twenty-five thousand dollars (\$25,000), which represents the costs of investigation to be used for future consumer protection purposes.

F. This Assurance of Voluntary Compliance shall terminate on the fifth anniversary of the date of its execution.

G. This Assurance of Voluntary Compliance is only applicable to Pepperidge Farm, Inc. and the Pennsylvania Office of Attorney General, Bureau of Consumer Protection.

H. The Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent, for the purpose of enforcement of this Assurance, for a period of five years from the date of its execution.

NOW THEREFORE, without the admission of any violation or wrongdoing, Respondent agrees by the signing of this Assurance of Voluntary

Compliance that Respondent shall henceforth abide by each and every
aforementioned provision and that breach of any or all of the terms of this
Assurance of Voluntary Compliance shall be sufficient warrant to petition
the Commonwealth Court to assess civil and other penalties and to order any
other relief which the Court deems necessary and proper in accordance with
the Consumer Act and the terms of this Assurance.

WITNESS, the following signatures this 20th day of August,
1991.

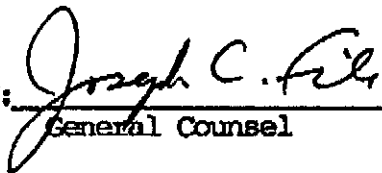
FOR THE COMMONWEALTH
BY: ERNEST D. PREATE, JR.
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ATTORNEY GENERAL

BY: RENARDO L. HICKS
RENARDO L. HICKS
CHIEF DEPUTY ATTORNEY GENERAL

BY: 
Robin David Bleacher
Deputy Attorney General

FOR THE RESPONDENT
PEPPERIDGE FARM, INCORPORATED

BY: 
President

BY: 
General Counsel