

Modifying Order

95 F.T.C.

IN THE MATTER OF

PORTER & DIETSCH, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9047. Decision, Dec. 20, 1977—Modifying Order, May 23, 1980*

This order amends a final order issued Dec. 20, 1977, 90 F.T.C. 770, 32 FR 9141, against a St. Paul, Minn. drug distributor by modifying the health risk disclosure requirement to include only those products containing phenylpropanolamine hydrochloride. Previously, the requirement included products containing methylcellulose as well. This modification brings the order into conformance with a Seventh Circuit Court of Appeals decision on review (605 F.2d 294, Aug. 8, 1979).

ORDER AMENDING ORDER TO CEASE AND DESIST

On December 20, 1977, following a complaint and proceeding thereon, the Commission issued its Decision and Order to Cease and Desist against the several named respondents in this matter. The respondents subsequently petitioned the United States Court of Appeals for the Seventh Circuit to review that Decision and Order, and that court issued its decision in the matter on August 8, 1979, requiring modification of the Order in certain respects. *Porter & Dietsch, Inc., et al. v. FTC*, 605 F.2d 294, 308-310. Respondents subsequently filed petitions for *certiorari* in the Supreme Court (79-731 and 79-1090), which were denied on March 31, 1980.

Accordingly, we hereby amend our order of December 20, 1977, in the following respects to conform to the mandate of the court of appeals:

First, we strike the existing paragraph I.E. and insert the following paragraphs I.E and I.F:

E. Disseminating or causing to be disseminated by the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement for any such product containing phenylpropanolamine hydrochloride or similar ingredients with similar properties, or methylcellulose (whether or not such products contain other ingredients as well) or any product held out as a diet remedy or other remedy for the reduction of human body weight unless such advertising "clearly and conspicuously" (in print at least as large as the largest print appearing in the advertising, or in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation) discloses the following statement, with nothing to the contrary or in mitigation of this statement:

"DIETING IS REQUIRED"

F. Disseminating or causing to be disseminated by United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade

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Commission Act, any advertisement for any such product containing phenylpropanolamine hydrochloride or similar ingredients with similar properties and held out as a diet remedy or other remedy for the reduction of human body weight unless such advertising "clearly and conspicuously" (in print at least as large as the largest print appearing in the advertising or, in an oral presentation, in speech as clear and distinct as that delivered in the rest of the presentation) discloses the following statement, with nothing to the contrary or in mitigation of this statement:

WARNING: THIS PRODUCT POSES A SERIOUS HEALTH RISK FOR USERS WITH HIGH BLOOD PRESSURE, HEART DISEASE, DIABETES, OR THYROID DISEASE. READ THE LABEL CAREFULLY BEFORE USING.

Second, we strike the existing paragraph II and insert the following paragraphs II and III (renumbering existing paragraph III and subsequent paragraphs accordingly):

II

It is further ordered, That respondents Kelly Ketting Furth, Inc., a corporation, its successors and assigns, and its officers, and Joseph Furth, individually and as an officer of said corporation; and employees of the foregoing respondents, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of any "food," "drug," "cosmetic," or "device" (as these terms are defined in the Federal Trade Commission Act) held out as a diet remedy or other remedy for the reduction of human body weight, shall forthwith cease and desist from disseminating or causing to be disseminated by United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains a representation or testimonial for such product prohibited by Paragraph I of this order, or which omits a disclosure for such product required by Paragraph I of this order.

III

It is further ordered, That respondent Pay'n Save Corporation, 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 advertising of any "food," "drug," "cosmetic," or "device" (as these terms are defined in the Federal Trade Commission Act) manufactured or distributed by Porter & Dietsch, Inc., and held out as a diet remedy or other remedy for the reduction of human body weight, shall forthwith cease and desist from disseminating or causing to be disseminated by United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains a representation or testimonial for such product prohibited by Paragraph I of this order, or which omits a disclosure for such product required by Paragraph I of this order.