

ment in the competitive situation.

IN THE MATTER OF
PAN AMERICAN CIGAR COMPANY ET AL. t/a HAVANA
FLORIDA CIGAR COMPANY AND GLOBE, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1261. Complaint, Oct. 5, 1967—Decision, Oct. 5, 1967

Consent order requiring a Hoboken, N.J., distributor of cigars to cease misrepresenting its business status and the origin, price, quality and guarantee of its cigars.

COMPLIANT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the

Federal Trade Commission, having reason to believe that Pan American Cigar Company, a corporation, and Samuel B. Jacobs and Mitchell B. Jacobs, individually and as officers of said corporation, and trading as Havana Florida Cigar Company and Globe, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pan American Cigar Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 94 River Street, city of Hoboken, State of New Jersey.

Respondents Samuel B. Jacobs and Mitchell B. Jacobs are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent. Said individual respondents also trade and do business as Havana Florida Cigar Company and Globe, Inc., with their office and principal place of business located at the above stated address.

PAR. 2. Respondents are engaged in the advertising, offering for sale, sale and distribution of cigars and tobacco products to distributors, wholesalers, dealers and retailers for resale to the public and in the direct mail order sale of said products at retail to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their cigars, the respondents have made numerous statements and representations in connection with the advertising of their cigars through the use of trade names and other descriptive and identifying matter and materials which purport to indicate the composition, formulation, contents, source of manufacture, price and savings available, former retail price

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based on Internal Revenue Service tax classification, or quality levels of their cigars, business status and policies.

Typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof, are the following:

1. HAVANA FLORIDA COMPANY.

2. HAVANA PALMAS.

100% Clear Havana Long Filler Havana Blends.

Clear Havanas Guaranteed Finest Clear Havana 100% Long Filler.

3. * * * in one of our Tampa factories * * *.

4. SPECIAL SALE PRICE

IMPORT BLEND PALMAS

CONTRACT PURCHASE

FAMOUS 28¢ IMPORT BLEND RECLASSIFIED

* * * * *

SPECIAL SALE PRICE

IMPORT BLEND ELEGANTES

CONTRACT PURCHASE

FAMOUS 25¢ IMPORT BLEND RECLASSIFIED

* * * * *

SPECIAL SALE PRICE

DOUBLE CORONAS

CONTRACT PURCHASE

FAMOUS 40¢ DOUBLE CORONA RECLASSIFIED

* * * * *

5. G U A R A N T E E

ALL CIGARS CONTAINED IN THIS BOX

ARE FIRST QUALITY ONLY

Same as their Regular Famous Name

No Seconds—No Irregulars

* * * * *

NOTICE TO RETAILERS

The law prohibits the removal of the cigars herein contained to be transferred to our regular brand name boxes or other boxes for the purposes of higher resale price or for any other reason.

* * * * *

However, the manufacturers do not permit the use of their regular brand name for advertising or promotional purposes as an aid to these cigars.

Copyright 1965 Globe Co.

PAR. 5. By and through the use of the above-quoted statements and representations, and others similar thereto not specifically set out herein, the respondents represent, and have represented, directly or by implication:

1. Through the use of respondents' trade name "HAVANA FLORIDA COMPANY" that respondents principal business operations or places of business are located on the island of Cuba and in the State of Florida.

2. That respondents' cigars bearing such designations as "Havana Palmas" and other similar brand names or descriptions in which the word "Havana" appears, are made entirely from tobacco grown on the island of Cuba.

3. That respondents are cigar manufacturers.

4. a. That respondents' cigars bearing such designations as "Import Blend Palmas" and "Import Blend Elegantes" and other similar descriptions were made entirely from imported tobaccos.

b. That substantial savings are obtainable by purchasers of respondents' cigars advertised at a "SPECIAL SALE PRICE" through "CONTRACT PURCHASE" which were usually and regularly retailed at 28¢, 25¢ and 40¢ respectively, and "RECLASSIFIED" into a lower price and tax category under the Tobacco Tax provisions of the Internal Revenue Code.

5. a. That respondents' cigars designated "IMPORT BLEND PALMAS," "IMPORT BLEND ELEGANTES" and "DOUBLE CORONAS" are unconditionally guaranteed.

b. Through statements such as "* * * Regular Famous Name * * *" and "* * * regular brand name * * *" that said cigars are an undisclosed highly prized prestige brand usually selling at a substantially higher price which have been specially packed for respondents under contract so as to conceal the identity of the well-known brand.

PAR. 6. In truth and in fact:

1. Respondents business operations or places of business are not located on the island of Cuba or in the State of Florida, but in the State of New Jersey.

2. Respondents' cigars designated "Havana Palmas" and other similar brand names employing the word "Havana" are not made entirely from tobacco grown on the island of Cuba, and, in many instances, said cigars do not contain any tobacco whatsoever grown on the island of Cuba.

3. Respondents are not cigar manufacturers, but are retailers, wholesalers or distributors of said products.

4. a. Respondents' cigars bearing such designations as "Import Blend Palmas," "Import Blend Elegantes" and other similar designations are not made entirely from imported tobaccos.

b. Substantial savings are not obtainable by purchasers of respondents' cigars advertised at a "SPECIAL SALES PRICE" through "CONTRACT PURCHASE" in that said cigars did not usually and regularly retail at 28¢, 25¢ and 40¢ and thereafter were not "RECLASSIFIED" into a lower price and tax category under the Tobacco Tax provisions of the Internal Revenue Code.

5. a. Respondents' cigars designated "IMPORT BLEND PALMAS," "IMPORT BLEND ELEGANTES" and "DOUBLE CORONAS" are not unconditionally guaranteed. Respondents fail to set forth the terms, conditions and limitations of their said guarantee and the extent to which their said guarantee applies as well as the identity of the guarantor and manner in which the guarantor will perform thereunder.

b. Respondents' cigars represented as "* * * Regular Famous Name * * *" and "* * * regular brand name * * *" are not an undisclosed highly prized prestige brand usually selling at a substantially higher price, nor are such cigars specially packed for respondents under contract so as to conceal the identity of a well-known brand for the purpose of price reduction.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their cigars, the respondents have made, numerous statements and representations in connection with the advertising of their cigars with respect to the grade, quality or performance of their cigars as well as claims as to the receipt of awards for the quality of their cigars in competition with other cigars.

1. Typical and illustrative of the aforesaid statements and representations as to the grade, quality or performance, but not all inclusive thereof, are the following:

TERRIFIC SAVINGS. As far as we can see these cigars are 98% perfect in appearance and 100% perfect in smoking quality.

* * * * *

Re-classified as Selection No. 1 irregulars because of few off-color wrappers or slightest imperfections.

* * * * *

W E B S T E R S E C O N D S

* * * * *

These Websters are 98% perfect in appearance
—100% perfect in smoking quality.

* * * * *

Sold as seconds because of un-matched
wrapper colors.

2. Typical and illustrative of the aforesaid statements and representations as to the receipt of awards for cigar quality in competition with other cigars, but not all inclusive thereof, is the following legend in the form of a scroll or seal:

A W A R D O F M E R I T
F I N E C I G A R S.

PAR. 8. By and through the use of the above-quoted statements and representations, and others similar thereto not specifically set out herein, the respondents represent and have represented, directly or by implication:

(1) That respondents' cigars advertised as "*** 98% perfect in appearance and 100% perfect in smoking quality" and representations of similar import were equal in performance to first quality merchandise.

(2) That respondents' cigars advertised as having received an "AWARD OF MERIT" or similar award have been selected for approval or endorsement by an independent organization engaged in the impartial evaluation of comparative cigar quality or in an objective determination of the merits of respondents' cigars in competition with other cigars.

PAR. 9. In truth and in fact:

(1) Respondents' cigars advertised as "*** 98% perfect in appearance and 100% perfect in smoking quality" and representations of similar import were not equal in performance to first quality merchandise; but were of an inferior quality known in the trade as (a) "seconds" and (b) "throwouts."

(a) A "second" as is known in the trade is a cigar in which a stem of the tobacco leaf protrudes through the wrapper or there is a cut or other defect in the nature of a perforation in the wrapper resulting from the manufacturing process.

(b) A "throwout" as is known in the trade is a cigar which is in perfect condition on leaving the factory except for a slight discoloration or imperfection in the wrapper. Hence, a cigar classified as a "second" and, in some instances a "throwout" would not be equal to first quality merchandise in that the perforation or other defects in the wrapper would materially affect the drawing or burning quality of the cigar.

(2) Respondents' cigars advertised as having received an "AWARD OF MERIT" have not been selected for approval or endorsement by an independent organization engaged in the impartial evaluation of comparative cigar quality or in an objective determination of the relative merits of respondents' cigars in competition with other cigars.

Therefore, the statements and representations as set forth in Paragraphs Seven and Eight hereof were and are false, misleading and deceptive.

PAR. 10. By the aforesaid practices respondents have placed in the hands of distributors, wholesalers, dealers and retailers, means and instrumentalities by and through which they may mislead the public as to the nature and extent of respondents' commercial affiliation with the island of Cuba and product origin on the island of Cuba, respondents' business status, the composition, formulation or origin of their cigars, and the brands quality and savings available.

PAR. 11. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 12. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having

accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Pan American Cigar Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 94 River Street, city of Hoboken, State of New Jersey.

Respondents Samuel B. Jacobs and Mitchell B. Jacobs are officers of said corporation and their address is the same as that of said corporation. Said individual respondents also trade and do business as Havana Florida Cigar Company and Globe, Inc., with their office and principal place of business located at the above stated address.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Pan American Cigar Company, a corporation, and its officers, and Samuel B. Jacobs and Mitchell B. Jacobs, individually and as officers of said corporation, and trading as Havana Florida Cigar Company and Globe, Inc., or under any other trade name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of cigars or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Havana Florida Company" in or as part of respondents' trade name or corporate name unless respondents' address is disclosed in immediate conjunction therewith in a clear and conspicuous manner; or misrepresenting, in any other manner, the place or location of any of respondents' business operations or place or places of business.

2. Using the term "Havana" or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in conjunction with any other terms, to describe,

designate or in any way refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated or referred to as "blended with Havana," or by any term of similar import or meaning: *Provided*, That the words "blended with," or other qualifying word or words, are set out in immediate connection or conjunction with the word "Havana," or other term indicative of tobacco grown on the island of Cuba, in letters of equal size and conspicuousness.

3. Using the term "import blend" or any other term or terms indicative of tobacco grown outside of the United States, either alone or in conjunction with any other terms to describe or designate or in any way refer to cigars not made entirely from tobacco grown outside of the United States; except that cigars containing a substantial amount of tobacco grown outside the United States may be described, designated, or referred to as "blended with," or by any term of similar import or meaning: *Provided*, That the words "blended with" or other qualifying word or words, are set out in immediate conjunction with the word "import," "imported" or other similar terms indicative of tobacco grown outside the United States, in letters of equal size and conspicuousness.

4. Misrepresenting, in any manner, the origin or source of respondents' products or any part or portion thereof.

5. Representing, directly or by implication, that they own, operate or control a factory in which merchandise sold by them is manufactured, or misrepresenting, in any manner, the kind or character of respondents' business.

6. Using the terms "special," "special sale price," "re-classified," "contract purchase" or other words or terms of similar import or meaning to refer to any price amount which is not substantially less than the price at which substantial sales of said products were made in the trade area or areas where the representations are made.

7. Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and any other price used for comparison with that price:

a. Unless respondents have offered such merchandise for sale at the compared price in good faith for a reason-

ably substantial period of time in the recent regular course of business; or

b. Unless substantial sales of said merchandise are being made in the trade area at the compared price, or at a higher price; or

c. Unless a substantial number of the principal retail or mail order outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price; or

d. When a value comparison representation with comparable merchandise is used, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

8. Falsely advertising, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise at retail.

9. Representing, directly or by implication, that any of respondents' merchandise is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed and any represented guarantee is in fact provided and fully and completely performed to the extent and in the manner represented.

10. Representing, directly or by implication, that respondents' cigars are of an undisclosed prestige or name brand: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said products were of the represented brand, grade or quality.

11. Representing, directly or by implication, that cigars classified as seconds or which are otherwise functionally defective are equal in performance to cigars without such defects; or otherwise misrepresenting the grade or quality of respondents' merchandise.

12. Representing, directly or by implication, that merchandise has been approved or endorsed by an independent organization engaged in protecting the interests of consumers or in determining objectively the merits of such merchan-

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dise: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such representation is truthful in every material respect.

13. Placing in the hands of retailers, dealers or others, the means or instrumentalities by or through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.
