

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.

IN THE MATTER OF

HABANA CIGAR CORPORATION, INC., ET AL.

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

Docket C-2022. Complaint, Sept. 2, 1971—Decision, Sept. 2, 1971

Consent order requiring a Newport, Ky., manufacturer and seller of cigars and tobacco products both at wholesale and retail to cease using the term "Habana" or other words implying its tobacco products are made from tobacco grown on the Island of Cuba, misrepresenting that it has been in business since 1894 or that it is owned by a Cuban-named individual, and falsely guaranteeing its products.

COMPLAINT

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 Habana Cigar Corporation, Inc., a corporation, and James J. Mathews, individually and as an officer of said corporation, 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. Habana Cigar Corporation, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 644 Monmouth Street, Newport, Kentucky.

Respondent James J. Mathews is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been

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engaged in the business of manufacturing, advertising, offering for sale, selling and distributing 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, as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the States of Florida and Kentucky to purchasers thereof located in various States of the United States other than the state of origination and in 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, respondents have made numerous statements and representations in advertising and promotional material respecting the history, ownership, business status and policies, and source of manufacture of the company or its products.

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

1. Habana Cigar Corporation, Inc.
2. Habana by Juan Hernandez. Habana Custom Hand Made. Habana.
3. Three generations of hand made cigars, since 1894.
4. Statements allegedly written and spoken by one Juan Hernandez:
*I, Juan Hernandez, present to you * * *. (Emphasis added.)*
*In keeping with MY family heritage, I not only obtain * * * (Tobacco) but employ (cigar makers). (Emphasis added.)*
*You will find that MY cigars * * *. (Emphasis added.)*
*This is why I proudly call MY cigar * * *. (Emphasis added.)*
5. HABANA GUARANTEE * * * all natural leaf tobacco * * * "hand made."

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with respondents' corporate name, "Habana Cigar Corporation, Inc.," respondents represent, and have represented, directly or by implication:

1. That respondents' principal business operations or place of business are located on the Island of Cuba.
2. That respondents' cigars bearing the designation "Habana" are made entirely or in substantial part from tobacco grown on the Island of Cuba.

3. That corporate respondent has been in the business of manufacturing and selling cigars since 1894, and has been owned and operated by three generations of a Cuban family.

4. That corporate respondent is owned and operated by a person named Juan Hernandez.

5. That respondents' cigars are unconditionally guaranteed.

PAR. 6. In truth and in fact:

1. Respondents' business operations or place of business are not located on the Island of Cuba, but in the States of Florida and Kentucky.

2. Respondents' cigars do not contain any tobacco whatsoever grown on the Island of Cuba.

3. Corporate respondent was organized, formed, and incorporated in the State of Florida in 1969 by American businessmen and has not been operated by three generations of a Cuban family.

4. Corporate respondent is not owned and operated by Juan Hernandez. Juan Hernandez is an employee of said respondent corporation, and not a principal thereof.

5. Respondents' cigars are not unconditionally guaranteed. Respondents' guarantee fails to set forth its nature and extent, the identity of the guarantor, and the manner in which the guarantor will perform thereunder.

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

PAR. 7. By the aforesaid practices respondents place, and have placed in the hands of distributors, wholesalers, dealers, and retailers the means and instrumentalities by and through which respondents may mislead and deceive the public in the manner and as to the things herein alleged.

PAR. 8. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and now are, 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. 9. The use by 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 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. 10. 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 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 Habana Cigar Corporation, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 644 Monmouth Street in the city of Newport, State of Kentucky.

Respondent James J. Mathews is an officer of the corporate respondent. He formulates, directs, and controls the policies, acts, and practices of corporate respondent. His address is the same as that of corporate respondent.

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 Habana Cigar Corporation, Inc., a corporation, and its officers, and James J. Mathews, individually and as an officer of said corporation 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 word "Habana" or any other word of similar import or meaning in or as a part of respondents' trade or corporate name; or representing, directly or by implication, that respondents' place of business is located on the Island of Cuba; or misrepresenting, in any manner, the place or location of any of respondents' business operations or its connection or affiliation with any foreign business operations.

2. Using the term "Habana" 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 conjunction or connection with the word "Havana" or other term indicative of tobacco grown on the Island of Cuba, in letters of equal size and conspicuousness.

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

4. Representing, directly or by implication, that corporate respondent has been in the business of manufacturing and selling cigars since 1894, or has been owned and operated by three generations of a Cuban family; or misrepresenting, in any manner, the age or founders of any of respondents' businesses.

5. Representing, directly or by implication, that corporate respondent is owned and operated by a person named Juan Hernandez; or falsely representing in any manner the identity of the person or persons, firm, or corporation, that owns, operates, or controls respondents' business operations.

6. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent

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of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and the respondents do, in fact, promptly fulfill all of their obligations arising under the directly or impliedly represented terms of such guarantees.

7. 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 prohibited by this order.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That 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 of their compliance with this order.

IN THE MATTER OF

ANGELO COFONE DOING BUSINESS AS T-VILLE FREEZER
MEATS, ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2023, Complaint, Sept. 2, 1971—Decision, Sept. 2, 1971

Consent order requiring a Norwich, Conn., individual selling and distributing