

Complaint

81 F.T.C.

IN THE MATTER OF

CUMBERLAND PACKING CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2284. Complaint, Sept. 13, 1972—Decision, Sept. 13, 1972*

Consent order requiring a Brooklyn, New York, manufacturer and seller of a sugar product and its New York City advertising agency, among other things to cease representing that their product is organically grown; representing that their product has not been processed; and misrepresenting the nutritional value of their product.

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 Cumberland Packing Corporation, a corporation, and Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt, and Ira Eisenstadt, individually and as officers of said corporation, and Stiefel/Raymond Advertising, Inc., a 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. Respondent Cumberland Packing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2 Cumberland Street, Brooklyn, New York. Respondents Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt and Ira Eisenstadt are individuals and are officers of Cumberland Packing Corporation. They formulate, direct and control the acts and practices of Cumberland Packing Corporation, including the acts and practices hereinafter set forth. Their address is the same as that of Cumberland Packing Corporation.

PAR. 2. Respondent Stiefel/Raymond Advertising, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 370 Lexington Avenue, New York, New York.

PAR. 3. Respondents Cumberland Packing Corporation, and Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt, and Ira Eisenstadt are now, and for some time last past have been, engaged in the manufacture, sale and distribution of a sugar product designated

"Sugar in the Raw" which comes within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondents Stiefel/Raymond Advertising, Inc., is now, and for some time last past has been, the advertising agency of Cumberland Packing Corporation and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of Cumberland Packing Corporation's "Sugar in the Raw," which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondents Cumberland Packing Corporation and Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt, and Ira Eisenstadt cause the said product, when sold, to be transported from its place of business in one state of the United States to purchasers located in various other states of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a course of trade in said product in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 6. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said "Sugar in the Raw" by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and newspapers, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product; and have disseminated, and caused the dissemination of, advertisements concerning said product by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

(a) A number of radio commercials, representative of which is the following:

My sugar is not refined—it's natural, earthy, organic SUGAR IN THE RAW. Sugar in the Raw has the honest, sweet flavor of the sugar cane from sunny

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Caribbean Islands. It contains all of its natural vitamins and minerals because it hasn't been bleached, processed, and stripped of its natural, nutritional goodness. It's naturally blonde. Nothing is added—no chemicals. No preservatives. Sugar in the Raw is naturally sweet—naturally delicious. Get back to nature. Next time you shop, pick up a box of one hundred individual servings of Sugar in the Raw. It's exciting in beverages! Wild on fruits and cereals! And sensational for cooking and baking. It's got no refinement, but Sugar in the Raw contains all of its natural vitamins and minerals. It's naturally more nutritious—more delicious than any other sugar you can buy. Sugar in the Raw is now featured at * * *

(b) The audio of one such television commercial:

It's organic. It's unrefined. Bursting with flavor. Naturally delicious Sugar in the Raw.

(c) One such print advertisement has the following copy:

My sugar is not refined! It's *Organic*, Natural, Earthy Sugar in the Raw! Get back to nature. Enjoy the honest flavor of Sugar in the Raw. It's naturally delicious, contains all of its natural vitamins and minerals. It hasn't been bleached, processed and stripped of nutritional goodness. Nothing is added—No chemicals. No preservatives. Are you bold enough to try it?

(d) Another such print advertisement has the following copy:

It's got no refinement! Sugar in the Raw. Organic! Unrefined! Natural! The honest to goodness sugar that contains natural vitamins and minerals.

(e) The print advertisement appearing on the back panel of the Sugar in the Raw package:

SUGAR IN THE RAW

EXCITING IN BEVERAGES

WILD ON FRUITS AND CEREALS

FOR COOKING AND BAKING

Sugar in the Raw is naturally blonde and has the honest, sweet flavor of the sugar and grows on sunny Caribbean Islands. It contains its natural vitamins and minerals because it hasn't been bleached, processed and stripped of its natural nutritional goodness, like ordinary sugar. Sugar in the Raw is not refined! It's earthy and natural. It contains the same amount of sweetness as ordinary sugar and may be used in the same way. The only difference is that it produces a more delicious flavor and adds its own natural nutritional value in foods and beverages.

CUMBERLAND PACKING CORP.

2 Cumberland St., Brooklyn, N.Y. 11255

PAR. 8. Through the use of said advertisements and others similar thereto not specifically set out herein, disseminated as aforesaid, respondents have represented and are now representing, directly and by implication, that:

- (a) "Sugar in the Raw" is an organically grown food.
- (b) "Sugar in the Raw" is not a processed food.
- (c) "Sugar in the Raw" is a significant source of vitamins and minerals.
- (d) "Sugar in the Raw" is a significantly greater source of vitamins and minerals than refined sugar.
- (e) "Sugar in the Raw" is substantially different from or is superior to other sugars because it does not utilize or contain any chemicals or preservatives.

PAR. 9. In truth and in fact:

- (a) "Sugar in the Raw" is not an organically grown food.
- (b) "Sugar in the Raw" is a processed food.
- (c) "Sugar in the Raw" is not a significant source of vitamins and minerals.
- (d) "Sugar in the Raw" is not a significantly greater source of vitamins and minerals than refined sugar. Neither "Sugar in the Raw" nor refined sugar contain a nutritionally significant amount of vitamins or minerals.
- (e) "Sugar in the Raw" is not substantially different from or superior to other sugars because of the absence of chemicals and preservatives.

Therefore, the advertisements referred to in Paragraph Seven were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations set forth in Paragraph Seven and Eight were, and are, false, misleading and deceptive.

PAR. 10. Certain of the aforesaid advertisements and others similar thereto not specifically set out herein have falsely represented, and are now falsely representing, directly and by implication, that "Sugar in the Raw" has unique properties not found in other types of sugars. Said advertisements tend to exploit the aspirations of consumers to select the foods best suited to their needs.

Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive and unfair.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents Cumberland Packing Corporation and Benjamin Eisentadt, Marvin E. Eisenstadt, Betty Eisenstadt and Ira Eisenstadt have been, and now are in substantial competition, in commerce, with corporations, firms and individuals in the sale of food products of the same general kind and nature as that sold by respondents.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents Stiefel/Raymond Advertising, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 13. The use by respondents of the aforesaid false, misleading, deceptive and unfair statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent Cumberland Packing Corporation's "Sugar in the Raw" by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," 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 and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 thereafter considered the matter and having determined that they had reason to believe that the respondents have violated the said Act, and that complaint should issue stating their charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public

record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules now in further conformity with the procedure prescribed in Section 2.34(b) of their rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Cumberland Packing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2 Cumberland Street, in the city of Brooklyn, in the State of New York. Respondents Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt and Ira Eisenstadt are individuals and are officers of the aforementioned corporate respondent. They formulate, direct and control the acts and practices of the aforementioned corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the aforementioned corporate respondent.

Respondent Stiefel/Raymond Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 370 Lexington Avenue, in the city of New York, in the State of New York.

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

ORDER

I

It is ordered, That respondent Cumberland Packing Corporation, a corporation, and its officers, and Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt and Ira Eisenstadt, individually and as officers of said corporation, and Stiefel/Raymond Advertising, Inc., a corporation, and its officers, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any sugar sold for consumer use forthwith cease and desist from:

1. Disseminating, or causing the dissemination of, an advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication, that:

(a) Any such product has been grown without the use of chemical fertilizers or pesticides; or specifically that any

such product is "organic," in that it has been organically grown.

(b) Any such product has not been processed.

(c) Any such product supplies any amount of a vitamin or mineral unless the amount is above five (5) percent of the Recommended Daily Dietary Allowance or ten (10) percent of the Minimum Daily Requirement and is clearly and conspicuously stated in terms of percentage of whichever standard is used.

(d) Any such product is in any way more nutritious than any other product which is substantially identical in composition.

(e) Any such product differs from or is superior to any other such product because no chemicals or preservatives have been added.

2. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents, in any manner, the nutritional value of any such product.

3. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product, in commerce, as "commerce" is defined in the Federal Trade Commission Act which contains any of the representations prohibited in subparagraph 1, above, or the misrepresentation prohibited in subparagraph 2, above.

II

It is further ordered, That respondent Cumberland Packing Corporation, a corporation, and its officers, and Benjamin Eisenstadt, Marvin E. Eisenstadt, Betty Eisenstadt and Ira Eisenstadt, individually and as officers of said corporation, and their successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any sugar sold for consumer use in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, directly or by implication, any statement or representation that:

1. Any such product has been grown without the use of chemical fertilizers or pesticides; or specifically that any such product is "organic," in that it has been organically grown.

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2. Any such product has not been processed.

3. Any such product supplies any amount of a vitamin or mineral unless the amount is above five (5) percent of the Recommended Daily Dietary Allowance or ten (10) percent of the Minimum Daily Requirement and is clearly and conspicuously stated in terms of percentage of whichever standard is used.

4. Any such product is in any way more nutritious than any other product which is substantially identical in composition.

5. Any such product differs from or is superior to any other such product because no chemicals or preservatives have been added.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days after service of the order upon it, file with the Commission a report in writing setting forth in detail the manner and form of its compliance with the order to cease and desist.