

IN THE MATTER OF

LEO BURNETT COMPANY, INC.

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

Docket C-2309. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a Chicago, Illinois, advertising agency for two New York City sugar industry trade associations, among other things to cease making false and unsubstantiated weight reduction claims for refined sugar and misrepresenting its nutritional value in weight-reduction dieting.

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 Sugar Information, Inc., Sugar Association, Inc., and Leo Burnett Company, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a pro-

ceeding 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. Respondents Sugar Information, Inc., and Sugar Association, Inc., are trade associations organized, existing and doing business as corporations under and by virtue of the laws of the State of New York, with their principal office and place of business located at 254 West 31st Street, New York, New York. Respondents Sugar Information, Inc., and Sugar Association, Inc., were organized and are maintained for the purpose of promoting, fostering and advancing the interests of their members who consist of firms engaged in businesses relating to the sugar industry, including but not limited to growers, refiners, and processors.

PAR. 2. Respondent Leo Burnett Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Prudential Plaza, Chicago, Illinois.

PAR. 3. Respondents Sugar Association, Inc., and Sugar Information, Inc., have been and now are engaged in a wide range of activities of mutual interest to their members including but not limited to the dissemination, publishing, and distribution of advertisements and promotional material concerning the uses, purposes, utility, characteristics and effects of sugar, which comes within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Leo Burnett Company, Inc., is now, and for some time last past has been, an advertising agency of Sugar Association, Inc., and Sugar Information, Inc., 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 sugar, and products containing sugar, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning sugar and products containing sugar 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 other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and have disseminated, and caused the dissemination of, advertisements concerning said products by various means, including but not limited to the afore-said media, for the purpose of inducing and which were likely to

induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following: [These advertisements are reproduced in Docket C-2308, pp. 713-719, herein.]

PAR. 7. 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. There is a reasonable basis from which to conclude that the consumption of sugar, and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals contributes significantly and reliably to the reduction of human weight and to the maintenance of reduced human weight.

B. Consumption of sugar and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals will result in reduced daily caloric intake.

C. Sugar is a uniquely suitable source of energy for persons attempting to lose weight or to prevent weight gain, because it provides more energy per calorie than other foods.

PAR. 8. In truth and in fact:

A. Respondents had no reasonable basis from which to conclude that the consumption of sugar, and foods containing sugar, such as soft drinks, ice cream cones, or candy bars, before meals contributes significantly and reliably to the reduction of human weight and to the maintenance of reduced human weight.

B. Consumption of sugar and foods containing sugar such as soft drinks, ice cream cones, or candy bars, before meals may result in increased daily caloric intake.

C. Sugar is not a uniquely suitable source of energy, in terms of the quantity of energy provided per calorie, for persons attempting to lose weight or to prevent weight gain. All food contain the same amount of energy per calorie, since calories are a measurement of the energy value of food.

Therefore, the advertisements referred to in Paragraph Six 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 Paragraphs Six and Seven were, and are, false, misleading and deceptive.

PAR. 9. Respondents have represented, through the use of the aforesaid advertisements and otherwise, directly and by implication, that

consumption of sugar and foods containing sugar before meals is an effective means of reducing human weight and maintaining reduced human weight. There existed at the time of said representations no reasonable basis to support said representations pertaining to the health and dietary qualities of said food products.

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

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondents Sugar Association, Inc., and Sugar Information, Inc., as agents or representatives of its membership constituency, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals representing or engaged in the food industry.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Leo Burnett Company, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive 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 sugar and products containing sugar.

PAR. 13. 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 Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 it had reason to believe that the respondent had violated the said Act, and that complaint should issue stating its 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, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order;

1. Respondent Leo Burnett Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Prudential Plaza, in the city of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Leo Burnett Company, Inc., a corporation, and its officers, agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of refined sugar forthwith cease and desist from:

1. 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 represents, directly or by implication, that:

a) Refined sugar makes any contribution to weight reduction or to the prevention of weight gain, unless there exists a reasonable basis from which respondent could draw such a conclusion.

b) Refined sugar supplies food energy uniquely suitable for persons attempting to lose weight or prevent weight gain.

c) For purposes of weight reduction or the prevention of weight gain, food energy supplied by refined sugar acts other than as a body fuel.

2. Disseminating, or causing the dissemination of, any advertisement concerning dieting, undertaken for the purposes of weight reduction or the prevention of weight gain, 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 refined sugar.

It is provided, however, That nothing contained in this order shall be construed as prohibiting accurate representations of refined sugar's role in and contribution to a balanced diet undertaken for the purpose of weight reduction or for the prevention of weight gain, where supported by competent scientific authority, or as prohibiting accurate representations of any non-nutritional characteristic of refined sugar.

A statement as to the qualities or attributes of refined sugar can amount to an implied uniqueness claim if it is made in a context which conveys an impression of uniqueness for refined sugar. However, statements as to the qualities or attributes of refined sugar covered by this order will not constitute a violation thereof for the sole reason that such statements could also be made with respect to other products.

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

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

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent 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 the order.

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

Complaint

81 F.T.C.

IN THE MATTER OF

CHARLES LEVINE & CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-2310. Complaint, Nov. 1, 1972—Decision, Nov. 1, 1972

Consent order requiring a New York, New York, importer and wholesaler of fur skins, among other things to cease falsely advertising and deceptively invoicing its fur products and failing to maintain adequate records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Charles Levine & Co., Inc., a corporation and Charles Levine, individually and as an officer of the said corporation hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Fur Products Labeling 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 Charles Levine & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Charles Levine is an officer of the corporate respondent and formulates, directs, and controls, the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are importers and wholesalers of fur skins with their office and principal place of business located at 358 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce; and have introduced into commerce, sold, advertised, and offered for sale in commerce, and transported and distributed in commerce, furs, as the terms "com-