

Complaint

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Consent order requiring a New York City manufacturer of sugar, among other things, to cease making false nutritional claims and from using false endorsements regarding its products. Further, respondent is prohibited from advertising Domino sugar for a one-year period unless it runs corrective advertising.

Consent order requiring two advertising agencies located in Philadelphia, Penn. and Los Angeles, Calif., which handle the advertising for Amstar Corporation, among other things to cease misrepresenting the nutritional value of sugar and to cease using false endorsements in advertising refined sugar.

Appearances

For the Commission: *Judith A. Mitnick* and *Michael A. Perlman*.

For the respondents: *Frederick M. Porter*, Assistant General Counsel, for Amstar Corporation, New York, N.Y.; *Sullivan & Cromwell*, New York, N.Y. for Lewis & Gilman, Inc.; *Covington & Burling*, Wash., D.C. and *Gang, Tyre & Brown*, Hollywood, Calif. for Dailey and Associates.

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 Amstar Corporation, a corporation, Lewis & Gilman, Inc., a corporation, and Dailey and Associates, 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 Amstar Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1251 Avenue of the Americas, New York, N.Y.

PAR. 2. Respondent Lewis & Gilman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1700 Market Street, Philadelphia, Penn.

PAR. 3. Respondent Dailey and Associates, is a corporation organized, existing and doing business under and by virtue of the

laws of the State of California, with its office and place of business located at 3807 Wilshire Boulevard, Los Angeles, Calif.

PAR. 4. Respondent Amstar Corporation is now, and for some time last past has been, engaged in the manufacture, sale and distribution of refined sugars which come within the classification of a "food," as said term is defined in the Federal Trade Commission Act. Its refined sugars are usually, but not always, sold for household use under the "Domino" and "Spreckels" brands.

PAR. 5. Respondents Lewis & Gilman, Inc., and Dailey and Associates, are now, and for some time last past have been, advertising agencies of Amstar Corporation and now and for some time last past, have prepared and placed for publication and have caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of Amstar Corporation's refined sugars, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 6. Respondent Amstar Corporation causes the said products, 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. Respondent Amstar Corporation maintains, and at all times mentioned herein has maintained, a course of trade in said products 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. 7. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said refined sugars 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

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which were likely to induce, directly or indirectly, the purchase of said refined sugars in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are a number of television and radio commercials, labels, and point-of-purchase advertisements featuring endorsements by athletic organizations. These commercials and promotional materials contain the message that the consumption of said refined sugars will yield "Strength, Energy and Stamina," or "SES." Several such commercials are set forth in printed form in subparagraphs A - E below as approximate descriptions of the contents of the films and tape recordings of some of the aforementioned commercials.

A. One such television commercial shows a youngster at the breakfast table with a bowl of cereal. He says, "Pass the sugar, Mom." The announcer then states that Domino Sugar is the official sugar of the National Football League Training Tables, and a scene of one player passing a sugar bowl to another is shown. The scenes shift between the family breakfast table and the football training table, while the announcer says, "It gives you and your family the same strength, energy and stamina that powers the pros. Get strength * * * energy * * * and stamina. Get Domino Sugar. It's on NFL training tables. It's on the tables of healthy, active people everywhere."

B. Another such television commercial depicts family members in action situations—cheerleading, playing handball, bowling and riding a bike—on one half of a split screen. On the other half of the screen are the words "She needs SES" alternating with "He needs SES." The split screen continues, now with a football player in action on one side and the words "He has SES" on the other. The announcer says "SES powers the Pros." Still on a split screen, a bag of Domino Sugar, with the words "Strength Energy Stamina" printed prominently on it, appears. While the scene of the bag of Domino sugar remains constant, the other half of the screen shows the words "This is SES" and "STRENGTH ENERGY STAMINA." The announcer says "This is SES Domino Sugar. Strength * * * Energy * * * Stamina. It's the official sugar of the National Football League Training Table." Then with a bag of Domino Sugar still focused on one side of the screen, the family action scenes are repeated. Along with this, the announcer says "Serve your family Domino Sugar, the natural

sweetener. Domino Sugar * * * SES for healthy, active people." The messages "STRENGTH ENERGY STAMINA for healthy, active people," and "SES for healthy, active people" are shown on the split screen with a bag of Domino Sugar.

C. Another television commercial features an enthusiastic young lady in a loose-fitting baseball uniform, holding a bag of Domino Sugar. She says "Hi, everybody! You want your kids to have strength, energy, and stamina, don't you? You want your weary old bones to have strength, energy and stamina, don't you? Well, besides plenty of sleep and exercise and all that stuff, you should have sugar. Sugar! Mmmmm! Bet you didn't know that. *And not just any old sugar you never heard of!*" The camera focuses on the bag of Domino Sugar showing the words "Strength Energy Stamina" as the young lady continues "You ought to have Domino Sugar. What would you say to a sugar that's so terrific * * * it's been chosen by whole baseball teams for strength, energy and stamina? You wouldn't believe it. Well, you're wrong. Domino is so terrific it's the official sugar of major league baseball." The camera focuses on the words "Official Sugar of Major League Baseball." The girl continues "Even if you don't know anything about baseball, you know that's got to be something! There's something in natural Domino Sugar that turns into strength, energy and stamina—the minute you eat it." (emphasis added)

D. A television commercial for Spreckels Sugar centers around a young boy in baseball gear and his mother. The boy comes to the mother in the kitchen and says "Mom—you know Spreckels Sugar is the official sugar of major league baseball * * * maybe I'll eat Spreckels and be a professional ballplayer." Mom says "It's nice sugar, but you'll be a doctor." As the camera focuses on a bag of Spreckels Sugar flanked by a baseball and a glove, the announcer states "Spreckels Sugar gives strength, energy and stamina to pitchers * * * shortstops * * * and [as a surgeon's head mirror encircles the top of the Spreckels Sugar bag] surgeons."

E. Three such radio commercials are set out as follows:

Strength—Stamina—and Energy—that's what you give your family when you serve them foods made with Spreckels Sugar. Matter of fact—Spreckels is such a good energizer, it's the official sugar of major league baseball! So the next time you need sugar, buy the one that scores big for sweetness. And Neatness—Spreckels Sugar in the easy-open/easy-pour zip top bags. Now with a great baseball warm-up jacket offer on their sunny yellow backs!

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No one knows better than Mother, what's good for her family. That's Mother's job. And that's why most mothers all over the country serve Domino Sugar to their families. They know that Domino Sugar has what it takes to keep a healthy, active family on the go. Domino Sugar has S-E-S. S-E-S stands for strength, energy, stamina. And those are three big words to a Mother with a family. Remember S-E-S—strength, energy and stamina next time you're at the store. And pick up Domino Sugar. It'll give you and your healthy, active family the S-E-S you need—by the bagful. That's why lots of Mothers call Domino Sugar *the premium sugar*. And that's why it's a must on your shopping list. So write it down, right now. Domino Sugar. *The sugar with S-E-S—strength, energy and stamina*. It's the sugar to serve to your family at every meal. Get strength, energy and stamina—get Domino Sugar—it's a tradition with healthy, active families. (emphasis added)

Mrs. Homemaker—somebody really cares about you! The Domino Sugar people know the mileage you cover—cleaning, cooking, shopping, washing. And how you're on your toes all the livelong day. So everyone at Domino Sugar thinks you ought to know about S-E-S. S-E-S is strength, energy and stamina, and you get all three by the bagful in Domino Sugar. That's why it's served on the training tables of the National Football League. And if it can power the football pros, just think what it can do for you and your active family. All that strength, energy and stamina in Domino Sugar helps keep you and everybody else at home going full steam ahead. And that's why it makes good sense to make it a must on your shopping list. So serve Domino Sugar to your family and give them S-E-S—strength, energy and stamina by the bagful.

F. Two such print media advertisements are the following:

PAR. 9. 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. All individuals will derive strength, energy and stamina from the consumption of Domino and Spreckels refined sugars.

B. Domino Sugar and Spreckels Sugar have been selected as the "official sugar" of the National Football League and of Major League Baseball because of their superior quality and nutritional value.

C. Domino Sugar has been selected for use by the U.S. Olympic Team and by the U.S. Olympic Committee because of its superior quality and nutritional value.

D. The table use of Domino Sugar and Spreckels Sugar by athletes enables the athletes to perform better in their respective sports.

E. Eating refined sugar is as necessary a factor in staying healthy as sleeping and exercising.

We've been
selected
for use by
the U.S.
Olympic
Team.



Domino.
GRANULATED
PURE
CANE
SUGAR



FOR
STRENGTH
AND
ENERGY
STAMINA

16 LBS.
NET WT.

STORE COUPON

Domino Sugar is the brand of sugar that's served on the training table of the U.S. Olympic Team.

The word sure gets around! Domino Sugar is full of S-E-S—the strength, energy and stamina that healthy, active families need to keep on the go.

Next time you need sugar, pick up a bright yellow bag of Domino Pure Cane Sugar, the natural sweetener.

Auster
AMERICAN SUGAR SALES

Save 10¢
on a 16 lb.
bag of Domino Sugar



MR. BROOKER: As our agent, redeem this coupon for 10¢ on the purchase price of a 16 lb. bag of Domino Sugar. Mail to American Sugar Sales Division, AUSTAR Corp., P.O. Box 233, Glendale, California 91206. We will then pay you 10¢, plus 3¢ handling. This offer void in any state or locality where taxed, prohibited or restricted by law. Cash value: 1/20 cent. FRAUD CLAUSE: Any other application of this coupon constitutes fraud. Invoices proving purchases within 30 days of sufficient stock to cover coupons presented for redemption must be made available upon request.

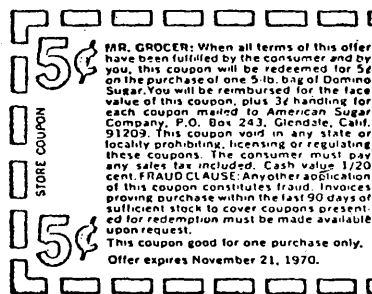
This coupon good for one purchase only. Sales tax to be paid by consumer. Offer expires April 24, 1971.

You always get more from Domino sugar.

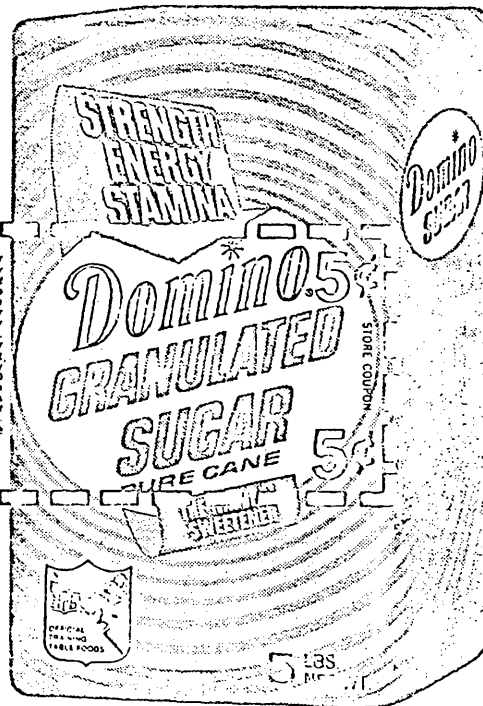
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SAVE 5¢ ON A BAGFUL OF S·E·S



S·E·S stands for strength, energy and stamina. And Domino Sugar gives it to you by the bagful. So you and everyone in your family can lead healthy, active lives. Domino Sugar, the natural sweetener, is the natural way to get your S·E·S.



F. Domino Sugar and Spreckels Sugar are substantially different from all other refined sugars in composition and food value.

G. Mothers can rely on Domino Sugar and Spreckels Sugar to keep their families healthy and active.

PAR. 10. In truth and in fact:

A. Not all individuals will derive strength, energy and stamina by consuming Domino refined sugar, Spreckels refined sugar, or any other refined sugar. The strength, energy and stamina that an individual possesses depend on many factors, including but not limited to general body build, exercise, rest, and diet.

B. Domino Sugar and Spreckels Sugar were not selected as the "official sugar" of the National Football League and of Major League Baseball because of their superior quality and nutritional value. Said selection was based primarily on monetary consideration furnished by respondent Amstar Corporation.

C. Domino Sugar was not selected for use by the U.S. Olympic Team and by the U.S. Olympic Committee because of its superior quality and nutritional value. Its selection by the U.S. Olympic Committee was based primarily on monetary consideration furnished by respondent Amstar Corporation.

D. The table use of Domino Sugar and Spreckels Sugar by athletes does not enable them to perform better in their respective sports. Refined sugar is used at the table primarily for the purpose of sweetening beverages and other foods. Such table use does not contribute substantially to the athletic training program or to athletic performance.

E. Eating refined sugar is not a necessary factor in staying healthy. Other carbohydrates are nutritionally suitable alternatives to refined sugar in a balanced diet, whereas there are no suitable alternatives to sleep and exercise, if one is to remain healthy.

F. Domino Sugar and Spreckels Sugar are not substantially different from all other refined sugars in composition and food value. Refined sugars generally, including Domino Sugar and Spreckels Sugar, consist almost entirely of sucrose, a simple carbohydrate.

G. Mothers cannot rely on Domino Sugar and Spreckels Sugar to keep their families healthy and active.

Therefore, the advertisements referred to in Paragraph Eight 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 repre-

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sentations set forth in Paragraph Eight and Nine were, and are, false, misleading and deceptive.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Amstar Corporation has been, and now is, 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 their aforesaid businesses, and at all times mentioned herein, respondents Lewis & Gilman, Inc., and Dailey and Associates, have been, and now are, in substantial competition in commerce with other advertising agencies.

PAR. 13. 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 respondent Amstar Corporation's refined sugars 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 Commission having issued its complaint on May 8, 1972, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion duly certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provisions of Section 2.34(d) of its rules, that the consent order procedure shall not be available after issuance of complaint; and

Respondents and counsel for the complaint having thereafter executed an agreement containing a consent order, an admission

by respondents of all jurisdictional facts set forth in the complaint, a statement that the signing of the agreement by respondents is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having thereupon placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter, now, in further conformity with the procedure prescribed in its rules, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Amstar Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its general office and place of business located at 1251 Avenue of the Americas, New York, New York.

2. Respondent Lewis & Gilman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 1700 Market Street, Philadelphia, Pennsylvania.

3. Respondent Dailey and Associates is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3807 Wilshire Boulevard, Los Angeles, California.

4. 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 AS TO RESPONDENT AMSTAR CORPORATION

I. *It is ordered*, That respondent Amstar Corporation, a corporation, and its officers, agents, successors and assigns, 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 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:

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a. The consumption of any such product is indispensable for proper or good health.

b. The consumption of any such product, in and of itself, will increase one's athletic ability, or that any such product is a special or unique source of strength, energy or stamina.

c. The consumption of any such product is indispensable to enable one to lead an active life.

d. The consumption, of any such product, in and of itself, will satisfy the concern of parents for the health of their families.

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 the value of any such product in an athlete's diet.

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, and the misrepresentation prohibited in subparagraph 2, above.

II. *It is further ordered*, That respondent Amstar Corporation, a corporation, and its officers, agents, successors and assigns, 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 food product 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. Any such product has been chosen for use by an athletic association, league, or any other athletic organization, due to the contribution it makes to athletic performance or physical fitness, where said choice is based primarily on monetary consideration flowing to such association, league or organization.

b. Any such product is used by an athletic association, league, or any other athletic organization, due to the

contribution it makes to athletic performance or physical fitness, unless said contribution is substantial when the product is used in the quantity and manner in which it is used or intended to be used by those at whom the advertisement is directed and unless the nature of said contribution is clearly and conspicuously and truthfully disclosed.

c. Any such product is in any way more nutritious than any other product to which it is identical or virtually identical in composition.

2. 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.

III. *It is ordered*, That respondent Amstar Corporation, a corporation, and its officers, agents, successors and assigns, 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 refined sugar forthwith cease and desist from making, directly or by implication, any statement or representation that:

1. The consumption of any such product is indispensable for proper or good health.

2. The consumption of any such product, in and of itself, will increase one's athletic ability, or specifically that any such product is a special or unique source of strength, energy, or stamina.

3. The consumption of any such product is indispensable to enable one to lead an active life.

4. The consumption of any such product, in and of itself, will satisfy the concern of parents for the health of their families.

IV. *It is ordered*, That respondent Amstar Corporation, a corporation, and its officers, agents, successors and assigns, 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 food product, forthwith cease and desist from making, directly or by implication, any statement or representation that:

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1. Any such product has been chosen for use by an athletic association, league, or any other athletic organization, due to the contribution it makes to athletic performance or physical fitness, where said choice is based primarily on monetary consideration flowing to such association, league or organization.

2. Any such product is used by an athletic association, league, or any other athletic organization, due to the contribution it makes to athletic performance or physical fitness, unless said contribution is substantial when the product is used in the quantity and manner in which it is used or intended to be used by those at whom the advertisement is directed and unless the nature of said contribution is clearly, conspicuously and truthfully disclosed.

3. Any such product is in any way more nutritious than any other product to which it is identical or virtually identical in composition.

A statement as to the qualities or attributes of a product can amount to an implied uniqueness claim if it is made in a context which conveys an impression of uniqueness for the product. However, statements as to the qualities or attributes of any product 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.

It is provided, however, That nothing contained in this order shall be deemed to prohibit advertisements or labeling complying with any guidelines or regulations with respect to product endorsements that hereafter from time to time may be promulgated by the Commission or enacted by Congress.

It is further provided, That Amstar Corporation shall not be held accountable under this order for advertising and labeling of products which it packaged, manufactured or otherwise processed but which bear labels other than those of Amstar or any of its subsidiaries or operating divisions, unless Amstar conceived or aided in the conception of said advertising or labeling and that Amstar Corporation shall not be held liable under this order for advertising by or on behalf of any trade association where such advertising does not refer directly or by implication to the trademark or trade name of any particular manufacturer.

V. *It is further ordered,* That respondent Amstar Corporation forthwith cease and desist from 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, for Domino refined sugar for a period of one year from the date this order is served upon it, unless not less than twenty-five percent (25%) of the media expenditures (excluding production costs and costs for advertisements directed exclusively to members of the food industry and industrial sugar users) for each medium in each market, or, in the alternative, unless at least one (1) out of every four (4) advertisements (excluding advertisements directed exclusively to members of the food industry and industrial sugar users) of equal time or space for each medium in each market, be devoted to advertising containing a clear and conspicuous disclosure as follows:

Do you recall some of our past messages saying that Domino Sugar gives you strength, energy, and stamina? Actually, Domino is not a special or unique source of strength, energy and stamina. No sugar is, because what you need is a balanced diet and plenty of rest and exercise.

In the case of radio and television advertising, such advertising is to be disseminated in the same time periods and during the same seasonal periods as other advertising of Domino sugar; in the case of print advertising, such advertising is to be disseminated in the same print media as other advertising of Domino sugar. Such advertising shall be prepared in a manner consistent with normal technical and artistic standards of production, and shall not contain material which is in any way inconsistent with the required disclosure.

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

It is further ordered, That if respondent hereafter proposes to make any change in its corporate structure which may affect compliance obligations arising out of the order, including such changes as dissolution, assignment, or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries, respondent shall notify the Commission of such change at least thirty (30) days in advance, except that if respondent has less than thirty (30) days prior knowledge of a proposed change, respondent shall notify the Commission as promptly as possible and in no event more than thirty (30) days after respondent has such knowledge.

It is further ordered, That respondent shall, within sixty (60)

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days after service of this order upon it, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

ORDER AS TO RESPONDENTS LEWIS & GILMAN, INC. AND DAILEY AND ASSOCIATES

I. *It is ordered*, That respondents Lewis & Gilman, Inc., and Dailey and Associates, corporations, and their officers, agents, successors and assigns, 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 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. The consumption of any such product is indispensable for proper or good health.

b. The consumption of any such product, in and of itself, will increase one's athletic ability, or that any such product is a special or unique source of strength, energy or stamina.

c. The consumption of any such product is indispensable to enable one to lead an active life.

d. The consumption of any such product, in and of itself, will satisfy the concern of parents for the health of their families.

e. Any such product is in any way more nutritious than any other product to which it is identical or virtually identical in composition.

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 the value of any such product in an athlete's diet.

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, and the misrepresentation prohibited in subparagraph 2, above.

II. *It is further ordered*, That respondents Lewis & Gilman, Inc., and Dailey and Associates, corporations, and their officers, successors and 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 food product 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. Any such product has been chosen for use by an athletic association, league, or any other athletic organization, due to the contribution it makes to athletic performance or physical fitness, where said choice is based primarily on monetary consideration flowing to such association, league or organization.

b. Any such product is used by an athletic association, league, or any other athletic organization, due to the contribution it makes to athletic performance or physical fitness, unless said contribution is substantial when the product is used in the quantity and manner in which it is used or intended to be used by those at whom the advertisement is directed and unless the nature of said contribution is clearly and conspicuously and truthfully disclosed.

2. 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.

A statement as to the qualities or attributes of a product can amount to an implied uniqueness claim if it is made in a context which conveys an impression of uniqueness for the product. However, statements as to the qualities or attributes of any product 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.

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It is provided, however, That nothing contained in this order shall be deemed to prohibit advertisements or labeling complying with any guidelines or regulations with respect to product endorsements that hereafter from time to time may be promulgated by the Commission or enacted by Congress.

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 if any respondent hereafter proposes to make any change in its corporate structure which may affect compliance obligations arising out of the order, including such changes as dissolution, assignment, or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries, such respondent shall notify the Commission of such change at least thirty (30) days in advance, except that if such respondent has less than thirty (30) days prior knowledge of a proposed change, respondent shall notify the Commission as promptly as possible and in no event more than thirty (30) days after respondent has such knowledge.

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon it, 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

ROBERT SHELDON, ET AL. TRADING AS REJUVENATION
CENTER LTD.

CONSENT ORDER, ETC. IN REGARD TO THE ALLEGED VIOLATION OF THE