

IN THE MATTER OF
CALIFORNIA AND HAWAIIAN SUGAR COMPANY,
ET AL.

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

Docket C-2858. Complaint, Jan. 6, 1977 — Decision, Jan. 6, 1977

Consent order requiring a San Francisco, Calif., seller of granulated sugar, and its advertising agency, Foote, Cone and Belding/Honig, Inc., among other things, to cease misrepresenting or making unsubstantiated claims regarding the superiority of their products over that of competing brands.

Appearances

For the Commission: *Ben Aliza and Alfred Lindeman.*

For the respondents: *George Link, Brobeck, Phlegge & Harrison, Los Angeles, Calif. and Quincy, White, Sidley & Austin, Chicago, Ill.*

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 California and Hawaiian Sugar Company, a corporation, and Foote, Cone & Belding/Honig, 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 California and Hawaiian Sugar Company 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 1 California St., San Francisco, California.

PAR. 2. Respondent Foote, Cone & Belding/Honig, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 55 Francisco St., San Francisco, California.

PAR. 3. Respondent California and Hawaiian Sugar Company 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 sold for household use under the "C&H" brand.

PAR. 4. Respondent Foote, Cone & Belding/Honig, Inc. is now, and for some time last past has been, the advertising agency of California and Hawaiian Sugar Company, and now and for some time last past, has prepared and placed for dissemination and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of California and Hawaiian Sugar Company's refined sugars, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent California and Hawaiian Sugar Company 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. Respondent California and Hawaiian Sugar Company maintains, and at all times mentioned herein has maintained, a course of trade in said products in or affecting 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 refined sugars by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, television and radio broadcasts transmitted by television and radio stations located in various States of the United States, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing and which are 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 refined sugars in or affecting 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 television and radio commercials¹ purporting to be recorded on the scene in supermarkets:

¹ In the scripts of said commercials, the following abbreviations are used:

A = announcer

I = interviewer

(Continued)

FOOTE, CONE & BELDING/HONIG

RADIO COPY

CLIENT C and H Sugar Company

PRO-

GRAM

PROD- DA Radio Interview #5 - Joyce

STA/CITY

UCT Pavlovsky

TIME :60

DATE May 12, 1975

- A: Why do women pick *one* brand over *another*? Mrs. Joyce Pavlovsky spelled it out for us in this supermarket interview. . .
- I: You picked C and H Sugar and I'm curious: Why do you buy C and H?
- R: I buy C and H all the time because it's the finest quality sugar that I can find and this is what I want for my family.
- I: What is it about C and H that you like? What does it say for you that makes it different?
- R: Well, I know it's a pure product. Pure cane sugar from Hawaii. So I believe it and so I buy it and it's always worked well for me.
- I: To me sugar is sugar. All brands are the same.
- R: No! To me sugar isn't sugar. 'Cause I've tried other brands.
- I: Isn't this other brand pure cane sugar from Hawaii?
- R: I don't know because I don't think it says it. And this says it! And I believe it because they wouldn't be allowed to put it on the package unless it were so. Pure cane sugar. So I buy C and H.
- I: If you want pure cane sugar from Hawaii, you're sure of getting it with C and H. It says so. . .
- R: On the package!

FOOTE, CONE & BELDING/HONIG

RADIO COPY

CLIENT C and H Sugar Company

PRO-

GRAM

PROD- DA Radio Interview #3 -

STA/CITY

UCT Joanne Wickley

TIME :60

DATE 5/12/75

- A: Does the information on food labels really influence women? Mrs. Joanne Wickley feels pretty strongly about it, as this supermarket interview will show you. . .
- I: You picked C and H Sugar. My question is "why?"
- R: Well, you know that it's pure cane sugar. Says so right on the package.
- I: Aren't all sugars the same? I mean, really, sugar is sugar. Now, there's other brands on the shelf. I mean, isn't that pure cane sugar from Hawaii?
- R: I don't know. It doesn't say that on there.
- I: And what about C and H? What does that do that makes it different?
- R: It tells us where it's from. It tells us that it's pure cane sugar.
- I: And really, this impresses you?

R = respondent-consumer

DA = devil's advocate

Complaint

89 F.T.C.

R: Yes! People read labels these days. They like to know what's in it, where it comes from and we can depend upon it's . . . what it says right here.

I: And you're honestly telling me that there is a difference between brands of sugar?

R: There really is.

I: If you want pure cane sugar from Hawaii, you're sure of getting it with C and H.

R: Right.

FOOTE, CONE & BELDING/HONIG

TV SCRIPT

CLIENT C and H Sugar Company TIME :30
 PROD. Pure Cane Sugar DATE June 23, 1975
 UCT
 SPOT "PACKAGE INFO" Final - Short form - legal
 NO.

1. MAN WITH SHOPPING CART FULL OF PACKAGES (NO BRAND NAMES). HE WHEELS DOWN AISLE TOWARD CAMERA, STOPS AT SUGAR SECTION. (SILENT, EXCEPT POSSIBLY FOR MUTED STORE SOUNDS.)

2. CU. HE TAKES GENERIC PACKAGE FROM SHELF. TURNS IT OVER AND OVER IN HIS HAND, LOOKING FOR SOMETHING ON THE LABEL. ON CAMERA ANNOUNCER (TO HIMSELF, IN A RATHER DRY, WRY, FLAT VOICE.)

It doesn't say. It just doesn't say.

3. HE SHAKES HIS HEAD IN RESIGNATION, SHRUGS AND PUTS PACKAGE BACK.

(TO VIEWER) Did you ever notice, many sugar packages don't tell you *what* the sugar is made from. They just say "granulated." On the other hand - most people who make cane sugar - like C and H - proudly. . .

4. HE TAKES DOWN A C AND H PACKAGE.
 5. SHOW CU LABEL WITH WORDS "PURE CANE SUGAR" AND "HAWAII."

put the word "cane" on every label. Besides that . . . they tell you *where* it comes from. Hawaii.

6. MEDIUM. HOLDS C AND H PACKAGE. THEN ANOTHER CU OF PACKAGE.

So, if you want pure cane sugar from Hawaii, you can be *sure* you're getting it with C and H.

7. INTO CU OF C AND H.

Says so right on the label.

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

1. There are differences in granulated sugars.
2. C&H brand granulated sugar derived from Hawaiian sugar cane is different from and superior to other granulated sugars in quality and purity.

In making said representations, respondents have failed to specify any consumer use of said sugar with respect to which C&H brand sugar is significantly different from or superior to other sugar.

PAR. 9. In truth and in fact, with respect to the uses for which consumers generally purchase such sugar:

1. There are no differences in granulated sugars. They are all 99.9 percent sucrose, $C_{12}H_{22}O_{11}$, a carbohydrate.
2. C&H brand granulated sugar derived from Hawaiian sugar cane is not different from or superior to other granulated sugars in quality or purity.

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 Paragraphs Seven and Eight were, and are, false, misleading and deceptive.

PAR. 10. In certain commercials, disseminated as aforesaid, respondents have represented, directly and by implication, that certain brands of sugar other than C&H do not disclose what their sugar is made from or where it comes from, and that such nondisclosure is a material fact which implies such competitive brands come from an inferior source of sugar. In truth and in fact, with respect to the uses for which consumers generally purchase such sugar, it is not a material fact that competitive brands of sugar do not disclose what their sugar is made from or where it comes from, and such nondisclosure does not imply that such competitive brands come from an inferior source of sugar. For consumer uses, all granulated sugars are substantially the same regardless of sugar source. They are all 99.9 percent sucrose, $C_{12}H_{22}O_{11}$, a carbohydrate.

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, representations and practices set forth in Paragraphs Seven and Ten were, and are, false, misleading and deceptive to consumers, and unfair acts and practices to competitors.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent California and Hawaiian Sugar Company 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 respondent.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Foote, Cone & Belding/Honig, 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 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 California and Hawaiian Sugar Company'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 or affecting commerce and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

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 San Francisco Regional Office 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 the 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 it had reason to believe that the respondents have 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 sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent California and Hawaiian Sugar Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1 California St., San Francisco, California.

Respondent Foote, Cone & Belding/Honig, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 55 Francisco St., San Francisco, California.

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 California and Hawaiian Sugar Company, a corporation, and Foote, Cone & Belding/Honig, Inc., a corporation, their successors and assigns, and their officers, 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 granulated sugar packaged for retail consumption, forthwith cease and desist from:

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

(A) (i) That there are differences in granulated sugars, or that C&H granulated sugar derived from Hawaiian sugar cane is superior to or different from sugar derived from sugar beets or sugar cane from places other than Hawaii, unless (a) such represented difference or superiority relates to a consumer use of such sugar which is specified in the advertisement, (b) the difference or superiority is substantiated by competent and reliable evidence prior to making the representation, and (c) such substantiation includes competent and reliable evidence that the difference or superiority is discernible to or of benefit to the class of consumers to whom the representation is directed.

(ii) *Provided, however,* that it shall not be a violation of this order to use the phrase "pure cane sugar from Hawaii" as a means of identifying the geographic origin and type of granulated sugar marketed under the C&H brand name in any context wherein the quality of the sugar marketed under the C&H brand is not expressly or implicitly compared with the quality of any other sugar. Where an

advertisement contains the phrase "pure cane sugar from Hawaii" and a depiction of C&H sugar, without any representation referring to any competitor's sugar product, or any representation that C&H sugar possesses a depicted characteristic or quality to a degree different from competitive brands of sugar, the advertisement will not be deemed to contain an implied comparison.

(iii) *It is further provided*, that if an advertisement makes a positive or absolute and truthful representation concerning C&H sugar without any representation concerning any competitor's sugar product, or without any representation that C&H sugar possesses a depicted characteristic or quality to a degree different from competitors' brands of sugar, the advertisement will not be deemed to contain an implied comparison under this order.

(B) That the label, advertising or packaging of any brand of granulated sugar other than C&H does not disclose the source or origin of its sugar, unless the advertisement specifies a consumer use of sugar with respect to which C&H sugar is different from such other sugar and such difference is substantiated by competent and reliable evidence prior to making the representation.

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 or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 above.

Provided, however, that it shall not be considered a violation of this order for Foote, Cone & Belding/Honig, Inc. to make what would otherwise be a false or misleading claim or representation concerning the qualities of C&H sugars or competitive sugars if that respondent shows that it neither had any knowledge of the falsity of or misleading character of such representation nor had any reason to know, nor upon reasonable inquiry could have known its false, deceptive or misleading nature.

It is further ordered, That the respondent corporations 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 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 corporation which may affect compliance obligations arising out of the order.

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

SALOMON/NORTH AMERICA, INC.

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

Docket C-2859. Complaint, Jan. 6, 1977 — Decision, Jan. 6, 1977

Consent order requiring a Peabody, Mass., manufacturer and distributor of ski bindings and related ski equipment, among other things, to cease establishing and maintaining resale prices; soliciting the identities of dealers failing to observe respondent's sales policy; threatening the termination of those dealerships; and restricting product sales only to authorized dealers. Additionally, the order requires respondent to indicate on each page of disseminated material containing retail prices, that these prices are suggested or approximate; and to maintain a five-year file containing correspondence and explanations of refusals to deal.

Appearances

For the Commission: *David W. DiNardi.*

For the respondent: *Blair L. Perry and John H. Morton, Hale & Dorr, Boston, Mass.*

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 Salomon/North America, Inc., a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Salomon/North America, 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 7 Dearborn Road, Peabody, Massachusetts.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of ski bindings and related items, hereinafter referred to as said products. Respondent's products are subsequently distributed and sold to authorized dealers throughout the United States for resale to the general public.

PAR. 3. In the course and conduct of its business as aforesaid,