

Complaint

94 F.T.C.

IN THE MATTER OF  
HOWARD JOHNSON COMPANY

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

*Docket C-2988. Complaint, Aug. 16, 1979 — Decision, Aug. 16, 1979*

This consent order requires a Boston, Mass. restaurant chain, among other things, to cease requiring its licensees to purchase food products, or other products or services from the company, or from particular sources. The firm is additionally required to cancel or delete from its franchising agreements all provisions which fail to conform with the terms of the order.

*Appearances*

For the Commission: *Harold F. Moody* and *Joanne M. Neale*.

For the respondent: *Walter W. Curcio*, Boston, Mass. and *Malcolm D. Perkins, Herrick & Smith*, 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 Howard Johnson Company, a corporation, hereinafter sometimes referred to as respondent, has 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. For the purposes of this complaint the following definitions shall apply:

"Ice cream products" means ice cream, ice milk, sherbert, ice cream cake, ice cream pie, frostee, thick shake mix, frozen yogurt, and yogurt mix;

"Food products" means all foodstuffs; including, but not limited to, syrups and toppings, condiments, candy, bakery products, dry mixes, processed foods, raw and prepared meats, fish and poultry, chowders, gravies, soups and ice cream products; and

"Howard Johnson's" restaurant means a restaurant operated by Howard Johnson Company or its licensee under the trademark "Howard Johnson's."

PAR. 2. Respondent Howard Johnson Company is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Maryland, with its principal office and place of business located at One Howard Johnson Plaza, Boston, Massachusetts.

PAR. 3. Respondent is now and has been engaged in the franchising or licensing of persons with respect to the operation of "Howard Johnson's" restaurants bearing, among others, the registered trademarks and service marks "Howard Johnson's," "Host of the Highways," "Landmark for Hungry Americans," "Someone You Know Wherever You Go," the distinctive Howard Johnson's roof and cupola, and the unregistered trade name "The Flavor of America." There are approximately 253 licensed "Howard Johnson's" restaurants located throughout the United States and Puerto Rico. Respondent also owns and operates approximately 645 "Howard Johnson's" restaurants throughout the United States.

Respondent is engaged in the manufacture and preparation of food products other than ice cream products, at several plant locations in Massachusetts, Florida, New York, and Pennsylvania, and in the distribution of said food products from distribution centers located in California, Florida, Georgia, Illinois, Maryland, Massachusetts, Ohio, Pennsylvania, and Texas. Respondent is also engaged in the manufacture and distribution of ice cream products from ice cream plants located in Massachusetts, Maryland, Florida, and Illinois. These food products are furnished to "Howard Johnson's" restaurants operated by the respondent and sold to licensed "Howard Johnson's" restaurants.

Respondent reported gross sales of approximately \$600 million by company-operated "Howard Johnson's" restaurants during the inclusive period of time from August 30, 1975 through September 30, 1977, and sales by licensed "Howard Johnson's" restaurants for 1976 of approximately \$100 million. Sales of food and supplies by respondent to its licensees totaled approximately \$55 million for the inclusive period of time from August 30, 1975 through September 30, 1977.

PAR. 4. In the course and conduct of respondent's business of licensing the use of the "Howard Johnson's" trademarks, service marks and trade names, both registered and unregistered, and of manufacturing and selling food products, respondent causes and has caused its food products to be shipped from distribution centers and manufacturing plants located in various states to both company owned and licensed "Howard Johnson's" restaurants located in various other states. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. Except to the extent that competition has been lessened by reason of the practices hereinafter alleged, respondent is in substantial

competition with other persons, firms and corporations engaged in the manufacture and sale at wholesale of food products, the sale of food products at retail to the public, and the licensing of trademarks, trade names, and service marks for use in connection with restaurant businesses in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended. Licensees of "Howard Johnson's" restaurants are in substantial competition with respondent, with one another, and with other firms, persons and corporations engaged in the sale of food products at retail to the public in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. In the course and conduct of its business, respondent has engaged in and is continuing to engage in the following unfair methods of competition and unfair acts and practices, among others, enumerated in this paragraph:

1. For several years, at least since September 1975, respondent has pursued a plan or policy, the purpose of which is to require that "Howard Johnson's" restaurant licensees purchase from respondent a substantial portion of the food products used by the licensees in their restaurant business.

2. In furtherance of this plan or policy, respondent has included and continues to the present time to include in its Operator's Agreements provisions requiring that "Howard Johnson's" restaurant licensees purchase from respondent a substantial portion of the food products sold to the licensees' restaurant customers.

PAR. 7. The above acts and practices have the capacity and tendency to lessen competition with the following effects, among others:

1. "Howard Johnson's" restaurant licensees are required to purchase from respondent a substantial portion of their requirements of food products, including their total requirements of approximately 170 food products enumerated in the respondent's Operator's Agreement.

2. Competition between respondent and other suppliers of such food products has been lessened.

PAR. 8. The aforesaid acts and practices of the respondent have the tendency to unduly hinder competition, have lessened actual and potential competition, and thus are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce, in violation of Section 5 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Boston Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 aforesaid draft of complaint, 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 has 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, 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 Howard Johnson Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at One Howard Johnson Plaza, in the City of Boston, Commonwealth of Massachusetts.

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

## I

## DEFINITIONS

For the purposes of this order the following definitions shall apply: "Ice cream products" means ice cream, ice milk, sherbert, ice cream

cake, ice cream pie, frostee, thick shake mix, frozen yogurt and yogurt mix;

"Food products" means all foodstuffs, including, but not limited to, syrups and toppings, condiments, candy, bakery products, dry mixes, processed foods, raw and prepared meats, fish and poultry, chowders, gravies, soups and ice cream products; and

"Howard Johnson's" restaurant means a restaurant operated by Howard Johnson Company or its licensee under the trade name "Howard Johnson's."

*It is ordered*, That Howard Johnson Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with its operation of a food manufacturing business and franchising or licensing of persons to operate a "Howard Johnson's" restaurant business, do forthwith cease and desist from requiring in any manner or by any means, directly or indirectly, its licensees to purchase food products (with the exception of the products listed in Appendix A attached hereto which are manufactured by Howard Johnson Company itself) or any other products or services from respondent or from any other source.

*Provided*, that nothing in this order shall prohibit respondent from establishing reasonable and uniform standards of manufacture, specifications, recipes or formulae for products sold or used in its licensed restaurants, if such standards, specifications, recipes or formulae are made available without charge to manufacturers desiring to produce products for "Howard Johnson's" restaurant licensees pursuant to them. Furnishing of standards, specifications, recipes or formulae may be made subject to assurance of confidential treatment by those to whom they are provided.

*Provided further* that if, subsequent to the date on which this order becomes final, respondent wishes to present to the Commission any reasons why the provisions of this order should not apply to any other product manufactured by respondent, it shall submit to the Commission a written statement setting forth said reasons and shall not require licensees to purchase said product from Howard Johnson Company or any other source without the prior approval of the Federal Trade Commission.

## II

*It is further ordered*, That respondent herein shall, within thirty (30) days after service upon it of this order, mail or deliver a copy of this order to each of its operating divisions and to each of its present

officers, and shall secure a signed statement acknowledging receipt of said order from each such entity or person.

### III

*It is further ordered,* That respondent herein shall, within thirty (30) days after service upon it of this order, mail or deliver a copy of this order to each present licensee under cover of the letter annexed hereto as Appendix B, and furnish the Commission proof of mailing thereof.

### IV

*It is further ordered,* That the respondent shall within thirty (30) days after service upon it of this order, take all necessary action to effect the cancellation or deletion of each provision of every contract or agreement between respondent and any of its "Howard Johnson's" restaurant licensees which is contrary to, or inconsistent with, any provision of this order.

### V

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the 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.

### VI

*It is further ordered,* That 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.

## APPENDIX A

### *Syrups and Toppings*

Chocolate syrup, Fudge and Butterscotch topping

### *Ice Cream Products*

(Ice cream, ice milk, sherbert, ice cream cake, ice cream pie, frostee, thick shake mix, frozen yogurt and yogurt mix.)

### *Bakery Products*

Coconut Layer Cake, Fudge Layer Cake, Apple, Blueberry, Cherry, Peach, Pecan and Squash Pies, Brownies, Chocolate Chip Cookies, Corn and Blueberry Toastees.

*Prepared Foods*

Beef Burgundy, Beef Stroganoff, Chicken Pie, Clam Chowder

*Other*

Frying Clams, Frankforts

Candy in Howard Johnson's trademark packages or wrappers. [Licensee is free to purchase candy from other sources in whatever quantity it chooses provided it is not identified as "Howard Johnson's".]

APPENDIX B

(Howard Johnson Company Letterhead)

Dear Sir/Madame:

Howard Johnson Company has entered into an agreement with the Federal Trade Commission relating to the company's policy requiring that licensees purchase certain food products only from the company. A copy of the consent order entered into pursuant to that agreement is attached hereto.

Howard Johnson Company has entered into this agreement solely for settlement purposes, and the agreement and consent order are not to be construed as an admission by Howard Johnson's that it has violated any of the laws administered by the Commission, or that any of the allegations of the complaint are true and correct. Instead, the order merely relates to the activities of the company in the future.

The consent order prohibits Howard Johnson Company from requiring you to purchase from it food products (other than those products which are manufactured by Howard Johnson Company and listed in Appendix A attached to the order) or any other products or services. Therefore, the products listed in Appendix A are the only food products you are required to purchase from Howard Johnson Company, and any provisions of your license agreement requiring you to purchase other food products from Howard Johnson Company or any other source are hereby deleted and cancelled.

Howard Johnson's retains the right to establish reasonable standards of manufacture, reasonable specifications or reasonable recipes or formulae for products sold in Howard Johnson's restaurants operated by licensees. The company will supply any standards, specifications, recipes or formulae so established, without cost, to other manufacturers who may desire to sell the products to Howard Johnson's licensees.

Sincerely,

Howard B. Johnson  
Chairman of the Board and President  
Howard Johnson Company

IN THE MATTER OF

J. WALTER THOMPSON COMPANY

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

*Docket 9104. Complaint, Nov. 4, 1977 — Decision, Aug. 23, 1979*

This consent order, among other things, requires a New York City advertising agency to cease disseminating advertisements which contain unsubstantiated performance claims for any "product," as the term "product" is defined in the order.

*Appearances*

For the Commission: *Robert Barton, Ronald Bogard, L. Hahn, Louise Kotoshirodo and Mitchell Paul.*

For the respondent: *Arthur Medow, Chicago, Ill., Donald Green, Wald, Harkrader & Ross, Washington, D.C., Howard Abrahams, New York City and Burton Y. Weitzenseld, Arnstein, Gluck, Weitzenseld & Minow, Chicago, Ill.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sears, Roebuck and Co., and J. Walter Thompson Company, hereinafter sometimes 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 Sears, Roebuck and Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at Sears Tower, Chicago, Illinois.

PAR. 2. Respondent J. Walter Thompson Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 420 Lexington Ave., New York, New York.

PAR. 3. Respondent Sears, Roebuck and Co., now, and for some time last past has been, engaged in the distribution, sale, and advertising of portable and undercounter dishwashers and other consumer products to the public.

PAR. 4. Respondent Sears, Roebuck and Co. causes the said products, when sold, to be transported from its places of business in various