

IN THE MATTER OF

RN NUTRITION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3549. Complaint, Jan. 13, 1995--Decision, Jan. 13, 1995*

This consent order prohibits, among other things, the California marketers of the calcium supplement product, BoneRestore, from making unsubstantiated claims that any food, drug, or food or dietary supplement products will treat or cure any disease or condition; prohibits the respondents from using the name BoneRestore in a misleading way; and restricts the use of testimonial endorsements that do not represent typical results.

Appearances

For the Commission: *Phoebe D. Morse* and *Barbara E. Bolton*.

For the respondents: *Andrew J. Strenio, Jr., Hunton & Williams*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent RN Nutrition is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office or place of business at 3402-M West MacArthur, Santa Ana, California.

Respondent George Page Rank is an individual who has been, and is now, a general partner of RN Nutrition. As such, he formulates, or participates in the formulation of, directs and controls the acts and practices of RN Nutrition, including the acts and practices alleged in

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this complaint. His business address is 3402-M West MacArthur, Santa Ana, California.

Respondent James W. Nugent is an individual who has been, and is now, a general partner of RN Nutrition. As such, he formulates, or participates in the formulation of, directs and controls the acts and practices of RN Nutrition, including the acts and practices alleged in this complaint. His business address is 3402-M West MacArthur, Santa Ana, California.

PAR. 2. Respondents have advertised, offered for sale, sold and distributed an orally-ingested product containing microcrystalline hydroxyapatite ("MCHC"), minerals and protein, under the name BoneRestore (hereinafter "MCHC" or "BoneRestore"). BoneRestore is a food and/or drug, as the terms "food" and "drug" are defined in Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for BoneRestore, including but not necessarily limited to the attached Exhibits A and B. These advertisements and promotional materials contain the following statements:

1. Clinical tests by the world-famous Royal Free Hospital show ... Natural BONE-RESTORE from Europe builds bone better than estrogen or calcium (with NO bad side effects!) (Exhibit A).

2. And some doctors feel MCHC could very well be the ultimate answer for people who want to stop bone loss and build strong bones, without the risk of drugs. (Exhibit A).

3. According to 7 clinical studies MCHC does...different things that help people with weak or weakening bones:

(1) MCHC seems to have the unique ability to slow down or stop bone loss dead in its tracks!

* * *

[D]ue to MCHC, it's possible to slow down or even halt bone loss. Even if you're already suffering from osteoporosis!

(2) Unlike estrogen and calcium, MCHC has been clinically shown to actually build new bone!

* * *

[S]cientific studies have shown that with MCHC you may not only be able to stop bone loss: you may actually be able to build new bone! (Exhibit A).

4. Increase in bone. "In September my bone densitometry test showed bone loss. It was then that I started using BoneRestore. I had been using calcium, and it was obviously not working at all. Well, to my doctor's and my surprise, the latest bone test, performed in December (only two months on your product) showed an actual increase in the bone...." (Exhibit A: Consumer Testimonial).

5. Osteoporosis healed. "Don't let anyone tell you osteoporosis can't be healed. Two weeks ago I went to my doctor for a check-up. Well, two days later he gave me the results of my tests. He said that they showed no new bone deterioration (osteoporosis) and that healing was taking place. Now I can run and I've been caught dancing a little. BoneRestore is my friend for life." (Exhibit A: Consumer Testimonial).

6. You see, in addition to the clinical studies mentioned above, 7 other scientific studies and papers have been done that confirm BoneRestore with MCHC is amazingly effective at halting bone loss and building bones. Here's a brief description of these reports:

1. Significant bone gain.
 2. Restored bone.
 3. Eliminated pain.
 4. Nearly twice as much absorption.
 5. 95% of back pain eliminated.
 6. No fractures.
 7. Significantly prevents osteoporosis.
- (Exhibit A).

7. Natural BONE RESTORE from Europe builds bone 4 times better than calcium alone! (Exhibit B).

8. Help slow down or stop bone loss and perhaps even rebuild bones safely -- with this revolutionary product from Europe. (Exhibit B).

9. Breakthrough technology means more of these nutrients actually get absorbed. Clinical tests prove it works better than calcium. (Exhibit B).

10. We recommend it especially for women and men over 40 as a safe, proven way to fight bone loss and in some cases restore bone. (Exhibit B).

11. Straightened up 10 degrees. "I don't often write testimonials, but I do want to tell you how pleased I am with the results of BoneRestore. My head was protruding from my neck at shoulder height. Now after taking it, it has come up at least 10 degrees if not more. After being told to "straighten up" since my sub-teens, I feel it has done remarkably. Thank you for a wonderful product!" (Exhibit B: Consumer Testimonial).

12. Really helped back. "My husband and I both are taking BoneRestore and it has really helped our backs. I have arthritis in my back and since I've been taking it I feel so much better. I can work better. Thank you so much." (Exhibit B: Consumer Testimonial).

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and

promotional materials attached as Exhibits A and B, respondents have represented, directly or by implication, that BoneRestore or MCHC:

1. Builds new bone, builds strong bones, increases bone and causes significant bone gain;
2. Builds bone better than estrogen or other forms of calcium;
3. Slows or stops bone loss;
4. Helps persons who suffer from weak or weakening bones;
5. Prevents and heals osteoporosis;
6. Rebuilds and restores lost bone;
7. Eliminates pain associated with bone ailments;
8. Is absorbed by the body better than other forms of calcium;
9. Prevents bone fractures; and
10. Straightens spinal curvatures.

PAR. 6. Through the use of statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A and B, respondents have represented, directly or by implication, that testimonials from consumers appearing in the advertisements and promotional materials for BoneRestore reflect the typical or ordinary experiences of members of the public who have used the product.

PAR. 9. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and

promotional materials attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representation set forth in paragraph eight, respondents possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 10. In truth and in fact, at the time they made the representation set forth in paragraph eight, respondents did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph nine, was, and is, false and misleading.

PAR. 11. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A and B, respondents have represented, directly or by implication, that scientific research, including clinical tests, scientific papers and/or scientific studies, proves that the use of BoneRestore or MCHC:

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1. Builds bone better than estrogen or better than other forms of calcium;
 2. Builds new bone, builds strong bones, and causes significant bone gain;
 3. Slows or stops bone loss associated with bone ailments;
 4. Restores lost bone;
 5. Eliminates pain associated with bone ailments;
 6. Is absorbed by the body better than other forms of calcium;
 7. Prevents fractures;
 8. Prevents osteoporosis; and
 9. Helps persons who suffer from weak or weakening bones.

PAR. 12. In truth and in fact, the representations set forth in paragraph eleven have not been proven by scientific research, including clinical tests, scientific papers and/or scientific studies. Therefore, the representations set forth in paragraph eleven were, and are, false and misleading.

PAR. 13. Through the use of the trade name of the product, BoneRestore, including but not necessarily limited to its use in the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A

and B, respondents have represented, directly or by implication, that the product restores, builds or increases bone.

PAR. 14. Through the use of the trade name of the product, BoneRestore, including but not necessarily limited to its use in the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A and B, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph thirteen, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 15. In truth and in fact, at the time they made the representations set forth in paragraph thirteen, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph fourteen was, and is, false and misleading.

PAR. 16. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

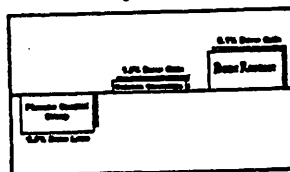
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EXHIBIT B

R&N
EXHIBIT B

Natural BONE RESTORE from Europe builds bones 4 times better than calcium alone! —

% Change in Bone Mass



In a clinical test at famous Royal Free Hospital in London, people taking the placebo kept on losing bone; those taking calcium stopped bone loss but gained only insignificant amounts of bone; whereas those taking BoneRestore showed a 6.1% gain in bone.

Help slow down or stop bone loss and perhaps even rebuild bones safely — with this revolutionary product from Europe. Not a drug, not merely calcium or ordinary bone meal. It contains dozens of nutrients your bones need, in one easy-to-use tablet. Breakthrough technology means more of those nutrients actually get absorbed. Clinical tests prove it works better than calcium. In fact, researchers at the famous Royal Free Hospital in London did a controlled test on women with primary biliary cirrhosis. According to *The British Medical Journal*, those women always have

osteoporosis. Women who took the placebo kept on losing bone — but women who took BoneRestore not only stopped bone loss; they had a NET GAIN in their bone of 6.1% (*American Journal of Clinical Nutrition*, 34: Sept. 82, pp. 426-430).

After 12 years of successful use in Europe, Bone Restore is now available in the U.S. We recommend it especially for women and men over 40 as a safe, proven way to fight bone loss and in some cases restore bone.

Straightened up 10". "I don't often write testimonials, but I do want to tell you how pleased I am with the results of BoneRestore. My head was protruding from my neck at shoulder height. Now after taking it, it has come up at least 10" if not more. After being told to "straighten up" since my sub-teens, I feel it has done remarkably. Thank you for a wonderful product!"
— Gladys Byham, TX

Pain in knees and neck almost gone. "I am very impressed with BoneRestore. At 78 years of age my neck hurt so that each step was one jar too much. It will be two weeks since I started and the pain is almost gone. Along with that relief came an unexpected release from stiff swollen knees of long standing. I expect to be doing deep knee bends shortly with caution."
— Helene Dawson, CA

Truly a miracle. "This is truly a miracle. I injured the sacrum in my back in November of 1988. I have suffered excruciating pain every day since, i.e. for nearly two years. Last year I went to a doctor who discovered I had osteoporosis. I was sure I was doomed. But thanks to your sending me BoneRestore so promptly the pain started going away within 2 weeks. May God Bless you." — Vallerie Hebert, LA

Really helped back. "My husband and I both are taking BoneRestore and it has really helped our backs. I have arthritis in my back and since I've been taking it I feel so much better. I can work better. Thank you so much."
— P.B., Chapel Hill NC

BoneRestore did so much good. "I am 83 years old. I had two heart attacks. I tried BoneRestore recently. It did me so much good. Every bone in my body was hurting at that time. I am ordering more bottles."
— A.B. Berwyn IL

Bone Restore:
240 Tablets.....~~39.95~~

Holiday Sale.....31.45

3 bottles: 89.85
SAVE \$15

R & N ASSOCIATES HOLIDAY CATALOG 1991

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 Boston 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, their attorney, 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 received, 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 RN Nutrition is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office or place of business at 3402-M West MacArthur, Santa Ana, California.
2. Respondent George Page Rank is an individual who has been, and is now, a general partner of RN Nutrition. As such, he formulates, or participates in the formulation of, directs and controls the acts and practices of RN Nutrition. His business address is 3402-M West MacArthur, Santa Ana, California.
3. Respondent James W. Nugent is an individual who has been, and is now, a general partner of RN Nutrition. As such, he

formulates, or participates in the formulation of, directs and controls the acts and practices of RN Nutrition. His business address is 3402-M West MacArthur, Santa Ana, 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

I.

It is ordered, That RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition, or under any other name, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of BoneRestore or any food or dietary supplement, food, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product:

1. Builds new bone, builds strong bones, increases bone and causes significant bone gain;
2. Builds bone better than estrogen or other forms of calcium;
3. Slows or stops bone loss;
4. Helps persons who suffer from weak or weakening bones;
5. Prevents and heals osteoporosis;
6. Rebuilds bone and restores lost bone;
7. Eliminates pain associated with bone ailments;
8. Is absorbed by the body better than other forms of calcium;
9. Prevents bone fractures;
10. Straightens spinal curvatures; and
11. Provides any benefit in the prevention, treatment, or cure of osteoporosis, arthritis, back pain, or any other bone ailment or condition;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition, or under any other name, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of BoneRestore or any food or dietary supplement, food, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product represents the typical or ordinary experience of members of the public who use the product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III.

It is further ordered, That RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition, or under any other name, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or

distribution of BoneRestore or any food or dietary supplement, food, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the name "BoneRestore," or any other name, in a manner that represents, directly or by implication, that such product has the ability to restore, build, or increase bone unless, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation that it restores, builds, or increases bone. This provision does not otherwise affect respondents' ability to use the trade name "BoneRestore," or any other brand name, to make a qualified representation that is substantiated by competent and reliable scientific evidence.

IV.

It is further ordered, That RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition, or under any other name, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of BoneRestore or any food or dietary supplement, food, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

V.

It is further ordered, That RN Nutrition, a limited partnership, and George Page Rank and James W. Nugent, individually and as co-partners, trading and doing business as RN Nutrition, or under any other name, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with

the labeling, advertising, promotion, offering for sale, sale, or distribution of BoneRestore or any food or dietary supplement, food, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product will treat, cure, alleviate the symptoms, prevent, or reduce the risk of developing any disease, disorder, or condition, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

VI.

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VII.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VIII.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call

into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IX.

It is further ordered, That respondents shall forthwith distribute a copy of this order to all principals and managers and to all personnel, agents, licensees and distributors, engaged in the preparation or placement of advertisements or promotional materials covered by this order and shall obtain from each such employee, agent, licensee and distributor a signed statement acknowledging receipt of the order.

X.

It is further ordered, That for a period of five (5) years from the date of entry of this order, respondents George Page Rank and James W. Nugent shall provide written notice to the Federal Trade Commission within thirty (30) days of:

- A. Any change in his business or employment that may affect compliance obligations arising out of this order;
- B. The discontinuance of his business or employment; and
- C. His affiliation with any new business or employment; each such notice to include his business address and telephone number, home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XI.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, and at such other times as the Commission may require, 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

CALIFORNIA AND HAWAIIAN SUGAR COMPANY, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION
OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2858. Consent Order, Jan. 6, 1977--Modifying Order, Jan. 17, 1995

This order reopens a 1977 consent order (89 FTC 15) that settled allegations that the respondents deceptively advertised that sugar derived from Hawaiian sugar cane is different from or superior to other sugars, particularly those derived from beets. This order modifies the consent order so that the respondents may make claims about objective differences in granulated white sugars with respect to health, safety, nutritional quality, or purity, as long as they have competent and reliable evidence to substantiate such claims. The Commission found that the public interest warranted reopening and modifying the 1977 order.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On July 20, 1994, the California and Hawaiian Sugar Company ("C&H") filed a request to reopen the proceeding in Docket No. C-2858, *California & Hawaiian Sugar Co.*, 89 FTC 15 (1977), and to set aside or modify the order issued ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. The Request was placed on the public record for 30 days for comment. C&H submitted additional material in support of its Request on September 12, 1994, November 16, 1994, and January 6, 1995.

I. THE ORDER

The Commission issued the complaint and its final decision and order in Docket No. C-2858 on January 6, 1977. The complaint alleged that C&H and its advertising agency misrepresented that there are differences in granulated sugars and that C&H sugar derived from Hawaiian sugar cane is different from and superior to other sugars in quality and purity. The complaint also alleged that the respondents failed to specify any consumer use of C&H sugar for