

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS

IN THE MATTER OF

HOOSIER PIANO AND ORGAN CO., INC., ET AL.

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

Docket C-2423. Complaint, July 12, 1973—Decision, July 12, 1973.

Consent order requiring a Shelbyville, Indiana, piano retailer, among other things to cease misrepresenting the manner in which merchandise has been reacquired from former purchasers or the terms and conditions under which such merchandise is being offered for sale for the unpaid balance of the original purchase price; making sale offers which are not bona fide offers; representing retail prices as usual and customary unless such is the case; misrepresenting prices as reduced from respondents' former price; and using false, misleading or deceptive sales plans or programs.

Appearances

For the Commission: *R. A. Palewicz.*

For the respondents: *Robert Adams, Adams & Cramer, Shelbyville, Indiana.*

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 Hoosier Piano and Organ Co., Inc., a corporation, and William A. Donica, individually and as an officer of said 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 Hoosier Piano and Organ Co., Inc.,

is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 1221 Jefferson Avenue, Shelbyville, Indiana.

Respondent William A. Donica is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of new pianos to the public at retail.

PAR. 3. In the course and conduct of their business as aforesaid, pianos, when sold, to be shipped from their place of business in the State of Indiana to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of said pianos respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general circulation and in oral sales presentations made by their salesmen to prospective purchasers and to purchasers with respect to the quality, condition, characteristics, and price of said pianos, the terms and conditions of sale, and of the status and position of their salesmen.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

SPINET PIANO BARGAIN WANTED—Responsible party to take over low monthly payments on a spinet piano. Can be seen locally. Write Credit Manager, P. O. Box 276, Shelbyville, Indiana 46176.

SPINET-CONSOLE PIANO BARGAIN Can be seen locally. Will transfer to responsible party. Cash or liberal terms. Write Credit Manager, P. O. Box 276, Shelbyville, Indiana 46176.

SPINET-CONSOLE PIANO Wanted responsible party to take over spinet piano. Easy terms. Can be seen locally. Write Credit Manager, P. O. Box 276, Shelbyville, Indiana 46176.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning,

but not expressly set out herein, and in connection with oral statements and representations of respondents and their salesmen, respondents have represented, and are now representing directly or by implication:

1. That pianos, partially paid for by previous purchasers, have been repossessed and may be purchased for the unpaid balance of the original purchase price.

2. That they are making bona fide offers to sell the pianos described in said advertisements.

3. That the advertised pianos are being offered for sale at special or reduced prices and that purchasers will thereby be afforded savings from respondents' regular selling prices.

4. That persons responding to said advertisements will deal with credit department or other personnel not compensated by sales commissions.

PAR. 6. In truth and in fact:

1. Few, if any, repossessed pianos are shown or made available for the unpaid balance of the original purchase price to persons responding to said advertisements. To the contrary, most, if not all, of the pianos shown or made available to such persons are new.

2. Respondents' offers are not bona fide offers. To the contrary, they are made for the purpose of obtaining leads to prospective purchasers. Respondents' salesmen, thereafter, call upon such persons and attempt to, and do, sell new pianos to them.

3. The advertised pianos are not being offered for sale at special or reduced prices, nor are purchasers thereby afforded savings from respondents' regular selling prices for new pianos. To the contrary, the prices at which respondents sell said pianos are their regular selling prices.

4. Persons responding to said advertisements do not ordinarily deal with the credit department or other personnel. To the contrary, they are induced to purchase pianos by sales personnel compensated by sales commissions.

Therefore, the statements and representations as set forth in Paragraph Four and Paragraph Five hereof were and are false, misleading, and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of pianos of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of aforesaid false, misleading and deceptive statements, representations, and practices, has had,

and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said pianos by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, 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 methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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 Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent's 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 thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 (b) of its rules, now in further conformity with the procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hoosier Piano and Organ Co., Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Indiana, with its office and principal place of business located at 1221 Jefferson Avenue, Shelbyville, Indiana.

Respondent William A. Donica is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his principal office and place of business is located at the above-stated address.

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 Hoosier Piano and Organ Co., Inc., a corporation, its successors and assigns, and William A. Donica, individually, and as an officer of said corporation (hereinafter sometimes referred to as "respondents"), and respondents' 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 pianos or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, orally, visually, in writing, or in any other manner, directly or indirectly that:

1. Pianos or other merchandise have been repossessed or in any manner reacquired from a former purchaser, or are being offered for sale for the unpaid balance, or any portion thereof, of the original purchase price, or for the amount or any portion of the amount owed by a former purchaser; however, it shall be a defense hereunder for respondents to show that said advertised products actually are of the character stated and are offered for sale and sold on the terms and conditions represented.

2. Any pianos or other merchandise are being offered for sale when such offer is not a bona fide offer to sell the advertised merchandise on the terms and conditions stated.

3. Any amount is respondents' usual and customary retail price for merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

4. Any price is reduced from respondents' former price if respondents' business records fail to establish and show

that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

5. Any savings is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

6. Persons responding to advertisements will be dealing with credit department personnel, or will be dealing with any other person than sales personnel.

It is further ordered, That respondents shall cease and desist from using any sales plan or procedure involving the use of false, misleading, or deceptive statements to induce the sale of pianos or other merchandise offered by respondents or to obtain leads or prospects for the sale of pianos or other merchandise.

It is further ordered, That respondents, for a period of one year from the effective date of this order, shall furnish each newspaper or other advertising medium which is utilized by the respondents to obtain leads for the sale of pianos or other merchandise, or to advertise, promote, or sell pianos or other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

It is further ordered, That respondents serve a copy of this order upon each present and every future agent, representative, salesman, and employee engaged in the sale of pianos or other merchandise; that respondents obtain from each such person so served a written acknowledgement of the receipt thereof and an agreement in writing to abide by the terms of this order; and that respondents discharge any such person so served for failure to abide by the terms of this order.

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

It is further ordered, That the respondents shall notify the Commission, at least thirty (30) days prior to any proposed change in their business organization such as dissolution, assignment, incorporation, or sale resulting in the emergence of a successor firm, partnership, or corporation, or any other change

which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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
RJR FOODS, INC., ET AL.

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

Docket C-2424. Complaint, July 13, 1973—Decision, July 13, 1973.

Consent order requiring a New York City manufacturer, seller and distributor of beverages designated "Hawaiian Punch," and its New York City advertising agency, among other things to cease misrepresenting the natural fruit juice content of fruit-flavored beverages, and depicting fruit or juice in labeling. In addition, the firm must make certain affirmative disclosures for a period of one (1) year and thereafter until a consumer survey is taken which gauges the need for continuing the disclosures.

Appearances

For the Commission: *C. O. Cook.*

For the Respondents: *David Grossberg, Cohen & Grossberg,* New York, New York, *Eugene L. Lambert, Covington & Burling,* Washington, D. C., and *G. A. Avram,* secretary and general counsel, RJR Foods, Inc., Winston Salem, North Carolina.

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 RJR

Foods, Inc., a corporation, and William Esty Company, 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 RJR Foods, Inc., 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 750 Third Avenue, New York, New York.

PAR. 2. Respondent William Esty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 100 East 42nd Street, New York, New York.

PAR. 3. Respondent RJR Foods, Inc., is now, and for some time last past has been, engaged in the manufacture, sale and distribution of beverages designated "Hawaiian Punch" which come within the classification of a "food," as said term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent William Esty Company, Inc., is now, and for some time last past has been, an advertising agency of RJR Foods, Inc., and now for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of "Hawaiian Punch" beverages, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent RJR Foods, Inc., causes the said product, when sold, to be transported from its places of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondent RJR Foods, Inc., maintains, and at all times mentioned herein has maintained, a course of trade in said product 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. 6. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of certain advertisements concerning the said beverages by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including

but not limited to, advertisements inserted in magazines and other advertising media, and by means of television broadcasts transmitted by television 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 which were likely to induce, directly or indirectly, the purchase of said beverages in 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:

A) The featuring of fresh fruits and fruit trees prominently and repeatedly in television commercials, sometimes continually throughout the television commercial, and often in conjunction with the audio message "Those seven natural fruit juices in Hawaiian Punch" and the video message "7 natural fruit juices." Sometimes but not always, the aforesaid messages are given in answer to questions, including but not limited to, the following:

1. What makes this [flavor] punch so great?
2. What makes Hawaiian Punch a natural with peanut butter?
3. What gives Hawaiian Punch its Punch?

B) The following print advertisements:

PAR. 8. 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 Hawaiian Punch beverages consist predominantly of natural fruit juices.

PAR. 9. In truth and in fact, the predominant ingredients in Hawaiian Punch beverages are water and sweetening agents which are added to fruit juices and other ingredients to produce the final products.

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 representations set forth in Paragraphs Seven and Eight were, and are, false, misleading and deceptive.



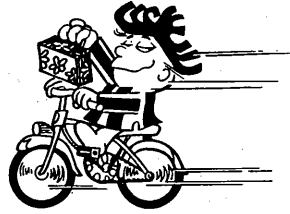
a new taste experience
NEW SUNSHINE ORANGE

Made healthy and more delicious by a blend of 7 natural fruit juices.

NEW!
HAWAIIAN PUNCH
SUNSHINE ORANGE
 WITH 7 REAL FRUIT JUICES

Hawaiian Punch® Sunshine Orange is much more than a combination with Valencia orange juice plus six other natural fruit juices. The result is a uniquely sweet orange that kids love. And it's loaded with Vitamin C. Sunshine Orange has as much Vitamin C as an equivalent of 10 oranges without the pulp, without any bitter taste. Serve Hawaiian Punch Sunshine Orange to your kids and you'll all be happy.

HAWAIIAN PUNCH



"Pack their lunch with a fruit juicy surprise"

Now **HAWAIIAN PUNCH** comes in 8 ounce single serving cans.

Now your kids don't have to be home to enjoy their favorite Hawaiian Punch flavor treats. Hawaiian Punch true fruit punches now come in handy, go-anywhere eight ounce easy-open cans.

Just pop them into the freezer overnight. Next morning put one into their lunch box. By the time noon rolls around, it's thawed and ready to drink; a cold, delicious lunch-time surprise.

Remember, Hawaiian Punch is made with seven natural fruit juices. You'll find your favorite flavor in our new eight ounce cans: Apple-Red, Great Grape, Sunshine Orange, and, of course, Fruit Juicy-Red.

Visit the Hawaiian Punch Pavilions at Sea World/San Diego and Sea World/Ohio... see Shamu, the killer whale.



STORE COUPON

Save 10¢

TO GROCER: Upon compliance with terms of this offer, you will be refunded 10¢ toward the purchase of one pack of six 8-oz. cans of Hawaiian Punch, any flavor, plus 3¢ handling cost if you mail this coupon to address below. Coupon not to be assigned or transferred by you. Any other application constitutes fraud. Limited to one purchase of stock within 90 days, to cover coupons accepted, must be shown on request. Void when presented by outside agency or where prohibited, taxed or otherwise restricted. Consumer must pay applicable sales tax. Good only in U.S.A. Cash value 1/20 of one cent. R/R Foods, Inc., Box 1013, Clinton, Iowa 52732. Redeem this coupon today.

R/R Foods, Inc.

HP-59

This advertisement prepared by **WILLIAM ESTY COMPANY** INCORPORATED

SAVE on Hawaiian Punch® Grape



Hawaiian
Punch Grape
is the great
grape punch—a
blend of seven
natural fruit
juices for
breakfast, lunch-
time, anytime.

7¢

SAVE 7¢ ON A 46 OZ. CAN OF HAWAIIAN PUNCH GRAPE

7¢

STORE COUPON



Mr. Grocer: You will be refunded 7¢ on one 46 oz. can of Hawaiian Punch Grape plus 3¢ for handling if you receive and handle it strictly in accordance with the terms of this offer and if, upon request, you submit evidence thereof satisfactory to K. J. Reynolds Foods. Void when presented by outside agency or where prohibited, taxed or otherwise restricted. Good only in U.S.A. Cash value 1/20 of 1¢. R. J. Reynolds Foods, Inc. Box 1003, Clinton, Iowa 52732.

STORE COUPON

7¢

R. J. REYNOLDS FOODS, INC.

HP-3

7¢



*To capture the sun
In fun drenched tumblers
Spilling sweet goodness
With a child's laughter*

*All the vitamin C of
orange juice.
Made with seven
natural fruit juices.*



This advertisement prepared by:
WILLIAM ESTY COMPANY, INC.
Ad No. P55-176A
This advertisement appears in:
Family Circle, October, Digest Page Bleed



PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent RJR Foods, Inc., 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. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent William Esty Company, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of "Hawaiian Punch" by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents including the dissemination of "false advertisements," as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Section 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection 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 agreement, placed such agreement on the public record for a period of thirty (30) days, and received and considered comments, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent RJR Foods, Inc., 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 principal place of business located at 750 Third Avenue, New York, New York.

Respondent William Esty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 100 East 42nd Street, New York, New York.

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

I. *It is ordered*, That respondent, RJR Foods, Inc., a corporation, and William Esty Company, 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 any fruit-flavored, non-carbonated beverage under the "Hawaiian Punch" trademark, as a frozen concentrate, liquid, liquid concentrate, powder, or in any other physical state, whether or not containing natural fruit juice, forthwith cease and desist for a period of one year after service of the order upon RJR Foods, Inc. and William Esty Company, Inc., and thereafter until respondents submit to the Commission the results of a survey conforming in protocol, procedure and results to Appendix A to this order, from:

1. Disseminating or causing the dissemination of, any

