

In Court, Splenda and Equal Battle over Advertising, Profits, and Market Share

By Anique Gonzalez

On April 10, Merisant Company, maker of Equal and NutraSweet, argued in a Philadelphia federal district court that McNeil Nutritionals, maker of Splenda, deliberately deceived consumers with the tagline “Made from sugar, so it tastes like sugar” and related advertising sending the message that Splenda is natural and made from sugar, which they contend it is not.

If Merisant wins the lawsuit, it hopes to receive a monetary award of \$205 million in addition to a court order that would compel Splenda to alter its advertising, including its slogan, as well as its packaging.

At the crux of the lawsuit, *Merisant Co. v. McNeil Nutritionals*, are Splenda’s slogan and its implications in the minds of consumers. In an opinion issued in March, presiding judge Gene E.K. Pratter further explained, “The phrase ‘made from sugar’ may seem simple enough, but it has spawned an epic battle among the parties over proper diction and syntax.”

Pratter continued, “For example, McNeil claims that ‘made from sugar’ clearly excludes the interpretation that Splenda is sugar or that Splenda is made with sugar. ‘Made with sugar’ would mean that sugar is an ingredient listed on the package. Drawing upon an often effective rhetorical device, McNeil asks the question, ‘How could a consumer interpret a product that is “made from sugar” and “tastes like sugar” as actually being sugar?’”

During the hearing, Splenda’s attorney, Steven A. Zalesin, contended that the suit filed by Merisant was a reaction to his client’s dominance in the market and that Splenda’s advertising is, in fact, accurate and does not mislead consumers in any way. Zalesin explained that the product’s main ingredient is sucralose, which “starts out as pure cane sugar” and is then “modified at the atomic level in a way that preserves the taste of sugar but eliminates the calories.”

Gregg F. LoCascio, the principal attorney for Merisant, argued in court that McNeil not only knew it was deceiving consumers by leading them to believe that Splenda was healthier than its competitors but also chose not to take action.

“McNeil documents [internal memos] show that they knew consumers were confused and they didn’t do anything to stop it,” LoCascio stated.

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In fact, LoCascio elaborated, Splenda's original slogan was "Made from sugar, so it tastes like sugar. But it's not sugar." According to LoCascio, sales were slow, so McNeil removed the last sentence from the slogan, which led to a dramatic increase in sales.

LoCascio told the jury that Splenda is an artificial sweetener just like its competitors. However, executives did not want the product to be labeled as such, as they believed it would hinder the product's success in the market.

Moreover, LoCascio claimed that because consumers and corporations such as PepsiCo, Inc., believed Splenda to be healthier than other sweeteners, McNeil fraudulently earned \$183 million in profits over the last four years while Merisant lost \$25 million worth of sales.

Zalesin countered that Merisant knew of Splenda's slogan and affiliated campaign before they were implemented in 2000 but waited until 2004 to file suit against McNeil. Had Merisant filed suit when the campaign was originally launched, profits, and Merisant's portion of them, would have been substantially less. Zalesin said that Merisant essentially wanted the jury "to reward its inaction."

Zalesin said the bottom line was that Merisant filed suit because Splenda is the market leader in the sweetener category. (Splenda currently holds 62% of the United States' market.)

"Folks, Equal was going to lose sales to Splenda and Splenda was going to outsell Equal no matter how Splenda was advertised," Zalesin stated.

In a related lawsuit, the Sugar Association, a collective of sugar manufacturers based in the United States, also sued McNeil over advertising claims that Splenda is safe and healthy. The case is scheduled to go to trial in November.

On the Net

Splenda

www.splenda.com

Equal

www.equal.com

NutraSweet

www.nutrasweet.com