

SUMMARY OF ALLEGATIONS AND FINDINGS

Allegation #1

AEB Staff threatened Mr. Tetrick in emails they exchanged about putting a “hit” on him.

Summary of Findings:

The AMS Review documented that American Egg Board (AEB) employees and one AEB alternate board member exchanged emails involving Mr. Tetrick, the founder and Chief Executive Officer of Hampton Creek, Inc. The emails included references such as, “Can we pool our money and put a hit on him?” and “old buddies from Brooklyn pay him a visit”.

Analysis:

Through interviews with the individuals affiliated with the Board it was determined that the statements were made in jest and that there was no actual intent to cause harm to Mr. Tetrick. Nonetheless, this behavior was inappropriate and raised concerns for AMS.

Corrective Actions:

The AEB employee and alternate board member have admitted the inappropriateness of such comments and apologized to Mr. Tetrick who confirmed that he received their apologies.

AEB staff and board members will be required to complete additional training regarding proper email etiquette and ethics.

Allegation #2

AEB attempted to block the sale of “Just Mayo” at Whole Foods.

Summary of Findings:

The AMS Review findings show that Whole Foods was never contacted by any member of the board, staff or other third party concerning the sale of “Just Mayo”. The AMS Review did confirm that during November 2013 marketing and advertising meeting, a professional consultant not under contract with AEB met with AEB executives and volunteered to contact Whole Foods to stop the sale of “Just Mayo.” Further documentation obtained from the AMS Review established that the former CEO of AEB later accepted the consultant’s offer to contact Whole Foods, Inc. and followed up with an email inquiring as to whether contact had been made.

A sworn statement provided by a Whole Foods Executive stated that Whole Foods was never contacted. In addition, the consultant provided a sworn statement affirming that he never contacted anyone at Whole Foods in an attempt to stop the sale of “Just Mayo.”

Analysis:

The AMS Review documented inappropriate discussions about an action that, if acted upon, would have significantly exceeded the provisions of the Egg Research and Consumer Information Act. The sworn statements obtained during the AMS Review indicate that the inappropriate discussions did not result in any actual conduct detrimental to “Just Mayo” being marketed by Whole Foods.

Corrective Actions:

On September 30, 2015, the CEO and President of AEB entered into a Confidential Severance Agreement and Release with AEB and retired from her position.

AEB staff and board members will be required to complete additional ethics training as well as training on the AMS Guidelines on acceptable R&P program activities and conduct.

Allegation #3

AEB hired Daniel J. Edelman, Inc. to lead a campaign against Hampton Creek, Inc.

Summary of Findings:

The AMS Review found that Daniel J. Edelman, Inc., (Edelman) was hired by the AEB in 2006 to provide public relations services. The documentation obtained shows that Edelman performed multiple services for AEB, including market research, media monitoring, crisis management, market analysis, promotional campaigns, and public relations activities.

The AMS Review demonstrated that Edelman created a campaign for AEB to promote the benefits of eggs and provide media monitoring regarding competitors, including Hampton Creek. Edelman developed a comparative campaign for food manufacturers to demonstrate the benefits of using eggs in their products instead of egg replacers. The public campaign did not identify a specific egg replacer or company, but internal documents did. As part of Edelman's role to provide market research services to AEB, a competitive analysis was conducted involving egg product replacers, including "Just Mayo." This analysis was used for internal purposes to provide educational direction to AEB and was not used as an external, consumer-driven campaign.

Analysis:

AEB's research on competitors' activities and Edelman's monitoring activities of competitors, on behalf of AEB, are acceptable marketing practices under AEB's authorizing statutes and AMS Guidelines. However, targeting a specific company is not allowed under the AMS Guidelines.

Corrective Action:

Daniel J. Edelman, Inc., is no longer an AEB contractor or service provider. AEB staff and existing board members will be required to complete additional training regarding acceptable research and promotion activities and business operations as stipulated by the Egg Research and Consumer Information Act, Egg Research and Promotion Order and AMS Guidelines. AMS will develop a Standard Operating Procedure (SOP) for new board member orientation sessions to include areas such as proper use of R&P funds.

Allegation #4

AEB paid bloggers to discredit Hampton Creek, Inc., online.

Summary of Findings:

The AMS Review documented that AEB hired bloggers to write about the benefits of consuming and cooking with eggs and to promote positive information about eggs on their own websites. Documentation obtained during the AMS Review showed that in accordance with AMS policy, AEB required all bloggers to disclose that their posts were sponsored by AEB.

Analysis:

This is an acceptable and common activity to promote products. The AMS Review did not find any documentation to show that AEB-hired bloggers made any disparaging comments about Hampton Creek Inc., or any other company or specific product.

Corrective Action:

No corrective action needed.

Allegation #5

AEB created pop-up ads to block information about Hampton Creek, Inc., and “Just Mayo” in online search engines.

Summary of Findings:

The AMS Review confirmed that AEB developed pop-up ads promoting positive messages about eggs that would display when audiences used online search engines to search for terms related to “Beyond Eggs” such as “Hampton Creek, Inc.,” “Josh Tetrick” and “Just Mayo.”

Analysis:

While online promotions that convey positive, factual messages about a commodity are generally acceptable under the AMS Guidelines, targeting private brands or trade names is not. The AMS staff approved the content of the pop-up ads, but AEB did not disclose that the pop-up ads were going to specifically be deployed when terms related to Hampton Creek were searched. AEB’s focus on Hampton Creek, Inc., and “Just Mayo” is not an appropriate activity for AEB to have pursued.

Corrective Actions:

The pop-ads were removed from the internet prior to commencing the AMS Review.

AEB staff and existing board members will be required to complete additional training regarding acceptable research and promotion activities and business operations as stipulated by the Egg Research and Consumer Information Act, Egg Research and Promotion Order and AMS Guidelines. AMS will develop a Standard Operating Procedure (SOP) for new board member orientation sessions to include areas such as proper use of R&P funds.

Allegation #6

AEB tried to join The Association of Dressings & Sauce to manipulate standards.

Summary of Findings:

The AMS Review did not find any evidence to support the allegation that AEB attempted to join the Association of Dressing and Sauces for the specific purpose of manipulating standards.

The AMS Review did confirm that AEB initiated the process to join the Association of Dressing and Sauces. Statements obtained during the course of the AMS Review indicated that AEB was interested in pursuing membership as a way to increase sales of eggs to food manufacturers that make sauces and dressings. The association determined that AEB did not fit into any of the Association’s membership categories and the issuing of AEB membership was dropped.

AEB’s attempt to join the Association of Dressing and Sauces occurred in August 2012, which was prior to “Just Mayo” products being offered for sale in the marketplace in December 2013.

Analysis:

It is a common and acceptable practice for research and promotion boards to join associations relative to their respective industries for educational and marketing purposes.

Corrective Action:

No corrective action needed.

Allegation #7

AEB intervened with an adversary in litigation (Unilever).

Summary of Findings:

The AMS Review determined that AEB did not intervene in the Hampton Creek, Inc., litigation with Unilever. The documentation reviewed shows that AEB's CEO was contacted by a Unilever representative requesting a statement of support for Unilever in a lawsuit against Hampton Creek, Inc. The information obtained in the AMS Review shows that AEB's CEO informed the Unilever representative that AEB could neither support the litigation, nor make a statement. The CEO directed Unilever to the appropriate regulatory authorities.

Analysis:

The information obtained in the AMS Review indicates that the AEB's CEO responded appropriately to the request from Unilever representative.

Corrective Action:

No corrective action needed.

Allegation #8

AEB intervened with the Food and Drug Administration (FDA) and tried to get the FDA to go after Mr. Tetrick for labeling issues.

Summary of Findings:

The AMS Review did not find information to support Mr. Tetrick's allegations that AEB intervened with the FDA regarding "Just Mayo" labeling violations. AEB did contact an AMS employee requesting contact information for the correct regulatory authority to alert about a possible labeling violation. The AMS Review confirmed that no AEB employee contacted FDA in regards to labeling concerns or any Hampton Creek products, including "Just Mayo."

Analysis:

Research and promotion boards are prohibited from requesting Government agencies to take action on a particular issue. This type of activity is considered lobbying. AMS Guidelines do permit research and promotion boards to provide information to Government agencies and this practice is not considered lobbying. In this case, AEB was not found to have requested FDA or AMS take action on a particular issue.

Corrective Action:

No corrective action needed.

Allegation #9

AEB used its funds to target Mr. Tetrick's products instead of promoting eggs.

Summary of Findings:

The AMS Review found that AEB funded promotion and research projects promoting the positive and nutritional aspects of eggs. AEB spent program funds on promotional campaigns touting the nutritional benefits of eggs, as well as the benefits of using eggs in products to food manufacturers.

In response to negative media attention generated by Hampton Creek, Inc., including media statements disparaging the use of eggs, AEB directed program funds to be used for media monitoring and education in an attempt to refute Hampton Creek's disparaging media statements.

AEB also used program funds to support academic research to determine the sustainability and environmental footprint of eggs versus egg replacer products, including soy, corn, and “Beyond Eggs” products. AEB’s promotional campaigns did not identify Hampton Creek, “Beyond Eggs”, or “Just Mayo” in consumer-facing advertisements or promotions to food manufacturers. These materials focused on using eggs versus egg replacers in food products and the benefits of consuming eggs. However, in internal budget line items and internal emails, AEB referred to “Beyond Eggs” campaigns or activities.

In addition, in the course of the AMS Review, it became clear that two amended AEB budgets containing line items for “Beyond Eggs” activities had been approved by AEB and were never submitted to AMS for review, as is required in the AMS Guidelines.

Analysis:

It is appropriate for AEB to direct funds towards market research and crisis management. As such, AEB’s promotional campaigns were generally acceptable under AEB authorizing statutes and AMS Guidelines. However, it was not appropriate for AEB to specifically identify Hampton Creek, “Beyond Eggs,” or “Just Mayo” in internal budgeting and program activities.

Corrective Actions:

AEB staff and existing board members will be required to complete additional training regarding acceptable research and promotion activities and business operations as stipulated by the Egg Research and Consumer Information Act, Egg Research and Promotion Order and AMS Guidelines. AMS will develop a Standard Operating Procedure (SOP) for new board member orientation sessions to include areas such as proper use of R&P funds.

AMS Guidelines require management reviews to be conducted at least once every 3 years. As the result of the findings in the AMS Review, AEB will be subject to annual management reviews for at least the next three years, beginning in calendar year 2016. The management reviews will be conducted by representatives of the AMS Compliance and Analysis Program, Compliance Branch.

The AMS Compliance and Analysis program will also conduct a program evaluation of the Livestock, Poultry and Seed Programs’ R&P oversight activities to ensure adherence with applicable laws and USDA policies and procedures in 2017.

Additional Review Areas

During the review, three additional areas were addressed that were not part of the allegations submitted by Mr. Tetrick. These three areas were (1) whether AEB requested AMS approval for projects/activities, (2) AMS oversight of the AEB, and (3) whether AEB deleted emails related to this review.

Analysis of areas (1) and (2)

AMS approval of projects/activities and general AMS oversight of the AEB are closely related. These two areas involve submission to AMS of the projects/activities undertaken by the AEB and AMS’ approval of the submissions. The review indicated certain activities appear to not have been approved by AMS as well as budget amendments that were not submitted to AMS for approval. Although not included in the allegations brought by Mr. Tetrick, in the course of the AMS Review we determined that AEB acted inappropriately by failing to obtain AMS approval for specific budget allocations and the related project activities.

Corrective Action:

To strengthen AMS’ ability to recognize irregularities in project/activity and budget submissions, the following actions are being implemented: a) providing AMS staff with additional training in areas including budget and finances, effective communications, and applying the AMS Guidelines; b)

standardizing new board member orientation to ensure awareness of specific board member responsibilities; c) revising the AMS Guidelines with respect to CEO requirements; and d) evaluate consistency of AMS oversight across all R&P programs. In addition, AMS will initiate rulemaking to standardized processes in all R&P programs regarding the removal of board members and staff who fail to perform their duties in accordance with authorizing statutes and the AMS Guidelines.

Analysis of area (3)

The Review provided documentation showing the former CEO had provided direction to AEB staff to delete email messages, after being read, when referencing Beyond Eggs. AEB staff indicated they did not follow her advice and during the course of the Review it was determined AEB staff did not delete Beyond Eggs emails as instructed by the former CEO. Forensic evidence did reveal that the former CEO had deleted emails regarding Beyond Eggs and these documents were retrieved during the course of the Review.

Corrective Action:

AEB staff and existing board members will be required to complete additional training addressing record retention policies related to board activities and operations.