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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Fruit Co. Seeks Sanctions In Contaminated Cane Juice Suit

By Joyce Hanson

Law360, New York (October 3, 2017, 3:34 PM EDT) -- Agrana Fruit US Inc. on Monday asked an Ohio federal court to issue sanctions against AmCane Sugar LLC for evidence spoliation in its lawsuit accusing AmCane of selling it evaporated cane juice littered with stones, arguing that the company intentionally destroyed evidence, including screens used in the production process and 200 to 300 testing stones.

Brecksville, Ohio-based Agrana, which claims it lost \$1.3 million in sales of sweetened fruit chunks for Chobani yogurts due to the contaminated cane juice, filed its sanctions bid as a cross-motion in response to an earlier AmCane sanctions bid accusing Agrana of failing to preserve the stones that gave rise to the fruit company's breach of contract claim.

The fruit company said it accidentally lost the contaminating stones found in mini vats at its plants in Baldwinsville, New York, and Centerville, Tennessee, and also claimed that AmCane intentionally discarded metal detectors designed to detect the stones and that it threw away all of the screens used in the evaporated cane juice production process during the relevant time period.

"The screens, the metal detectors, the 200 to 300 stones that AmCane used to test the metal detectors and the ECJ production line surveillance video footage are all highly relevant to the claims and defenses in this action," Agrana said. "AmCane intentionally threw away the screens and the 200 to 300 testing stones, and intentionally altered the metal detectors by resetting their parameters or leaving them to waste in storage, while also negligently allowing the video footage to be deleted. Under these circumstances, a severe sanction against AmCane is appropriate."

On Aug. 31, AmCane Sugar asked the court to grant it sanctions against Agrana after the fruit company failed to produce any of the stones that it claimed contaminated a batch of sweetener from AmCane and caused Chobani to terminate its purchase of blueberry and strawberry fruit preparations from Agrana.

"Agrana has failed to fulfill its duty to preserve the evidence — the stones at issue," AmCane said. "Agrana acted with the requisite culpable state of mind in its spoliation of evidence."

Agrana initially filed its complaint in Cuyahoga County Court in Ohio in August 2016, claiming that the contaminated sugar product cost the fruit company \$1.3 million in damaged stock and lost profits and that it violated federal food quality and safety requirements.

AmCane moved the lawsuit to Ohio federal court in **September 2016**. The suit alleges

that AmCane is liable for at least \$1.47 million in damages, including lost sales as well as \$167,445 of wasted product plus the cost of investigating, identifying and destroying the corrupted lots of evaporated cane juice.

Agrana alleges that during April and May of 2015, there were stones in the product it received from AmCane for its Lysander and Centerville plants. Immediately upon discovering the contamination, Agrana said, it investigated and destroyed all product in the tainted shipments.

Representatives for Agrana and AmCane did not immediately respond to requests for comment on Tuesday.

Agrana is represented by David W. Mellott and Robert E. Haffke of Benesch Friedlander Coplan & Aronoff.

AmCane is represented by Carolyn M. Cappel and Jordan J. Call of Weston Hurd LLP.

Counsel information for Agrana was not immediately available on Tuesday.

The case is Agrana Fruit US Inc. v. AmCane Sugar LLC, case number 1:16-cv-02348, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Kat Sieniuc. Editing by Stephen Berg.

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