

IN THE MATTER OF
LACY'S, INC., ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6131. Complaint, Oct. 27, 1953—Decision, Feb. 26, 1954

Where a corporation and two officers thereof, engaged in the sale of television sets and home freezers, in advertising their said freezers by radio broadcasts, in newspapers, and through brochures utilized by their salesmen—

- (a) Represented through the use of such terms as "Lacy's Family Food Plan" that they were engaged in the operation of a plan for the purchasing of food, when their sole connection with the food business was that they enrolled the purchasers of their freezers in a food purchasing plan operated by another concern with which they were in no way affiliated;
- (b) Represented falsely that participants in said plan could eliminate the retailer and buy food at wholesale prices or from a wholesaler;
- (c) Represented falsely that participants in the said plan could effect overall monetary savings through the general use of frozen foods in place of corresponding foods in other form;
- (d) Represented falsely that the average family could reduce its expenditures for food by \$30 to \$50 per month by participation in the plan they offered; that participants in said plan could save 20% to 30% of their food cost; and that net monetary savings could be effected by all who purchased and used their home freezers; and

Where said corporation and individuals in advertising certain television sets—

- (e) Represented that they were making bona fide offers to sell various sets advertised, including Admiral, General Electric, and others, at the prices specified from time to time through newspaper advertisements and radio broadcasts in which they offered to give a demonstration of the sets in the homes of persons interested;

When in fact said offers were made to induce prospective purchasers to visit their stores or to obtain leads as to persons interested in the purchase of sets in order that they could be solicited in their homes by respondents' salesmen; and respondents and their salesmen, at their place of business and in calling upon persons at their homes, in many instances, failed to demonstrate the advertised sets or disparaged the design, workmanship, and performance thereof and attempted to demonstrate and sell different and more expensive sets:

Held, That such acts and practices constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

Mr. John J. McNally for the Commission.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission

and Order to File Report of Compliance", dated February 26, 1954, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 27, 1953, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. Respondents Lacy's, Inc., William Warsaw and Hyman Goodbinder filed no answers to the complaint, nor did they enter any appearance at a hearing held on January 8, 1954, by the above-named hearing examiner, theretofore duly designated by the Commission, such hearing being held in accordance with notice given in the complaint. Respondents Eugene H. Rietzke and Hyman M. Goldstein filed answers to the complaint but did not appear at the hearing. Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, the answers of respondents Eugene H. Rietzke and Hyman M. Goldstein, and the default of the other respondents, and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lacy's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its general office and principal place of business located at Eighth and E Streets, N. W., Washington, D. C. Respondents William Warsaw and Hyman Goodbinder are, respectively, President and Vice President of the corporate respondent and formulate, direct and control its affairs and policies.

Respondent Eugene H. Rietzke and Hyman M. Goldstein, while admitting in their answers that they have been officers of the corporate respondent, allege that their duties were in no way connected with the formulation, direction or control of the advertising or sales policies or activities of the corporation, and that they have not at any time participated in the formulation, direction or control of such policies or activities. Supporting the answers and affidavits by certain other parties connected with the corporation who appear to have been in

position to have knowledge of the relationship between these two respondents and the corporation. At the hearing, counsel supporting the complaint stated that no evidence was available to controvert the statements in the answers. It is therefore concluded that the complaint should be dismissed as to these two respondents, and the term respondents as used hereinafter will not include these individuals unless the contrary is indicated.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale of electrical appliances, including television sets and home freezers. Respondents have made arrangements whereby purchasers of said home freezers are enrolled in a food distributing organization, operated by a concern unaffiliated with respondents, which entitles participants to purchase certain food items in bulk quantities.

PAR. 3. In the course and conduct of their business, respondents cause said television sets and home freezers, when sold, to be transported to the purchasers thereof at their places of residence in the District of Columbia and in States adjacent thereto, and at all times material herein have maintained a course of trade in said television sets and home freezers in commerce in the District of Columbia and adjacent States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents, through the use of radio and television broadcasts and advertising inserted in newspapers have made certain statements with respect to their home freezers. Among and typical, but not all inclusive, of said statements are the following:

Over Television Station WTOP-TV, Washington, D. C., May 24, 1952:

Every time you eat a meal, you COULD be saving money, through the Washington Food Savings Plan. Savings of \$30 to \$50 a month for the average family. This is the food plan that's sweeping the country. The plan that makes it possible for you to buy all the food you need at low, low prices * * *

Over Television Station WTTG-TV, Washington, D. C., July 12, 1952:

* * * I want to show you how you can own this Gibson freezer or a Deep-freeze, Hotpoint, General Electric, or Westinghouse freezer for just 40 cents a day, when you buy it from the Washington Food Savings Plan. Also I will show you how you can save hundreds of dollars a year on the biggest expenditure in your budget * * * your food bill. When you buy a freezer for 40¢ a day from the Washington Food Savings Plan they will make arrangements so you may buy meats, poultry, vegetables, fish, fruits and juices at low, low discount prices at much less than you are now paying at your retail food store. You buy only the finest foods, nationally advertised brands at way below retail prices * * * You save money because you don't

have a left-over problem * * * you simply freeze it in the freezer where it keeps until you are ready to use it again. You can also freeze your own foods * * * here's an example of how you can save money by buying foods at the right time. Take poultry for instance. Chickens have gone up as much as 7¢ a pound in the last week. With a freezer you could buy all food items when the prices are low. The Washington Food Savings Plan keeps you posted with their monthly bulletins. When you buy this lovely freezer from the Washington Food Savings Plan for only 40¢ a day, you'll receive a membership card that entitles you to buy all the food you need and it's delivered right to your door FREE. You don't have to buy in large quantities, you only buy what you need as you need it at low, low discount prices.

Every home should have a freezer. You'll save hundreds of dollars a year. Call Republic 3800 * * * for more details. That's Republic 3800 * * * the Washington Food Savings Plan where you can buy this freezer with a five-year guarantee for just 40¢ a day. The number is Republic 3800 * * * and they will take your call right now.

Over Radio Station WARL, Arlington, Virginia, February 28, 1953:

* * * "Today's Woman" describes the food plans as the hottest cold wave ever to hit the country and goes on to say that freezer food plans have lowered the food costs for some families as much as 30% * * *. In just a moment we'll tell you how you can start saving by joining the Lacy's Family Food Plan.

March 4, 1953:

* * * Here's your chance to save money on food, and actually to eat better than ever before while you're doing it * * *.

Advertisement in the Washington "Times Herald" issue of June 4, 1952:

Top of Page:

LET LACY'S SHOW YOU HOW THE MONEY YOU SAVE ON FOOD PAYS FOR YOUR (Depiction of an emblem or trademark and the name "Gibson"). It's a proven fact and we can show you how LACY'S sponsored Washington Food Savings Plan saves you enough on food to pay for your freezer!

Right Side:

1—SAVE MANY DOLLARS—EAT BETTER THAN EVER because you buy fresh-frozen packaged foods, you eliminate paying for waste, and you get MORE NUTRITION from foods that are frozen before the bodybuilding vitamins and minerals are lost. Only the finest crops, U. S. choice steaks, roasts and beef are offered to you.

2—SAVE LOTS OF MONEY THE LACY WAY! Because you buy your food at DISCOUNT PRICES—buy in season when prices are lowest—freeze low-cost, bulk-cooked food, and leftovers—YOU SAVE ON EVERY SINGLE MEAL!

3—SAVE TIME! SAVE WORK! SAVE GOING TO THE GROCERS. Meal planning is easier, quicker, and more balanced all year 'round; hundreds of trips to the store are eliminated—you have more variety, more convenience with a Gibson freezer in your home.

For membership in a "New Way of Life" come into any of Lacy's 7 stores or Call today * * *.

Left Side:

(Depiction of a Freezer)

1952 BRANDNEW 10 CU. FT. GIBSON HOME FREEZER \$399.95. Your savings on the food plan pay your monthly payments. Other GIBSON freezers: 13 Cu. Ft. \$439.95; 18 Cu. Ft. \$614.95.

From a Brochure utilized by respondents' salesmen:

MORE SAVINGS FOR YOU. Comparison table—savings in waste (chart showing various vegetables, fruits, fish, and poultry—columns headed "FROZEN FOOD," "FRESH FOOD," AND "% WASTE ELIMINATED").

* * * all factors considered, frozen foods are more economical * * *. SAVE THOSE LEFTOVERS and save more money (Depiction of a table, a home freezer and a rubbish can).

20%—Start Saving Here—(pointing to freezer).

20%—Stop Waste Here—(pointing to rubbish can).

HERE'S HOW THIS FOOD PLAN OPERATES (Depiction of a truck leaving a farm, bypassing a retail store which is crossed out with a large X. The truck is labeled "WASHINGTON FOOD SAVINGS PLAN.")

SAVE THE DISCOUNT.

Respondents' salesmen exhibit literature to prospective purchasers of home freezers containing the same or similar statements as aforesaid and make oral statements of the same or like import.

PAR. 5. Through the use of the foregoing statements and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

1. That they are engaged in the operation of a food-purchasing plan.

2. That participants in said plan can eliminate the retailer and buy food at wholesale prices or from a wholesaler.

3. That participants in said plan can effect overall monetary savings through the general use of frozen foods in place of corresponding foods in other forms.

4. That the average family can reduce its expenditures for food by \$30 to \$50 per month by participation in the plan offered by respondents.

5. That participants in said plan can save 20% to 30% of their food costs.

6. That net monetary savings can be effected by all who purchase and use respondents' home freezers.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact:

1. Respondents are engaged in the sale of electrical appliances, including home freezers and television sets; not in the food business. Their sole connection with the food business is that they enroll the purchasers of their freezers in a food-purchasing plan operated by another concern with which they are in no way affiliated.

2. The food-distributing organization, from which participants in said food plan purchase, is not a wholesaler and the prices at which participants purchase are not wholesale prices.

3. In the main, frozen foods purchased through said plan will cost more per edible pound than corresponding foods in other available forms normally consumed by the public. No overall saving in food costs will be accomplished by the general substitution of frozen foods, purchased through said plan, for corresponding foods in other forms.

4. In the main, food plan prices are considerably in excess of usual retail prices of corresponding foods in other forms and are close to, and in some instances identical with, usual retail prices of similar frozen foods.

For a saving of \$30 to \$50 per month on the family food bill effected by participation in said plan, the family's monthly food bill prior to participation must have been far in excess of that which is usual for many families, and such participation will not in any substantial number of instances result in a saving of \$30 to \$50 per month.

5. The prices of most items available through said food plan are more than 80% of the prices thereof in usual retail channels. Participation in the plan will not, in any substantial number of instances, result in savings of 20 to 30% of participants' food costs.

6. In a substantial number of instances, the purchase and use of a home freezer will not result in net monetary savings. In such instances the increase in expenses directly attributable to the purchase and use of a freezer will eliminate savings, if any, which may be effected through the purchase of food in bulk quantities. Among the expenses which will be thus incurred are the costs of financing where credit is used and of operation, maintenance and depreciation of the home freezer.

PAR. 7. In the course and conduct of their business, respondents, through the use of radio broadcasts and advertisements inserted in newspapers, have made certain statements with respect to television sets and other appliances. Among and typical, but not all inclusive, of said statements are the following:

From the "Washington Post" issue of June 22, 1952.

ON SALE MONDAY AT LACY'S 7 STORES

1951 and 1952 orig. \$249.95 to \$319.95 ADMIRAL,

GENERAL ELECTRIC, EMERSON, ZENITH, TELETONE,

MOTOROLA, PHILCO, HALLICRAFTERS, CROSLEY and

other famous 16", 17" and 20" console and table

T. V. \$99. (depictions of eight television sets)

Respondents also offered, from time to time, through radio broadcasts and through advertisements inserted in newspapers, to give a

Order

50 F. T. C.

demonstration of, and to sell, television sets at various stated prices, in the homes of those members of the public who request to have the advertised set demonstrated.

PAR. 8. Through the use of the foregoing statements and others of the same import, but not specifically set out herein, respondents represented that they were making bona fide offers to sell the advertised television sets at the stated prices.

PAR. 9. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, said offers to sell the advertised television sets were not bona fide offers to sell said items. On the contrary, said offers were made for the purpose of inducing prospective purchasers of television sets to visit respondent's stores, or to obtain leads as to persons interested in the purchase of television sets in order that they could be solicited in their home by respondents' salesmen.

Respondents and their salesmen, at their place of business and in calling upon persons at their homes, in many instances failed to demonstrate the advertised television sets, or disparaged the design, workmanship and performance of said television sets, and attempted to demonstrate and sell different and more expensive television sets than those advertised.

PAR. 10. The use by respondents of said false and misleading statements and representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein were true, and to induce the purchase of substantial quantities of respondents' freezers and television sets by reason of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Lacy's, Inc., a corporation, and its officers, and William Warsaw and Hyman Goodbinder, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electrical appliances, including home freezers and television sets, do forthwith cease and desist from:

1. Representing, through the use of such terms as "Lacy's Family Food Plan" or in any other manner, that they are engaged in the operation of a plan for the purchasing of food.

2. Representing, directly or by implication, that participants in such plan can eliminate the retailer or buy at wholesale prices or from a wholesaler.

3. Representing, directly or by implication, that overall monetary savings may be effected through the general use of frozen foods in place of corresponding foods in other forms.

4. Representing, directly or by implication, that any stated overall monetary saving can be effected through participation in such plan unless, in immediate connection therewith, the amount of the expenditure for foods available through such plan which is necessary to effect such saving is disclosed.

5. Misrepresenting the difference between the price of foods available under the plan and the price of such foods in usual retail channels, or the percentage of food costs which can be saved by participation in such plan.

6. Representing that net monetary savings, however expressed, can be effected by the use of freezers purchased from respondents, unless the costs of operation, maintenance, and depreciation and, in the event that the freezer is purchased on credit, the costs of such credit, are taken into account.

7. Representing, directly or by implication, that television sets or other appliances are being offered for sale, when such offer is not a genuine and bona fide offer to sell the television sets or other appliances so offered.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Hyman M. Goldstein and Eugene H. Rietzke.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, Lacy's, Inc., a corporation, William Warsaw and Hyman Goodbinder, individually, 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 the order to cease and desist [as required by said declaratory decision and order of February 26, 1954].

IN THE MATTER OF
DISTILLERS CORPORATION-SEAGRAMS, LTD., ET AL.

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

Docket 6047. Complaint, Sept. 24, 1952—Decision, Mar. 2, 1954

Where 13 corporations which were engaged in the production, sale, and distribution of alcoholic beverages; were direct or indirect subsidiaries of a Canadian corporation which had created or acquired and owned directly or indirectly a large number of subsidiary corporations thus engaged; were included, as such subsidiaries, among the members of such subsidiary organization, utilized, among other purposes, to facilitate the sale and distribution of alcoholic beverages under various trade-marks, brands, and trade names so that at least some of said respondents should sell or distribute to persons other than those owned or controlled by any of them, i. e., those outside the group, such beverages for public consumption under trade-marks, brands, and trade names which were in competition, except insofar as restricted as below set forth, with similar alcoholic beverages likewise sold or distributed as such to persons under different trade-marks, brands, and trade names, by other similar subsidiary respondents; were engaged in the interstate sale of such beverages to wholesalers or others located throughout the country; constituted collectively, along with their affiliated and subsidiary corporations, one of the largest producers and sellers of alcoholic beverages in the United States, the gross sales of which as such were in excess of \$200,000,000 in 1951; and, in the case of each, were in competition with one or more of the other respondents in such sales, except as hindered, lessened, or suppressed as below set forth—

With intent and effect of restricting and hindering their aforesaid competition in commerce in the sale and distribution of such beverages to persons other than those owned or controlled by any of them, through combination, conspiracy, cooperation, and planned common courses of action, and as part thereof, for more than five years past—

- (a) Raised, fixed, stabilized, or maintained prices;
 - (b) Discussed, conferred, and exchanged information by correspondence and otherwise between and among themselves or with other concerns affiliated with or wholly or partly owned or controlled by them, for the purpose or with the effect of establishing or maintaining prices, terms, or conditions of sale or of securing adherence to prices, terms, or conditions of sale;
 - (c) Met with one another or with retail liquor dealers or with representatives of retail liquor dealer associations for the purpose or with the effect of reaching agreement as to the employment of resale price maintenance contracts or arrangements; of adjusting or increasing resale prices after tax rate changes; and of reaching agreements as to the use of resale price maintenance contracts or arrangements as a means of fixing, raising, stabilizing, or maintaining prices;
- Used common directors or officers as a means of raising, fixing, stabilizing, or maintaining prices;