

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

Docket C-219. Complaint, Sept. 10, 1962—Decision, Sept. 10, 1962

Consent order requiring Scranton, Pa., sellers of freezers and foods by means of a "Freezer Food Plan", to cease representing falsely in television and radio commercials, newspaper advertising, and other promotional material, that purchasers of its said "Plan" would receive the same amount of food and

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a freezer for the same, or less, money than they had been paying for food, receive the freezer free, and pay wholesale prices; and making other misrepresentations as in the order below indicated.

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 Cleland Simpson Company, a corporation trading and doing business as Globe Store, and Herbert Lugg, an individual, 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 Cleland Simpson Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 119-135 Wyoming Avenue, Scranton 3, Pa., where it is trading and doing business as Globe Store.

Herbert Lugg is an individual who manages and directs the sale of a Freezer Food Plan as sold by the corporate respondent. 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 freezers and foods by means of a so-called Freezer Food Plan.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their freezers and food when sold, to be shipped from their place of business in the State of Pennsylvania 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 freezers and food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce with corporations, firms and individuals in the sale of freezers, food and freezer-food plans.

PAR. 5. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said food and freezer food plan 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 newspapers and other advertising media, and

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by means of circulars, brochures and by radio and television broadcasts, by stations 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 food, as the term "food" is defined in the Federal Trade Commission Act; and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food and freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of advertisements disseminated, as aforesaid and by the oral statements of sales representatives, respondents have represented, directly or by implication:

1. That "Home Economists" will assist purchasers of the aforesaid Freezer Food Plan in planning their food orders.
2. That the freezers and the food are fully and unconditionally guaranteed or insured under the contract.
3. That purchasers of the aforesaid Freezer Food Plan will receive the same amount of food and a freezer for the same or less money than they have been paying for food alone.
4. That purchasers can enter the Freezer Food Plan on a trial basis.
5. That purchasers will receive a freezer free of charge.
6. That purchasers of the aforesaid Freezer Food Plan make one monthly payment which covers both food and freezer.
7. That respondents sell their food at wholesale prices.

PAR. 7. In truth and in fact:

1. The individuals sent to help purchasers of the aforesaid Freezer Food Plan in planning food orders are not "Home Economists". They have not had sufficient or proper training to warrant calling them "Home Economists".
2. The freezers and the food are not fully or unconditionally guaranteed or insured under the contract.
3. Purchasers of the aforesaid Freezer Food Plan do not receive a freezer and food for the same or less money than they had been paying for food alone.
4. Purchasers of the aforesaid food plan are not able to enter the plan on a trial basis, but are bound by the original provisions of the contract.
5. Purchasers of the Freezer Food Plan do not receive a freezer free of charge, but in fact purchase and pay for said freezer.
6. Purchasers of the aforesaid Freezer Food Plan are required to make two monthly payments, one for food and one for the freezer.

7. Respondents do not sell their food to purchasers of the Freezer Food Plan at wholesale prices.

Therefore, the advertisements referred to in paragraph 5 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 referred to in paragraph 6 were, and now are, false, misleading and deceptive.

PAR. 8. The use by respondents of the 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 freezers, food and freezer food plans from respondents by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, 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 and deceptive acts and practices, in commerce within the intent and meaning of the Federal Trade Commission Act, and in violation of Sections 5 and 12 of said Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

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ment, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Cleland Simpson Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 119-135 Wyoming Avenue, in the city of Scranton, State of Pennsylvania.

Respondent Herbert Lugg is an individual who manages, directs and controls the Freezer Food Plan sold by said corporation. His address is the same as that of said corporation.

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

PART I

It is ordered, That Cleland Simpson Company, a corporation, trading and doing business as Globe Store, or any other name, and its officers and Herbert Lugg, an individual, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of freezers, foods or a freezer food plan in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) A "Home Economist" or other formally trained individuals will assist purchasers of the aforesaid Freezer Food Plan in planning their food orders;

(b) The freezer or any part thereof or the food are guaranteed or insured in any manner, unless the nature and extent of the guarantee or insurance, and the manner in which the guarantor or the insurer will perform thereunder are clearly and conspicuously disclosed in immediate conjunction with any such representation;

(c) Purchasers of a freezer food plan will receive the same or any amount of food and a freezer for the same or less money than they have been paying for food alone;

(d) Purchasers can enter the Freezer Food Plan on a trial basis;

(e) Purchasers receive a freezer or any other item free of charge;

- (f) Purchasers of the Freezer Food Plan make but one monthly payment covering both the food and the freezer.
2. Representing that purchasers of a freezer food plan can buy their food from respondents at wholesale prices.
 3. Misrepresenting in any manner the savings realized by the purchasers of a freezer food plan, freezer or food.

PART II

It is further ordered, That respondents Cleland Simpson Company, a corporation, trading and doing business as Globe Store, or any other name, and its officers and Herbert Lugg, an individual, and respondents' agents, representatives and employees, directly, or through any corporate or other device in connection with the offering for sale, sale or distribution of any food or any purchasing plan involving food, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation or misrepresentation prohibited in paragraphs 1 through 3 of Part I of this order.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of any food, or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1 through 3 of Part I of this order.

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

FIBRE GLASS-EVERCOAT COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE