

IN THE MATTER OF

SAFEWAY STORES, INCORPORATED

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

Docket 7584. Complaint, Sept. 16, 1959—Decision, Apr. 18, 1963

Order requiring a corporation operating retail food stores in some 25 States in which it sold its own "Slender-Way" bread, to cease representing falsely by advertising in newspapers and by television and radio broadcasts, as well as by use of the designation "Slender-Way," that the bread was low in calories compared with other bread and would cause the consumer to lose weight or prevent him from gaining weight.

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 Safeway Stores, Incorporated, a corporation, hereinafter referred to as respondent, has 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 Safeway Stores, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 4th and Jackson Streets, Oakland 4, California.

PAR. 2. Respondent owns, operates and controls retail food stores in approximately 25 States of the United States and in the District of Columbia in which it sells a bread, baked by respondent or one of its subsidiaries, designated as "Slender-Way" bread. Bread is a food as "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of its said business, respondent has disseminated and caused the dissemination of certain advertisements concerning the said "Slender-Way" bread by the United States mail 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 of interstate circulation and other advertising media, and by means of television and radio broadcasts, transmitted by television and radio stations located in various States of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing, and which were and are likely to induce, directly or indirectly, the purchase of said "Slender-Way" bread; and has disseminated, and caused the dissemination of, advertisements concerning said "Slender-Way" bread by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said "Slender-Way" bread in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical of the statements and representations contained in said advertisements designated as hereinabove set forth are the following:

SLENDERWAY BREAD
 Ideal for Weight Watchers

 SLENDER-WAY BREAD
 SKYLARK BAKED
 LOWER IN CALORIES

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SKYLARK SLENDER-WAY

BREAD * * * thinly sliced

Fewer calories per slice * * *

Contains Approximately 50 calories per slice.

Here's a bread sale you can't afford to miss!

Your choice of Slender-Way Bread, the bread
that's high in proteins and low in calories,

SLENDER-WAY—PROTEIN

MULTI-GRAIN

For the Modern Way to "Hold that Line", serve—

Slender-Way Bread

I guess about half the people in this country of ours are trying to lose weight. Whether you want to lose weight, or hold the line, here's a pleasant and sensible way to help the situation (hold up banner)—

Safeway's exclusive "Slenderway". Slenderway is definitely a very low-calorie bread. Its nut-like flavor is really delicious, making it a pleasant way to keep the pointer on the scales from creeping up and up. * * * You'll find it's a very pleasant, tasty and practical way to hold down your weight. Try Safeway's Slenderway Bread this week.

Here's a delicious way to control weight: enjoy SAFEWAY'S flavorful "Slenderway" bread. Slenderway bread offers a very low sum of calories, yet Slenderway gives you all the helpful vitamins and minerals you need. Here's the low-calorie bread you've been looking for.

PAR. 5. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent represented and is now representing, directly or by implication:

1. That said bread is low in calories when compared with other breads; and

2. That said bread is a low calorie food and that the consumption thereof will cause one to lose weight or prevent the consumer from gaining weight.

Through the use of "Slender-Way" as a designation for said bread respondent represented or implied that said bread is a low calorie food, that it is lower in calories than ordinary breads, and that the consumption thereof will cause one to lose weight or prevent one from gaining weight.

PAR. 6. The said advertisements 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. In truth and in fact:

"Slender-Way" bread is not lower in calories than ordinary breads; is not a low calorie food; and the consumption thereof will not cause one to lose weight or prevent one from gaining weight.

PAR. 7. The designation by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and de-

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ceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Morton Nesmith for the Commission.

Mr. Drummond Wilde, Mr. Bernal E. Dobell and Mr. James M. McGinty, of Oakland, Calif., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

FEBRUARY 27, 1963

On September 16, 1959, a complaint was issued in this proceeding charging Safeway Stores, Incorporated, a corporation, hereinafter called respondent, with false advertising, in violation of the Federal Trade Commission Act. The complaint alleged, in substance, that respondent had disseminated advertisements representing that its bread "Slender-Way" was a low-calorie food and its consumption as part of a diet would prevent the consumer from gaining weight. The complaint further alleged that "Slender-Way" bread is not a low-calorie food and the consumption thereof will not cause one to lose weight or prevent one from gaining weight. For these reasons, it was alleged, said advertisements were false and deceptive.

After answering the complaint counsel for respondent and counsel supporting the complaint entered into a written agreement dated December 4, 1959, wherein and whereby it was agreed, among other things, that this proceeding would be held in abeyance pending the final order to be issued in another proceeding then pending before the Commission, *Bakers Franchise Corporation, et al.*, D. 7472 [59 F.T.C. 70], which involved substantially similar charges. Said agreement also provided: (1) if there should be an excision of the trade name in that case, *Bakers Franchise Corporation, supra*, then respondent herein, Safeway Stores, Incorporated, agreed to an excision of its trade name "Slender-Way"; (2) if a cease and desist order should be issued against *Bakers Franchise Corporation, supra*, and, if appealed, the order should be affirmed, respondent Safeway Stores, Incorporated, would thereupon enter into an agreement containing a consent order to cease and desist on the same terms as those contained in the cease and desist order issued against *Bakers Franchise Corporation, supra*; and (3) that said agreement would be filed with the hearing examiner for his approval or rejection. This agreement was approved by the hearing examiner on December 11, 1959, and the proceedings herein held in abeyance as provided in said agreement.

Thereafter, the Commission issued its decision in *Bakers Franchise Corporation, supra*, which included the excision of the trade

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name of the bread there involved and a cease and desist order. That decision was affirmed by the United States Court of Appeals for the Third Circuit in 302 F. 2d 258 [7 S. & D. 464] (1962), and has now become final.

Accordingly, pursuant to the terms of said written agreement dated December 4, 1959, the respondent herein, Safeway Stores, Incorporated, its counsel, and counsel supporting the complaint have entered into an agreement for a consent order to be entered herein embodying substantially the same provisions as those included in the order of the Commission in the *Bakers Franchise* case, *supra*. Said agreement was entered into in accordance with the provisions of Section 3.25 of the Commission's Rules as published May 6, 1955, as amended, in effect at the time of the execution of the agreement dated December 14, 1959. This agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondent admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent waives further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondent waives any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent, Safeway Stores, Incorporated, is a corporation organized and doing business under the laws of the State of Maryland, with its office and principal place of business located at 4th and Jackson Streets, Oakland 4, California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, Safeway Stores, Incorporated, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Slender-Way" bread, or any other bread of substantially the same composition, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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 represents directly or by implication:

(a) That said bread is lower in calories than other white bread;

(b) That said bread is less fattening, or is more effective in controlling body weight than other white bread.

2. 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, in which the words "Slender-Way" or words of similar import or meaning are used as the trade name or designation for respondent's bread.

3. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's product, which advertisement contains any of the representations prohibited in Paragraph 1 hereof or the trade name or designation prohibited in Paragraph 2 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 18th day of April 1963, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

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IN THE MATTER OF

DAN A. LA PANTA COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C)
OF THE CLAYTON ACT

Docket C-493. Complaint, Apr. 22, 1963—Decision, Apr. 22, 1963

Consent order requiring Duluth, Minn., brokers and wholesale distributors of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by accepting discounts on purchases of citrus fruit for their own accounts for resale from Florida packers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Dan A. La Panta Company, Inc., is a corporation organized on or about August 8, 1947, existing and doing business under and by virtue of the laws of the State of Minnesota, with its offices and principal place of business located at 1201½ West Michigan Street, Duluth, Minnesota.

Respondent Dan A. La Panta is an individual and is president of the corporate respondent, and owns substantially all of its capital stock. As president and substantial owner, he formulates, directs and controls the acts, practices, and policies of the said corporate respondent, including the acts and practices hereinafter mentioned. Said corporate respondent and individual respondent are hereinafter jointly referred to as respondents.

PAR. 2. Respondents are now, and for the past several years have been, engaged in business as a broker, representing a number of principals located in various States throughout the United States, who sell and distribute citrus fruit and produce. Respondents also are now, and for the past several years have been, engaged in business as a wholesale distributor, buying, selling, and distributing citrus fruit and produce, all of which are hereinafter sometimes referred to as food products. Respondents purchase their food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondents in the brokerage business and in the purchase and sale of food products is substantial.