

IN THE MATTER OF
MID-AMERICA FOOD SERVICE, INC., ET AL.

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

Docket C-708. Complaint, Feb. 7, 1964—Decision, Feb. 7, 1964

Consent order requiring River Forest, Ill., distributors of freezers and foods by means of a so-called "freezer-food plan", to cease making a variety of false representations concerning their time in business, ownership of their own food processing plants, size and manner of operations, guarantees, prices, terms and conditions of sale, among other false claims as in the order below.

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 Mid-America Food Service, Inc., a corporation, and Leonard A. Ferrara, individually and as an officer of said corporation, 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 Mid-America Food Service, Inc., is a corporation organized, existing and doing business under and by vir-

tue of the laws of the State of Illinois, with its principal office and place of business located at 7353 North Avenue, River Forest, Illinois.

Respondent Leonard A. Ferrara is the president and chief executive officer of the corporate respondent, and he formulates, directs and controls the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent. His home address is 7820 Chicago Avenue, River Forest, Illinois.

PAR. 2. Respondents are now and for some time last past, have been engaged in the advertising, offering for 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, 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. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements 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 of extensive interstate circulation, brochures and circulars, 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. 5. By means of advertisements disseminated, as aforesaid and by the oral statements of sales representatives, respondents have represented, directly or by implication:

1. That respondents have been in the freezer food business since 1957.
2. That respondents own and operate their own food processing plants in River Forest, Illinois, or in any other location.
3. That respondents serve over three million satisfied families.
4. That respondents sell only food and do not sell freezers.
5. That the freezers and the food are fully and unconditionally guaranteed or insured under the contract.
6. That purchasers can enter respondents' freezer-food plan on a trial basis.
7. That respondents sell their food at wholesale prices.

8. That respondents will permit purchasers of a food plan to have the free use of a freezer.

9. That a purchaser of respondents' food who remains in the food-freezer plan for two years will automatically become the owner of a freezer without charge.

10. That the initial food order supplied by respondents will last the purchaser for four months.

11. That purchasers can cancel respondents' contract at any time without penalty or additional charge.

12. That substantially all major brands of food products are available under respondents' freezer-food plan.

13. That purchasers of or subscribers to respondents' freezer-food plan will receive all their food requirements and a freezer for the same or less money than they have been paying for food alone.

14. That installment contracts for the purchase of respondents' freezer-food plan, freezers, or food are financed or carried by respondents and are not discounted to others.

15. That respondents do not charge a "membership fee."

16. That meat prices quoted by respondents' salesmen to purchasers are net weight prices.

17. That respondents quoted prices for meats and frozen foods will remain constant throughout the time purchasers remain a member of the food freezer plan.

18. That respondents' operation is national in scope.

19. That there are no finance charges on purchasers' food orders.

20. That food spoilage insurance is furnished free of charge.

21. That a deposit of \$25 or other stated amounts paid by purchasers subscribing to the freezer-food plan is to be applied on the initial food order.

PAR. 6. In truth and in fact:

1. Respondents have not been in the freezer-food business since 1957.

2. Respondents do not own or operate their own food processing plants in River Forest or in any other location.

3. Respondents do not serve over three million satisfied families.

4. Respondents sell food and freezers.

5. Respondents' freezers and food are not fully and unconditionally guaranteed or insured under the contract.

6. Purchasers cannot enter the food-freezer plan on a trial basis.

7. Respondents do not sell their food at wholesale prices.

8. Purchasers of a freezer-food plan from respondents do not have the free use of a freezer, but are in fact required to purchase said freezer.

9. A purchaser of respondents' food who remains in the food-freezer plan for two years does not automatically become the owner of a freezer without charge.

10. The initial food order supplied by respondents is not sufficient to last purchasers for four months.

11. Purchasers cannot cancel respondents' contracts at any time without penalty or liquidated damages.

12. Not all nor substantially all major brands of food products are available under the food plan.

13. Purchasers of or subscribers to respondents' freezer-food plan do not receive all their food requirements and a freezer for the same or less money than they have been paying for food alone.

14. In many instances, the contracts of purchasers of or subscribers to respondents' freezer-food plans are not financed by respondent, but are financed through a financial institution.

15. Respondents do charge a membership fee.

16. That quoted prices for respondents' meats are gross weight prices.

17. Respondents' quoted prices for their meats and frozen food do not remain constant throughout the time a purchaser remains a member of the food-freezer plan.

18. Respondents' operation is not national in scope.

19. Purchasers are required to pay finance charges on their food orders.

20. The food spoilage insurance is not furnished free of charge.

21. A deposit of \$25 or other stated amounts paid by purchasers subscribing to the freezer-food plan is not applied on the initial food order, but is actually a down payment on the freezer-food plan.

Therefore, the advertisements referred to in Paragraph Four 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 Five were and now are false, misleading, and deceptive.

PAR. 7. 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. 8. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent, Mid-America Food Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 7353 North Avenue, River Forest, Illinois.

Respondent, Leonard A. Ferrara, is the chief executive officer of proposed corporate respondent and his business address is the same as the corporate address of Mid-America Food Service, Inc. His home address is 7820 Chicago Avenue, River Forest, Illinois.

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.

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ORDER

PART I

It is ordered, That proposed respondents, Mid-America Food Service, Inc., and Leonard A. Ferrara, individually and as an officer of said corporation, and proposed respondents' representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the advertising, offering for sale, sale or distribution of freezers, food or freezer-food plans, or other merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Representing directly or by implication that:

- (a) Proposed respondents have been in the freezer-food business since 1957 or for any other length of time not in accordance with the facts;
- (b) Proposed respondents own and operate their own food processing plants in River Forest, Illinois, or in other locations;
- (c) Proposed respondents serve over 3,000,000 satisfied families or any other number of families when such is not in accordance with the facts;
- (d) Proposed respondents sell only food and do not sell freezers;
- (e) Freezers or parts thereof or foods are unconditionally guaranteed or are guaranteed in any manner unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.
- (f) Purchasers can enter proposed respondents' freezer-food plan on a trial basis;
- (g) Proposed respondents sell their food at wholesale prices;
- (h) Proposed respondents will permit purchasers of a food plan to have the free use of a freezer;
- (i) A purchaser of proposed respondents' food who remains in the food-freezer plan for two years will automatically become the owner of a freezer without charge;
- (j) The initial food ordered by a purchaser will be sufficient to last such purchaser any stated or specified period of time;
- (k) Purchasers can cancel proposed respondents' contract at any time without penalty or additional charge;

(l) Substantially all major brands of food products are available under proposed respondents' freezer-food plan;

(m) Purchasers of or subscribers to proposed respondents' freezer-food plan will receive all their food requirements and a freezer for the same or less money than they have been paying for food alone;

(n) Installment contracts for the purchase of proposed respondents' freezer-food plan, freezers, or food, are financed or carried by proposed respondents and are not discounted to others;

(o) Proposed respondents do not charge a membership fee;

(p) Meat prices quoted by proposed respondents' salesmen to purchasers are the net weight prices if such is not in accordance with the facts;

(q) Proposed respondents' quoted prices for meats and frozen foods will remain constant throughout the time purchasers remain a member of the food-freezer plan;

(r) Proposed respondents' operation is national in scope;

(s) Purchasers' food orders do not entail finance charges;

(t) Food spoilage insurance is furnished free of charge;

(u) A deposit of \$25 or any other stated amount paid by purchasers subscribing to the freezer-food plan is to be applied on the initial food order.

PART II

It is further ordered, That respondents Mid-America Food Service, Inc., a corporation, and its officers, and Leonard A. Ferrara, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device in or in connection with the offering for sale, sale or distribution of any food or 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 paragraph a through u 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

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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 (a) through (u) 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

BIGELOW-SANFORD CARPET COMPANY, INC.

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

Docket 7420. Complaint, Feb. 26, 1959—Decision, Feb. 10, 1964.

Consent order requiring manufacturers of rugs and carpets, with plants in a number of Eastern States, to cease discriminating in price among retailers who compete in reselling its rugs and carpets by means of its annual cumulative quantity discount system, in violation of Sec. 2(a) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Bigelow-Sanford Carpet Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 140 Madison Avenue in the city of New York, State of New York.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of rugs and carpets under two distinct product lines, Bigelow Rugs and Carpets and Sanford Carpets. Respondent is a substantial factor in the carpet industry with a sales volume in 1957 in

excess of \$74,000,000 and manufacturing plants located in Amsterdam, New York, Bristol, Virginia, Landrum, South Carolina, Summerville, Georgia and Thompsonville, Connecticut.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused its rugs and carpets, when sold for use, consumption, or resale, to be shipped from its manufacturing plants in the aforesaid States to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said rugs and carpets in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent in the course and conduct of its business, has discriminated in price between different purchasers of its rugs and carpets of like grade and quality, by selling said products at higher and less favorable net purchase prices to some purchasers than the same are sold to other purchasers who have been and are in competition with the favored purchasers.

PAR. 5. The following example is illustrative of respondent's discriminatory pricing practices.

Respondent now has, and for the past several years has had in effect, an annual cumulative quantity discount system ranging from one to five percent, based on the annual net billings of rugs and carpets of its Bigelow Rugs and Carpets line, as follows:

<i>Annual purchases</i>	<i>Discount (percent)</i>
Up to \$4,999-----	0
\$5,000 to \$14,999-----	1
\$15,000 to \$24,999-----	1½
\$25,000 to \$34,999-----	2
\$35,000 to \$44,999-----	2½
\$45,000 to \$59,999-----	3
\$60,000 to \$74,999-----	3½
\$75,000 to \$89,999-----	4
\$90,000 to \$104,999-----	4½
Over \$105,000-----	5

Respondent's aforescribed annual cumulative quantity discount system results in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedule. Purchasers of respondent's products for competitive resale unable to reach an annual purchase volume of \$5,000, for example, receive no volume discounts on their purchases and thus have a significant buying price disadvantage.

Moreover, the competitive effect of the resulting net price differences becomes even more apparent in connection with respondent's application of the above discount schedule to chain stores such as, for example, The May Department Stores Company and Allied Stores Corporation.

Respondent allows said chain purchasers to combine the purchase volume of their various outlets so as to qualify for the maximum 5% discount allowed. In many instances the purchase volumes of the different individual stores of the chain are not sufficient to warrant any discount at all, but because of the policy of the respondent in granting the rate of discount on the combined purchase volumes of all the chain outlets, each individual store is allowed the maximum discount of 5%.

For example, in 1955 total net purchases from respondent by the Allied chain were \$824,431 on which a rebate of \$41,221, calculated at 5% was paid. Individually, 15 of the 44 stores participating failed to qualify for any rebate, 13 qualified for a rebate of only 1% and none of the individual stores qualified for the maximum 5% rebate, which was allowed to all the participating stores in the Allied chain. In the same year the net purchases by The May Department Stores from respondent were \$595,622 on which a 5% rebate of \$29,781 was paid. Based on their individual purchase volumes only three of the participating stores qualified for the 5% maximum rebate which all were allowed.

In many instances respondent's non-chain customers are purchasing individually from respondent in considerably greater volume than the individual chain store with whom they compete, and, in so doing receive either no discount, or at best a low bracket discount corresponding with their actual volume of purchases, while the competitive individual chain store is allowed the maximum discount of 5%. The products sold under respondent's different product lines are of like grade and quality in its respective line, and these independent non-chain customers purchase the same grade and quality of merchandise from respondent as do its chain store customers. In many instances the individual chain stores and the independently owned stores are located in the same city or metropolitan area and both the chain and non-chain stores are in active and constant competition with and among and between each other for the consumer trade.

Specific illustrations of representative net price differences occasioned between the said favored and non-favored competing cus-

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tomers on commodities of like grade and quality sold by respondent in commerce during 1955, are as follows:

Customer	Purchase volume	Rebate	Percent of rebate
Baltimore trade area:			
The May Co.-----	\$11, 024. 32	\$551. 22	5
Hutzler Brothers, Inc.-----	26, 924. 60	538. 49	2
McDowell & Co.-----	11, 407. 14	114. 07	1
Blum's, Inc.-----	5, 408. 41	54. 08	1
Akron trade area:			
M. O'Neil Co. (May)-----	97, 947. 27	4, 897. 37	5
A. Polsky (Allied)-----	45, 689. 44	2, 284. 47	5
Yeager Co.-----	10, 939. 50	109. 40	1
H. M. Stough-----	(¹)	None	-----

¹ Under \$5,000.

PAR. 6. The effect of the discriminations in price by respondent as hereinbefore set forth may be substantially to lessen competition in the lines of commerce in which the purchasers receiving and those denied the benefits of the more favorable prices are engaged, and to injure, destroy or prevent competition between purchasers receiving the benefit of said more favorable prices, and the purchasers from whom such more favorable prices are withheld.

PAR. 7. The aforesaid discriminations in price by respondent as hereinabove alleged and described constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

Mr. Eldon P. Schrup and Mr. Robert G. Cutler for the Commission.

Cahill, Gordon, Reindel & Ohl, by *Mr. Jerrold G. Van Cise*, New York, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 26, 1959, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On March 2, 1960, the respondent and its attorney entered into an agreement with counsel supporting the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be

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entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

This agreement is entered into subject to the condition that the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission unless and until the Commission disposes of Docket Nos. 7421, 7631, 7632, 7633, 7634, 7635, 7636, 7637, 7638, 7639 and 7640, by orders to cease and desist in substantially the same form as set forth herein, or by other appropriate order to cease and desist or of dismissal.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the 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 following jurisdictional findings are made and the following order issued.

1. Respondent Bigelow-Sanford Carpet Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 140 Madison Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Bigelow-Sanford Carpet Company, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of rugs and carpets in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, by cumulative volume discount or otherwise, in the price of rugs and carpets of like grade and quality, by selling to any purchaser at net prices lower than the net price charged any other purchaser competing in

fact with such favored purchaser in the resale and distribution of such rugs and carpets.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

FINAL ORDER*

The Commission, by order issued August 19, 1960, having extended until further order of the Commission the time within which the initial decision of the hearing examiner would otherwise become the decision of the Commission, pursuant to certain conditions contained in paragraph 8 of the consent agreement to cease and desist; and

The Commission having determined that the aforesaid conditions have been fulfilled and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, filed July 25, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the above-named respondent shall, within sixty (60) days after the expiration of time allowed for filing a petition for review, if no such petition has been duly filed within such time by respondents in Docket 7634, Docket 7635 or Docket 7639, 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.

It is further ordered, That if petition for review is duly filed in Docket 7634, Docket 7635 or Docket 7639, then the time for filing a report of compliance shall begin to run de novo from the latest date of any final judicial determination in any such appellate review.