

Complaint

65 F.T.C.

IN THE MATTER OF

DIANA STORES CORPORATION

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

Docket C-744. Complaint, May 13, 1964—Decision, May 13, 1964

Consent order requiring a New York City corporate operator of numerous department stores in various States under the trade name "Great Eastern Mills" to cease representing falsely that it manufactured the clothing and other merchandise it sold, by use of the word "Mills" in its corporate or trade name or in any other manner.

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 Diana Stores Corporation, 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 Diana Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 450 West 41st Street, New York 36, New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the operation, in various States of the United States, of numerous department stores using "Great Eastern Mills" as a trade name.

Said Great Eastern Mills stores are operated as a division of Diana Stores Corporation. They are self-service operations which include the use of shopping carts and central check-out systems. Through said stores respondent sells clothing and other merchandise to the purchasing public

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said merchandise to be shipped from its headquarters in New York to its several stores in various other States of the United States, for sale to the purchasing public. In such instances shipments are made to respondent's stores in States other than that in which such shipments have originated, and respondent maintains and at all times mentioned herein has main-

tained, a substantial course of trade in said merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act.

Respondent also causes advertisements and other promotional material to be shipped from its place of business in the State of New York to its stores in various other States and maintains a substantial commercial intercourse between its headquarters in New York and its stores in other States consisting of the transmission and receipt of numerous commercial documents, reports and information. Respondent's buying, merchandising and advertising departments, warehousing operations and receiving inspecting, packing and shipping departments, serving all of its stores, are located at its headquarters.

PAR. 4. In the course and conduct of its business, as aforesaid, and and for the purpose of inducing the purchase of its merchandise which had been shipped and received in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondent has used the name "Great Eastern Mills" in advertisements of its merchandise in newspapers having general circulation in various States of the United States.

PAR. 5. Through the use of the word "mills" as part of the respondent's trade name, respondent represents that it owns or operates a mill or factory in which the clothing and other merchandise sold by it are manufactured.

PAR. 6. Said representation is false, misleading and deceptive. In truth and in fact respondent does not own or operate the mill or factory in which the clothing and other merchandise sold by it are manufactured but buys from manufacturers and others for resale to the purchasing public.

PAR. 7. There is a preference on the part of many members of the purchasing public to buy merchandise, including clothing, direct from factories or mills, believing that by so doing lower prices and other advantages thereby accrue to them, a fact of which the Commission takes official notice.

PAR. 8. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of clothing and other merchandise of the same general kind and nature as that sold by respondent.

PAR. 9. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 respondent 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 agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Diana Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 450 West 41st Street in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered. That respondent Diana Stores Corporation, a corporation, and its officers and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of clothing or any other merchandise in commerce, as "commerce" is defined in the Fed-

eral Trade Commission Act, do forthwith cease and desist from using the word "Mills" or any other word of similar import or meaning in or as a part of respondent's corporate or trade name or representing in any manner that respondent is a manufacturer of the clothing and other merchandise sold by it unless and until respondent owns and operates or directly and absolutely controls a manufacturing plant wherein such clothing or other merchandise is made; provided, however, that should respondent so desire for reasons of continuity, it may use the identifying phrase "formerly Great Eastern Mills" or words of similar import in its advertising for a period not to exceed six months from the effective date of this order.

It is further 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 this order.

IN THE MATTER OF

AMERICAN FOODS, INC., ET AL.

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

Docket C-745. Complaint, May 13, 1964—Decision, May 13, 1964

Consent order requiring three associated corporations with headquarters in St. Paul, Minn., and operating in Minnesota, Iowa, and North Dakota, respectively, to cease making false representations in advertising by radio in connection with their sale of freezers and foods by means of a "Freezer-Food Plan," including claims of savings to purchasers, wholesale prices for their food, guarantees, assistance of "food consultants" in planning food orders, financing and size of operations.

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 American Foods, Inc., a corporation of St. Paul, Minnesota (formerly American Food Plant of Minnesota, Inc.), American Food Plan of Iowa, Inc., a corporation, American Foods of North Dakota, Inc., a corporation, and Walter L. Lange, individually and as an officer of said corporations, trading and doing business as American Foods, Inc., American Foods, American Food Plan, American Foods Plan, Inc., and American Foods Service, Inc., hereinafter referred to as respondents, have vio-

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lated 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 American Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 1255 East Highway 36, St. Paul, Minnesota, which corporation was formerly known as American Food Plan of Minnesota, Inc.

Respondent American Food Plan of Iowa, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal place of business located at 337 University Avenue, Des Moines, Iowa.

Respondent American Foods of North Dakota, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its principal office and place of business located at 737 20th St. N., Fargo, North Dakota.

Respondent Walter L. Lange is the chief executive officer of all the corporate respondents and he formulates, directs and controls the acts and practices of said respondents including the acts and practices hereinafter set forth. In addition, in his individual capacity from time to time, he has traded and done business as American Foods, Inc., American Foods, American Food Plan, American Food Plan, Inc., and American Foods Service, Inc. His business address is the same as that of the corporate respondents. His home address is 1282 Sherburne Avenue, St. Paul 4, Minnesota.

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 places of business respectively in the States of Minnesota, Iowa and North Dakota 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 by means of circulars, brochures, and by radio 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 "food counselors" or "consultants" will assist purchasers of the aforesaid freezer-food plan in planning their food orders;
2. That the freezer or any part thereof and the food are fully and unconditionally guaranteed under the contract;
3. That purchasers of the aforesaid freezer-food plan will receive their food requirements and a freezer for the same or less money that they have been paying for food alone;
4. That purchasers can save enough on the purchase of food to pay for the freezer;
5. That purchasers can become a member of a freezer-food plan on a trial basis;
6. That respondents sell their food at wholesale prices;
7. That respondents are the oldest and largest food service in the Midwest serving more than 18,000 families in Minnesota, Wisconsin, Iowa and North Dakota;
8. That purchasers participation in the aforesaid freezer-food plan will continue for a "lifetime";
9. That respondents have established a reserve fund or posted a bond, the benefits of which are available to purchasers as a guarantee of continuous service;
10. That purchasers will realize savings in their food purchases of 25 to 40% on food purchases under the aforesaid freezer-food plan;
11. That installment contracts for the purchase of the aforesaid Freezer-Food Plan, freezers or food, are financed or carried by corporate respondents and will not be sold or discounted to others;
12. That sales contracts offered to purchasers for signature contain all the terms or conditions of sale.

PAR. 7. In truth and in fact:

1. The individuals sent to help purchasers of the aforesaid freezer-food plan in planning their food orders are not "food counselors" or "consultants". They have not had sufficient or proper training or experience to warrant being referred to as "food counselors" or "consultants" or any other name which would imply special qualifications in the field of home economics.

2. The freezer or any part thereof and the food are not fully or unconditionally guaranteed under the contract.

3. Purchasers of the aforesaid freezer-food plan do not receive a freezer and their food requirements for the same or less money than they had been paying for food alone.

4. Purchasers of the aforesaid freezer-food plan cannot save enough money on the purchase of food to pay for the freezer.

5. Purchasers of the aforesaid freezer-food plan will not be able to enter the plan on a trial basis, but they are bound by the original provisions of the contract.

6. Respondents do not sell their food to purchasers of the aforesaid freezer-food plan at wholesale prices.

7. The respondents are not the oldest or the largest food service in the Midwest, moreover, respondents do not serve more than 18,000 families in Minnesota, Wisconsin, Iowa and North Dakota.

8. Purchasers are not assured that they will be able to purchase food from the aforesaid freezer-food plan for a "lifetime".

9. Respondents have not established a reserve fund or posted a bond, the benefits or proceeds of which are available to purchasers as a guarantee of continuous service.

10. Purchasers of the aforesaid freezer-food plan do not realize savings of 25 to 40% on their food bills.

11. Respondents have sold or discounted purchasers' installment contracts to others despite their representation to the contrary.

12. All of the terms and conditions of sale are not always disclosed at the time of a sale, and in many instances contracts are not completely filled in at the time of a sale and when later filled in and sent to purchasers, the terms or conditions thereof are not the same as previously agreed to by the purchasers.

Therefore, the advertisements referred to in Paragraph Five 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 Six 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 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 American Foods, Inc., formerly known as American Food Plan of Minnesota, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 1255 East Highway 36, St. Paul, Minnesota.

Respondent American Food Plan of Iowa, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 337 University Avenue, Des Moines, Iowa.

Respondent American Foods of North Dakota, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its principal place of business located at 737 20th Street N., Fargo, North Dakota.

Respondent Walter L. Lange is the chief executive officer of all of the corporate respondents. The business address of the said Walter L. Lange is the same as the corporate address of American Foods, Inc., and his home address is 1282 Sherburne Avenue, St. Paul 4, Minnesota.

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 respondents American Foods, Inc., a corporation, American Food Plan of Iowa, Inc., a corporation, American Foods of North Dakota, Inc., a corporation and their officers, and Walter L. Lange individually and as an officer of said corporations, 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 freezers, food or freezer-food plans, or other merchandise, 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 "food counselor" consultant or other formally trained individual 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 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 in immediate conjunction with any such representation;

(c) By purchasing their Freezer-Food plan purchasers can purchase their food requirements and a freezer for the same or less money than they have been paying for food alone;

(d) Purchasers of their freezer-food plan can save enough money on the purchase of food to pay for a freezer;

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

(f) Purchasers of a freezer-food plan can buy their food from respondents at wholesale prices.

2. Representing that respondents are the oldest food service in the Midwest.
3. Representing that respondents are the largest food service in the Midwest.
4. Representing that purchasers are entitled to participate in the freezer-food plan for a "lifetime."
5. Representing that respondents serve any stated number of families unless respondents actually serve the number represented.
6. Representing that respondents have established a reserve fund or posted a bond the benefits of which are available to purchasers as a guarantee to continuous service unless respondents do in fact have such a fund or bond available and unless the said fund or bond is made available to all purchasers of respondents' product as a guarantee to continuous service.
7. Representing, directly or by implication, that purchasers' contracts: (a) Are financed or carried by corporate respondents and (b) will not be sold or discounted to others unless respondents establish in every instance, where the representation has been made that the installment contract has been carried by corporate respondents and has not been sold or discounted to others.
8. Misrepresenting in any manner the savings realized by the purchase of the freezer-food plan.
9. Obtaining purchasers' signatures on sales contracts which contracts do not at that time contain all of the terms or conditions of sale.

PART II

It is further ordered, That respondents American Foods, Inc., a corporation, American Food Plan of Iowa, Inc., a corporation, American Foods of North Dakota, Inc., a corporation, and their officers, and Walter L. Lange individually and as an officer of said corporations, 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 Paragraphs 1 through 8 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 8 of Part I of this order.