

AMERICAN SERVICE & SUPPLY COMPANY, INC., ET AL.

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

Docket C-907. Complaint, June 10, 1965—Decision, June 10, 1965

Consent order requiring a North Attleboro, Mass., seller of freezers, food and freezer-food plans to cease misrepresenting that purchasers of its plan can reduce their family food costs, that it has offices in thirteen cities and 20,000 satisfied customers, that its meats are federally inspected, that it advertises in Life Magazine, and cease disseminating through advertising any of the above misrepresentations.

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 Service & Supply Company, Inc., a corporation, and Edward A Kurker, individually and as an officer of the 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 re-

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spect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Service & Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 335 South Washington Street, in the city of North Attleboro, in the State of Massachusetts.

Respondent Edward A. Kurker is an individual and an officer of the said corporate respondent. He formulates, directs and controls the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. His principal office and place of business 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, food and freezer food plans to members of the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the aforesaid freezers and food to be shipped from their aforesaid place of business in the State of Massachusetts, and from the various places of business of their suppliers located in other States of the United States to members of the purchasing public located in States other than the States in which the shipments originated, 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, respondents have disseminated, and caused the dissemination of, certain advertisements by the United States mail and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, 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 freezers, food and freezer food plans 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 represent and have represented, directly or by implication, that:

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1. Purchasers of respondents' freezer food plan can acquire their food requirements and a freezer for an amount equal to or less than what is now being paid for food alone.

2. For \$14.95 a week, under respondents' freezer food plan customers can feed a family of four and acquire a freezer.

3. Respondents' customers receive food at wholesale prices.

4. Respondents' customers can purchase Maxwell House Coffee at 58¢ a pound; Giant Tide at 69¢; Kraft Miracle Whip at 39¢ a quart, and other food items at similar, specified low prices, delivered in small lots as a part of their regular food orders.

5. Respondents have offices in thirteen cities.

6. Respondents have over 20,000 satisfied customers.

7. All of respondents' meats are inspected by the United States Department of Agriculture and graded either "USDA prime" or "USDA choice."

8. Respondents have advertised their freezer food plan in Life Magazine.

9. Respondents' freezers are unconditionally guaranteed for the lifetime of the purchaser.

PAR. 6. In truth and in fact:

1. Purchasers of respondents' freezer food plan cannot acquire their food requirements and a freezer for an amount equal to or less than what is now being paid for food alone.

2. Customers cannot, under respondents' freezer food plan, feed a family of four and acquire a freezer for \$14.95 a week.

3. Respondents' customers do not receive food at wholesale prices.

4. Customers cannot purchase Maxwell House Coffee at 58¢ a pound; Giant Tide at 69¢; Kraft Miracle Whip at 39¢ a quart, and other food items at similar, specified low prices delivered in small lots as a part of their regular food order. Said prices prevail only when said purchases are made in case lots, and the merchandise is picked up at respondents' place of business. These conditions are not disclosed in the advertising.

5. Respondents do not have offices in thirteen cities.

6. Respondents have substantially less than 20,000 satisfied customers.

7. All of respondents' meats are not inspected by the United States Department of Agriculture and all are not graded either "USDA prime" or "USDA choice."

8. Respondents have not advertised their freezer food plan in Life Magazine.

9. Respondents' freezers are not unconditionally guaranteed for the lifetime of the purchaser. Said guarantees that are provided with said freezers are subject to various conditions and limitations which are not disclosed in advertising.

Therefore, the advertisements referred to in Paragraph Four were and are misleading in material respects and constituted, and now constitute, false advertisements as such 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. In the 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 of the same general kind and nature as those sold by respondents.

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 the respondents by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, including the dissemination of respondents' 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 respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agree-

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

1. Respondent American Service & Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 335 South Washington Street, in the city of North Attleboro, State of Massachusetts.

Respondent Edward A. Kurker is an officer of the said corporation and his address is the same as that of the 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 respondents American Service & Supply Company, Inc., a corporation, and its officers, and Edward A. Kurker, individually and as an officer of the said corporation, 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 freezers, food or freezer food plans, or other merchandise in conjunction with freezers, food or freezer food plans, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That purchasers of respondents' freezer food plan can acquire their food requirements and a freezer for an amount equal to or less than what said customer has been paying for food alone;

2. That under respondents' freezer food plans, customers can feed their families for any specified amount unless respondents are able to establish the truth of any such representation;

3. That respondents' customers receive food at wholesale prices;

4. That respondents' customers can purchase any merchandise at specified prices, when such prices are based on purchases in specified quantities and under specified conditions, unless respondents clearly and conspicuously disclose in immediate conjunction with such representations the requirements of quantity purchase and other conditions;

5. a. That respondents have offices in thirteen cities;

b. That respondents have over 20,000 satisfied customers;

6. That any of respondents' meats are inspected by the United States Department of Agriculture or are graded either "USDA prime" or "USDA choice," unless respondents are able to establish the truth of such representations;

7. That respondents have advertised their freezer food plan in Life Magazine;

8. That respondents' freezers or other products or merchandise are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

B. Misrepresenting in any manner the prices of food, freezer food plans or merchandise; the savings that will be realized by purchasers of food or freezer food plans; the grade or quality of the food sold to purchasers; the size or extent of respondents' business; or the publications or manner in which respondents' freezer food plan has been advertised.

PART II

It is further ordered, That respondents American Service & Supply Company, Inc., a corporation, and its officers, and Edward A. Kurker, individually and as an officer of the said corporation, 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 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 of the representations or misrepresentations prohibited in Paragraphs A and B of Part I of this order;

2. Disseminating, or causing to be disseminated any advertisement by any means, for the purpose of inducing, or which is likely

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to induce, directly or indirectly the purchase of any food, or other 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 and B 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.
