

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
HOME DELIVERY FOOD SERVICE, INC., ET AL.

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

Docket C-912. Complaint, June 28, 1965—Decision, June 28, 1965

Consent order requiring a Springfield, Mass., seller of freezers and foods by means of a freezer-food plan, to cease using false pricing, savings, and guarantee claims and other misrepresentations in advertisements in newspapers, brochures, and by radio broadcasts, to sell its freezers and freezer-food plan.

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 Home Delivery Food Service, Inc., a corporation, and Bernard Brodsky and Abraham J. Tevelov, individually and as officers 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:

E. Which has a label affixed setting forth a generic name or fiber trademark, whether required or non-required, without marking a full and complete fiber content disclosure in accordance with the Act and Regulations the first time such generic name or fiber trademark appears on the label.

It is further ordered, That respondents Daly Bros., a partnership, and Charles F. Daly, Jack F. Daly, John S. Daly, Cornelius Daly, Catherine Matthewson, Marian Biord, and Annette Falk, individually and as copartners trading as Daly Bros., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, in the manner and form required, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

Complaint

67 F.T.C.

letters 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 freezers and food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

1. That, by use of the corporate name, "Home Delivery Food Service Inc.," separately, and in conjunction with oral representations to purchasers, they are engaged in the business of processing, storing, marketing and delivering food and food products.

2. That purchasers cannot purchase the food plan unless a freezer is purchased from the respondents or, if a purchaser did not buy a freezer, a substantial sum of money must be paid for membership in the food plan.

3. That purchasers of respondents' freezer-food plan can buy unlimited unrestricted quantities and selections of food through or from respondents at specific reduced prices and realize thereby "tremendous" savings.

4. That the advertised, reduced prices of the food plan are guaranteed for a period of three years and that a member of the food plan can continue food service after the freezer was paid for with no quality, service or price difference.

5. That the combined freezer and food payments under the freezer-food plan would be no more than the purchaser was then paying for food alone.

6. That the food order as advertised, would last four months.

7. That purchasers of the freezer-food plan would receive both the freezer and the food at payments from as low as \$9.99 and \$11.99 per week.

8. That, to purchasers of the freezer-food plan, dependent on the number of persons in the purchaser's family, certain specific amounts of annual savings were possible, based on figures from the U.S. Department of Agriculture, U.S. Bureau of Labor Statistics and the U.S. Bureau of Human Nutrition and Home Economics.

9. That the food orders are free of delivery charges.

10. That meats are "U.S. Choice" or "U.S. Prime" grades.

PARAGRAPH 1. Respondent Home Delivery Food Service, 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 233 Orange Street, Springfield, Massachusetts.

Respondents Bernard Brodsky and Abraham J. Tevelov are officers and directors of the said corporation, being president and vice-president respectively. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their addresses are currently as follows: Bernard Brodsky, 28 Daviston Street, Springfield, Massachusetts and Abraham J. Tevelov, 122 Wolfswamp Road, Longmeadow, Massachusetts.

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 in the taking of orders for food for delivery by others by means of a so-called freezer-food plan.

PAR. 3. Respondents cause the said freezers when sold, to be transported from their place of business in the State of Massachusetts, and the premises of suppliers of said freezers located in the State of Massachusetts and various other States of the United States to purchasers thereof located in the States of Massachusetts, Connecticut and other States of the United States. Respondents further cause the food, when sold through their food plans, to be transported from the suppliers thereof, located in the States of Massachusetts, Connecticut and New York, to the purchasers thereof, located in the States of Massachusetts, Connecticut and other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said freezers and food plans in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is, and has been, substantial.

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 freezer and food plan, by United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to the advertisements inserted in newspapers, brochures, circulars and

Complaint

67 F.T.C.

Labor Statistics and the U.S. Bureau of Human Nutrition and Home Economics.

9. The food orders are not free of delivery charges.
10. The substantial portion of the meats provided under the freezer-food plan are not "U.S. Choice" or "U.S. Prime" grade meats, inspected and graded as such by inspectors of the U.S. Department of Agriculture.
11. The individuals sent to help purchasers of the aforesaid freezer-food plans in planning their food orders are not Home Economists nor have they had sufficient or proper training to be called Home Economists.
12. The price of a new freezer or refrigerator-freezer is so inflated that the trade-in allowance of \$200 or any other amount is absorbed in said selling price and savings from said trade-in are not realized.
13. The freezers and refrigerator-freezers, supplied by respondents, do not have five-year Manufacturer's Warranty, nor are they guaranteed for a lifetime.
14. The freezers and refrigerator-freezers supplied by respondents are not commercial types nor built to commercial standards.
15. All foods do not carry an unconditional money-back guarantee.
16. A member, under the conditions of the respondents' referral plan is not able to qualify to win the major awards of a Caribbean Cruise or \$500 in cash or 100,000 Green trading stamps.

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 and freezer-food plans from the 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

1318

Complaint

11. That a member of respondents' freezer-food plan, upon request, would be provided with services of a Home Economist to assist in the preparation of food reorders.

12. That a trade-in allowance of \$200 will be given with the purchase of a new freezer or refrigerator-freezer combination.

13. That the freezer or refrigerator-freezer supplied by the respondents has a five-year Manufacturer's Warranty, or a lifetime guarantee.

14. That the freezer or refrigerator-freezer is a commercial type, or built to commercial standards.

15. That all foods ordered through the freezer-food plan carried an unconditional money-back guarantee.

16. That a member was eligible in connection with respondents' referral plans for awards which included, but were not limited, to a Caribbean Cruise, \$500 in cash or 100,000 Green trading stamps.

PAR. 7. In truth and in fact:

1. The respondents never were, nor are they now, engaged in the business of processing, storing, marketing or delivering food and food products.

2. The purchasers can purchase food without the necessity of purchasing a freezer or refrigerator-freezer or paying a membership fee in any amount.

3. Purchasers cannot buy unlimited or unrestricted quantities or selections of food through or from respondents at specific reduced prices or realize thereby tremendous or any other substantial savings in that the purchase of groceries was limited to \$25 per food order and that the selection of many food items could be made only by paying a higher price than the advertised price.

4. The advertised, reduced prices of the food plan are not guaranteed for a period of three years and the purchasers thereof cannot continue the food service after the freezer was paid for with no quality, service or price difference.

5. The combined freezer and food payments are higher than the prices the purchasers were paying for the food alone.

6. The food order as advertised is not sufficient to last for four months.

7. The purchasers of the freezer-food plan cannot receive both the freezer and the food at payments as low as \$9.99 and \$11.99 per week.

8. It is not possible for the purchasers of the freezer-food plan to realize certain specific amounts of annual savings, allegedly based on figures of the U.S. Department of Agriculture, U.S. Bureau of

sale and distribution of freezers, refrigerator-freezers and freezer-food plans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, through their corporate or trade name or otherwise, that they are engaged in the business of processing, storing, marketing, or delivering food or food products.

2. Representing, directly or by implication that:

(a) purchasers cannot buy food under respondents' advertised food plan without the purchase of a freezer or refrigerator-freezer from respondents, or without the payment of a membership fee;

(b) purchasers of respondents' freezer-food plan can buy unlimited or unrestricted quantities or selections of food through or from respondents at specific reduced prices; or realize thereby tremendous or other substantial savings;

(c) the advertised, reduced prices of the food plan, are guaranteed for a period of three years;

(d) members of the food plan could continue food service after the freezer was paid for with no quality, service or price difference;

(e) the combined freezer and food payments under the freezer-food plan would be no more than the purchaser was then paying for the food alone;

(f) any food order, as advertised, will be sufficient for the purchasers' needs for any specified period of time; unless the respondents are able to establish that the quantities of food or food products are sufficient for the purchasers' needs for the specified period of time;

(g) the purchasers of the freezer-food plan would receive both the freezer and the food at payments from as low as \$9.99 and \$11.99 per week;

(h) the purchasers of the freezer-food plan would realize specific amounts of annual savings, based on figures from the U.S. Department of Agriculture, U.S. Bureau of Labor Statistics and the U.S. Bureau of Human Nutrition and Home Economics;

(i) the food orders are free of delivery charges;

(j) the meats are "U.S. Choice" or "U.S. Prime," unless the respondents are able to establish that such meats are inspected and so graded by the U.S. Department of Agriculture;

1318

Decision and Order

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

1. Respondent Home Delivery Food Service, 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 233 Orange Street, in the city of Springfield, State of Massachusetts.

Respondents Bernard Brodsky and Abraham J. Tevelov are officers of said corporation. The address of Bernard Brodsky is 28 Daviston Street, Springfield, Massachusetts. The address of Abraham J. Tevelov is 122 Wolfswamp Road, Longmeadow, Massachusetts.

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 Home Delivery Food Service, Inc., a corporation, and its officers and Bernard Brodsky and Abraham J. Tevelov, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale,

directly or through any corporate or other device in connection with the offering for sale, sale and distribution of food or any purchasing plan involving the sale of 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 1 through 5 inclusive 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 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 5 inclusive 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.