

Complaint

IN THE MATTER OF

SUPREME FOOD PRODUCTS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 8699. Complaint, July 19, 1966—Decision, Oct. 19, 1966*

Consent order requiring a Philadelphia, Pa., food freezer corporation, to cease using false pricing, savings and quality claims and other deceptive practices in selling its food, freezers and freezer food plans.

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 Supreme Food Products Company, Inc., a corporation, and Benjamin Jay Berman, 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 Supreme Food Products Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 4246-4250 Market Street in the city of Philadelphia, State of Pennsylvania. It also has done business under the names of Supreme Frozen Food Company, Foremost Products Co., and Foremost Food Service.

Respondent Benjamin Jay Berman is an individual and officer of Supreme Food Products Company, Inc. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address 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

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freezers and food to be shipped from their aforesaid place of business in the State of Pennsylvania, and from the various places of business of their suppliers located in the State of Pennsylvania, to members of the purchasing public 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, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said food and freezer food plans, by the United States mails 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 advertisement concerning the said food and freezer food plans by various means, including but not limited to 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 advertisement disseminated as aforesaid and by the oral statements of sales representatives, respondents have represented, directly or by implication:

1. That purchasers of their freezer food plan can buy their usual food requirements and a freezer for the same or a less amount of money than they have been paying for food alone.
2. That purchasers of respondents' freezer food plan will save enough money on the purchase of their food to pay for the freezer thereby receiving a freezer free of charge.
3. That the totals shown in respondents' sales contracts include all charges the purchaser must pay.
4. That respondents' regular and usual food prices are those charged for the initial order of food.
5. That purchasers can obtain all of their food needs through respondents' freezer food plan.
6. That all the food products sold by respondents are nationally advertised brands.
7. That the freezers sold by respondents are "frost free."
8. That all meats sold under respondents' freezer food plan are United States Government inspected and graded "choice."

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9. That purchasers of respondents' freezer food plans have but one payment per month to make covering both food and freezer.

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

11. That purchasers can become members of respondents' freezer food plan on a trial basis.

12. That purchasers of the aforesaid freezer food plan can sign blank contracts and notes with the assurance that when such instruments are filled in the terms and conditions and amounts as set forth therein will be the same as agreed upon and disclosed at the time of the sale.

PAR. 6. In truth and in fact:

1. Purchasers of respondents' freezer food plan cannot buy their usual food requirements and a freezer for the same or a less amount of money than such purchasers have paid for food alone.

2. Purchasers of respondents' freezer food plan do not save enough money on the purchase of their food to pay for the freezer and in fact must purchase and pay for said freezer.

3. The totals in respondents' sales contracts do not include all charges the purchaser must pay. Finance charges are later added to the amount which the purchaser must pay.

4. Respondents' regular and usual food prices are not those charged for the initial order of food. Respondents use lower than normal prices in the initial food order to induce purchasers to become members of their freezer food plan. On subsequent food orders customers pay the normal higher prices for food and the purported savings which induced purchasers to become members of the freezer food plan are no longer available.

5. Purchasers cannot buy all of their food needs through respondents' freezer food plan.

6. All the foods sold by respondents are not nationally advertised brands.

7. Freezers sold in connection with respondents' freezer food plan are not frost free, but accumulate frost and require manual defrosting.

8. All meats sold under respondents' freezer food plan are not United States Government inspected nor are they all United States Government graded "choice."

9. Purchasers of respondents' food plan are required to make two monthly payments, one for food and one for the freezer.

10. In many instances the initial food order supplied by re-

spondents, will not last for four months but lasts for a substantially shorter period of time.

11. Purchasers of respondents' freezer food plan cannot enroll in such plan on a trial basis. The contracts entered into and promissory notes signed by them are noncancellable and irrevocable and they are bound by the terms thereof.

12. All the terms and conditions are not disclosed at the time of sale. In many instances when contracts and notes which have been signed in blank are filled in, the terms, conditions or amounts as set forth therein were not the same as agreed upon and disclosed at the time of the sale.

Therefore, the advertisements referred to in Paragraph Six 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. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of freezers, food and freezer food plans.

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 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 the 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 the 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 issued its complaint on July 19, 1966, charging the respondents named in the caption hereof with viola-

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tion of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of Section 2.4(d) of its rules that the consent order procedure shall not be available after issuance of complaint; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts of this proceeding, 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 aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Supreme Food Products Company, Inc., is a corporation organized, existing and doing business under by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 4246-4250 Market Street in the city of Philadelphia, State of Pennsylvania.

Respondent Benjamin Jay Berman is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of 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 Supreme Food Products Company, Inc., a corporation, and its officers, trading under its own name or as Supreme Frozen Food Company, Foremost Food Products Co., or Foremost Food Service or under any other trade name or names, and Benjamin Jay Berman, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other

device, in connection with offering for sale, sale or distribution of 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 that:

1. Purchasers of their freezer food plan can buy their usual food requirements and a freezer for the same or a lesser amount of money than they have been paying for said food requirements alone.

2. Purchasers of their freezer food plan will save enough money on the purchase of their usual food requirements to pay for the freezer.

3. Food prices charged by respondents for the initial order are respondents' regular and usual price for each such item: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said initial prices are respondent's regular and usual prices for each such item at the time of the initial order.

4. Purchasers can obtain all of their food needs through respondents' freezer food plan.

5. All of respondents' food products, or any category thereof, are nationally advertised brands: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that all such products, or any category thereof, are nationally advertised brands in conformity with the representation made.

6. The freezers sold by respondents are frost free: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such freezers are frost free.

7. The meat sold by respondents is either United States Government inspected or graded: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the meat so described has been inspected or graded in conformity with the representation made.

8. That purchasers have but one payment to make covering both food and freezer: *Provided, however*, That it shall be a defense in any enforcement proceeding

instituted hereunder for respondents to establish that only one payment is required for both food and freezer.

9. Any quantity of food ordered by the purchaser will be sufficient to last such purchaser any stated or specified period of time: *Provided, however, That* it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any representation in the foregoing respect constituted a bona fide estimate by respondents' representative of the purchaser's food requirements for the stated period of time based upon information secured in good faith from the purchaser.

10. Purchasers can become members of respondents' freezer food plan on a trial basis.

B. Misrepresenting in any manner the prices or the grade or quality of food sold by respondent or the savings realized by purchasers of respondents' food, freezers or freezer food plans.

C. Inducing purchasers to sign any contract to purchase, promissory note or other instrument which does not at the time of signing contain all the terms and conditions of the transaction and the total charges which the purchaser must pay.

PART II

It is further ordered, That respondents Supreme Food Products Company, Inc., a corporation, and its officers, trading under its own name or as Supreme Frozen Foods Company, Foremost Food Products Co., or Foremost Food Service, or any other trade name or names, and Benjamin Jay Berman, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with 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 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, B and C of Part I of this order.

2. Disseminating or causing to be disseminated any adver-

tisement 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 A, B and C of Part I of this order.