

Complaint

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IN THE MATTER OF

FOX VALLEY FOODS, INC., ET AL.

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

Docket C-1148. Complaint, Dec. 12, 1966—Decision, Dec. 12, 1966

Consent order requiring an Appleton, Wisc., food and freezer distributor to cease falsely advertising its products by using deceptive savings claims, misleading guarantees and false magazine endorsements.

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 Fox Valley Foods, Inc., a corporation, and Harry Schlichting, 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 Fox Valley Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 1131 East Wisconsin Avenue in the city of Appleton, State of Wisconsin.

Respondent Harry Schlichting is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the 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 and food 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, freezers and food, when sold, to be shipped from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States, and maintain, and at all

times mentioned herein have maintained, a 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 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 advertisements by various means, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. By means of advertisements disseminated as aforesaid and by oral statements of sales representatives respondents have represented, directly or by implication:

1. That the purchaser of respondents' freezer food plan will save enough money on the purchase of food to pay for a freezer.

2. That the purchaser of respondents' freezer food plan can buy meat and other food products at wholesale or at prices significantly less than what he has been paying for such products.

3. That respondents raise their own cattle and vegetables enabling the freezer food plan purchaser to buy food products without payment of middleman's costs.

4. That the initial food order supplied by respondents will last a specified time period, usually four months.

5. That respondents fully and unconditionally guarantee the food supplied each purchaser and will give full credit or a refund on any food considered unsatisfactory by the purchaser.

6. That respondent corporation is a member of the Appleton, Wisconsin, Chamber of Commerce.

7. That respondents' freezer food plan is recommended by Parents' Magazine.

8. That the terms and conditions of the sale are as agreed upon and as disclosed at the time of the sale, and that a purchaser can sign a contract, note or other instrument in blank, or partly in blank, with assurance that when such an instrument is filled in the terms and conditions and amounts will be the same as agreed upon and disclosed at time of sale.

PAR. 6. In truth and in fact:

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1. The purchaser of respondents' freezer food plan does not save enough money on the purchase of food to pay for a freezer.
2. The prices charged for meat and other food products are not always wholesale, if ever, and are not significantly less, if at all, than what the purchaser has been paying for such products.
3. The purchaser of respondents' freezer food plan does not save the middleman's costs as respondents purchase the meat and other food products supplied their purchasers from others.
4. Purchasers do not always receive an initial food order which lasts four months or other time specified. In some instances the initial food order lasts for a substantially shorter period of time than specified.
5. Respondents do not fully or unconditionally guarantee the food supplied their purchasers and will not give full credit or refund on food considered unsatisfactory by such purchasers.
6. Respondent corporation is not, and has not been, a member of the Appleton, Wisconsin, Chamber of Commerce.
7. Respondents' freezer food plan is not, and has not been, recommended by Parents' Magazine.
8. All the terms and conditions are not always disclosed at the time of sale. In some instances, contracts, notes or other instruments are signed in blank, or partly in blank, and thereafter filled in so that the terms, conditions or amounts are not the same as previously agreed upon and disclosed at the time of sale.

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 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 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 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 constituted, and now constitute,

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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 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 Fox Valley Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1131 East Wisconsin Avenue, in the city of Appleton, State of Wisconsin.

Respondent Harry Schlichting is an officer 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 Fox Valley Foods, Inc., a corporation, and its officers, and Harry Schlichting, 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

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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 will save enough money on the purchase of food to pay for a freezer.

2. Food prices charged by respondents are wholesale or are significantly less than what the purchaser has been paying.

3. Respondents raise their own cattle or vegetables.

4. Purchasers of respondents' freezer food plan save the middleman's costs.

5. Food supplied to a purchaser will be sufficient to last any stated or specified period of time.

6. Any freezer food or food plan is 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.

7. Respondent corporation is a member of the Appleton, Wisconsin, Chamber of Commerce; or falsely representing in any manner that respondents are affiliated with any organization or person.

8. Respondents' freezer food plan is recommended by Parents' Magazine; or falsely representing in any manner that respondents or any food, freezer or freezer food plan distributed by them are recommended or endorsed by any organization or person.

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

C. Obtaining a purchaser's signature on a contract, note, or other instrument which does not at that time contain all the terms and conditions of the transaction and total charges which the purchaser is to pay.

PART II

It is further ordered, That respondents Fox Valley Foods, Inc., a corporation, and its officers, and Harry Schlichting, 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 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 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 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.
