

Complaint

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IN THE MATTER OF

ANGUS FREEZER MEATS, INC., TRADING AS BLACK ANGUS
FREEZER MEATS ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8720. Complaint, Nov. 4, 1966—Decision, Feb. 16, 1967*

Order requiring three affiliated meat dealers of Washington, D.C., Philadelphia, Pa., and Norfolk, Va., to cease using bait advertising, misrepresenting the grade and quality of their meat, falsely representing that their products are graded by the United States Department of Agriculture, and making other deceptive claims.

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 Angus Freezer Meats, Inc., a corporation trading as Black Angus Freezer Meats; Steakland Freezer Meats, Inc., a corporation; Black Angus Freezer Meats of Virginia, Inc., a corporation; and David W. Ewing, individually and as an officer of said corporations; 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 Angus Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 513 Morse Street, NE., in the city of Washington, District of Columbia, where it trades and does business as Black Angus Freezer Meats.

Respondent Steakland Freezer Meats, 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 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent Black Angus Freezer Meats of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 151 East Little Creek Road, in the city of Norfolk, State of Virginia.

Respondent David W. Ewing is an individual and an officer of the said corporate respondents. He formulates, directs and controls the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. His principal office and place of business is located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act to members of the purchasing public.

PAR. 3. 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, including advertisements in daily newspapers, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical of the statements appearing in the newspaper advertisements disseminated as aforesaid are the following:

(The Washington Post, 10-1-65)

[Depiction of a Black Steer] Black Angus' Fancy Beef Sides 31¢ lb. with volume orders.

IOWA BEEF

* * * Have your meat cut and wrapped at your convenience. Black Angus Fancy Hindquarters with Steak and Roast Sections * * * 36¢ lb. with volume orders.

Black Angus Freezer Meats

(Washington Daily News, 7-5-65)

Black Angus' Special. Consists of potentially sirloin, T-bone, round, club steak, roasts, porterhouse, etc., 29¢ lb. U.S.D.A. Choice Hindquarters with roast sections 49¢ lb. Special-Beef Orders 69¢ lb. and up.

Black Angus Freezer Meats

(The Philadelphia Inquirer, 9-19-65)

Western BEEF Round-up. A carload of top quality beef. Guaranteed tender, delicious beef halves, includes all top cuts of steaks and roasts

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29¢ lb. Example: 300 lbs. only \$6.69 a week for 13 weeks. 2 Convenient locations.

Steakland Freezer Meats

(The Virginian-Pilot, 11-12-65)

"Black Angus" Beef Sale—[depiction of Black Steer]—29¢ lb. Western Fed Beef Sides including all Steaks, Roasts & Cuts. U.S.D.A. Choice beef orders 100 lbs. and up 33¢ lb.

Black Angus Freezer Meats

PAR. 5. Through the use of the aforesaid advertisements and others of similar import and meaning not specifically set out herein, respondents have represented, directly and by implication:

1. That the offer to sell beef at 29, 31, and 33 cents per pound is a bona fide offer to sell such merchandise at these prices.

2. That the beef offered at the prices aforesaid is top quality beef and that it has been graded as "choice" by the United States Department of Agriculture.

3. That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, porterhouse, roasts and other top quality cuts of beef.

4. That the beef offered in said advertisements comes entirely or primarily from the breed of cattle known as Black Angus.

5. That the beef offered in said advertisements will be cut and wrapped at the purchaser's convenience.

PAR. 6. In truth and in fact:

1. The offer to sell beef at 29, 31 and 33 cents per pound is not a bona fide offer but, on the contrary, is made for the purpose of inducing the public to come to respondents' places of business. When customers respond and go to said places of business, respondents' employees and representatives point out to said customers that there will be an excessive weight loss in trimming and cutting said beef and otherwise disparage the beef offered at the prices aforesaid and attempt to, and usually do, sell beef at higher prices to said customers.

2. The beef offered at 29, 31 and 33 cents per pound is not "choice" or top quality beef and it has not been so graded by the United States Department of Agriculture.

3. The beef offered at the prices aforesaid does not consist primarily of sirloin, T-bone, roasts, porterhouse and other top quality cuts of beef.

4. The beef offered in said advertisements does not come en-

tirely or primarily from the breed of cattle known as Black Angus.

5. The beef offered in said advertisements is not, in many instances, cut and wrapped at the purchaser's convenience; on the contrary, it is cut and wrapped at respondents' convenience.

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.

PAR. 7. The dissemination by respondents of the false advertisements, as aforesaid, constituted and now constitutes, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Mr. William Hill supporting the complaint.

Mr. Samuel Kravitz, Philadelphia, Pa., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JANUARY 6, 1967

This proceeding was commenced by the issuance of a complaint on November 4, 1966, charging the corporate respondents and David W. Ewing, individually and as an officer of said corporations, with unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, by using bait advertising, by misrepresenting the grade and quality of their beef, and by making other false claims concerning their meat products.

After being served with the said complaint, the corporate respondents and the individual respondent appeared by counsel and filed their joint answer on December 2, 1966. In their answer they admitted a number of the specific allegations in the complaint, but denied generally the illegality of the practices set forth in the complaint.

On December 14, 1966, respondents by their attorney filed a Motion to Withdraw Answer to Complaint and requested leave to file Substituted Answer. In their Substituted Answer respondents set forth that they did not elect to deny or to challenge the averments contained in the complaint, that they waived any further proceedings and that they agreed that the order attached to the complaint be entered in this matter. This motion was unopposed by complaint counsel. On January 3, 1967, the hearing

examiner issued an order permitting respondents to withdraw their previous answer and to file in lieu thereof their Substituted Answer, dated December 14, 1966.

Based upon the entire record consisting of the complaint, Substituted Answer, and other matters of record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order:

FINDINGS OF FACT

1. Respondent Angus Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 513 Morse Street, NE., in the city of Washington, District of Columbia, where it trades and does business as Black Angus Freezer Meats.

Respondent Steakland Freezer Meats, 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 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent Black Angus Freezer Meats of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 151 East Little Creek Road, in the city of Norfolk, State of Virginia.

Respondent David W. Ewing is an individual and an officer of the said corporate respondents. He formulates, directs and controls the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. His principal office and place of business is located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act to members of the purchasing public.

3. 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, including advertisements in daily newspapers, for the purpose of inducing, and which were likely to induce, directly or

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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 in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Typical of the statements appearing in the newspaper advertisements disseminated as aforesaid are the following:

(The Washington Post, 10-1-65)

[Depiction of a Black Steer] Black Angus Fancy Beef Sides 31¢ lb. with volume orders.

IOWA BEEF

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Black Angus' Special. Consists of potentially sirloin, T-bone, round, club steak, roasts, porterhouse, etc., 29¢ lb. U.S.D.A. Choice Hindquarters with roast sections 49¢ lb. Special-Beef Orders 69¢ lb. and up.

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Western BEEF Round-up. A carload of top quality beef. Guaranteed tender, delicious beef halves, includes all top cuts of steaks and roasts 29¢ lb. Example: 300 lbs. only \$6.69 a week for 13 weeks. 2 Convenient locations.

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Black Angus Freezer Meats

5. Through the use of the aforesaid advertisements and others of similar import and meaning not specifically set out herein, respondents have represented, directly and by implication:

(1) That the offer to sell beef at 29, 31, and 33 cents per pound is a bona fide offer to sell such merchandise at these prices.

(2) That the beef offered at the prices aforesaid is top quality beef and that it has been graded as "choice" by the United States Department of Agriculture.

(3) That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, porterhouse, roasts and other top quality cuts of beef.

(4) That the beef offered in said advertisements comes entirely or primarily from the breed of cattle known as Black Angus.

(5) That the beef offered in said advertisements will be cut and wrapped at the purchaser's convenience.

6. In truth and in fact:

(1) The offer to sell beef at 29, 31 and 33 cents per pound is not a bona fide offer but, on the contrary, is made for the purpose of inducing the public to come to respondents' places of business. When customers respond and go to said places of business, respondents' employees and representatives point out to said customers that there will be an excessive weight loss in trimming and cutting said beef and otherwise disparage the beef offered at the prices aforesaid and attempt to, and usually do, sell beef at higher prices to said customers.

(2) The beef offered at 29, 31 and 33 cents per pound is not "choice" or top quality beef and it has not been so graded by the United States Department of Agriculture.

(3) The beef offered at the prices aforesaid does not consist primarily of sirloin, T-bone, roasts, porterhouse and other top quality cuts of beef.

(4) The beef offered in said advertisements does not come entirely or primarily from the breed of cattle known as Black Angus.

(5) The beef offered in said advertisements is not, in many instances, cut and wrapped at the purchaser's convenience; on the contrary, it is cut and wrapped at respondents' convenience.

Therefore, the advertisements referred to in Finding No. 5 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.

7. The hearing examiner also finds that 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 respondents' products by reason of said erroneous and mistaken belief.

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, 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, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction of and over respondents and of the subject matter of this proceeding.

3. The complaint herein states a cause of action and this proceeding is in the public interest.

The order, as hereinafter set forth, follows the form of the order contained in the complaint and is also the order agreed to by the parties.

After due consideration, the hearing examiner believes that such order is appropriate and may be entered.

ORDER

It is ordered, That respondents Angus Freezer Meats, Inc., a corporation trading as Black Angus Freezer Meats, or under any other name or names, and its officers; Steakland Freezer Meats, Inc., a corporation, and its officers; Black Angus Freezer Meats of Virginia, Inc., a corporation, and its officers; and David W. Ewing, individually and as an officer of said corporations, 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 beef or other meat products, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, 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 represents, directly or by implication:

1. That any such products are offered for sale when such offer is not a bona fide offer to sell such products at the price or prices stated.

2. That beef offered at 29, 31 or 33 cents per pound, or at any other comparatively low price per pound, is "choice" or top quality meat; or that such beef has been so graded by the United States Department of Agriculture.

3. That the beef offered at the prices aforesaid con-

sists primarily of sirloin, T-bone, roasts, porterhouse or other top quality cuts of meat.

4. That the beef offered for sale comes entirely or primarily from the Black Angus breed of cattle: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted under subparagraphs 2, 3 or 4 of Paragraph A of this order for respondents to establish that the advertised beef conforms to the representations made.

5. That the beef or meat products offered for sale will be cut and trimmed at the convenience of the purchaser: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they in fact comply with such representation.

B. Disseminating, or causing the dissemination of, 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 misrepresents in any manner the quality or grade of any beef or other meat product.

C. Discouraging the purchase of, or disparaging in any manner, any products which are advertised or offered for sale in advertisements disseminated or caused to be disseminated in commerce as "commerce" is defined in the Federal Trade Commission Act.

D. 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 respondents' products 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 above.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review, and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner

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shall, on the 16th day of February 1967, become the decision of the Commission.

It is further ordered, That Angus Freezer Meats, Inc., a corporation, trading as Black Angus Freezer Meats; Steakland Freezer Meats, Inc., a corporation; Black Angus Freezer Meats of Virginia, Inc., a corporation; and David W. Ewing, individually and as an officer of said corporations, shall within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.
