

IN THE MATTER OF
AMERICAN FOODS, INC., ET AL.

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

Docket C-1377. Complaint, July 10, 1968—Decision, July 10, 1968

Consent order requiring five affiliated sellers of freezer-food plans to cease delaying or failing to deliver purchasers' orders, substituting inferior quality merchandise, and failing to disclose that sales contracts might be sold to finance companies.

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 Foods, Inc., a corporation (formerly American Food Plan of Minnesota, Inc.), American Food Plan of Iowa, Inc., a corporation, American Foods of Nebraska, Inc., a corporation, American Foods, Inc., of South Dakota, a corporation, American Foods of North Dakota, Inc., a corporation, and Walter L. Lange, individually and as an officer of said corporations, trading and doing business as American Foods, Inc., American Foods, American Food Plan, American Food Plan, Inc., and American Foods Service, Inc., 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 American Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 1255 East Highway 36, St. Paul, Minnesota, which corporation was formerly known as American Food Plan of Minnesota, Inc.

Respondent American Food Plan of Iowa, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal place of business located at 337 University Avenue, Des Moines, Iowa.

Respondent American Foods of Nebraska, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place

of business located at Post Office Box 307, South Sioux City, Nebraska.

Respondent American Foods, Inc., of South Dakota is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Dakota, with its office and principal place of business located at 1815 East 10th Street, Sioux Falls, South Dakota.

Respondent American Foods of North Dakota, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its office and place of business located at 737 20th Street, N., Fargo, North Dakota.

Respondent Walter L. Lange is the chief executive officer of all the corporate respondents and he formulates, directs and controls the acts and practices of said respondents including the acts and practices hereinafter set forth. In addition, in his individual capacity from time to time, he has traded and done business as American Foods, Inc., American Foods, American Food Plan, American Food Plan, Inc., and American Foods Service, Inc. His business address is the same as that of the corporate address of American Foods, Inc., of St. Paul, Minnesota, described above. His home address is 1282 Sherburne Avenue, St. Paul 4, Minnesota.

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 foods, as "food" is defined in the Federal Trade Commission Act, 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, their freezers and food when sold, to be shipped from their places of business respectively in the States of Minnesota, Iowa, Nebraska, South Dakota, and North Dakota to purchasers thereof 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, 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, respond-

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ents have disseminated, and caused the dissemination of, certain advertisements concerning the said food and freezer food plan by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements by means of circulars, brochures, 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 food and freezers 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 have represented, directly or by implication:

1. That food order forms and current price lists will be forwarded to purchasers of freezer food plans or memberships in response to telephone or post card requests promptly or by return mail;

2. That food and grocery orders received from purchasers of freezer food plans or memberships will be filled promptly, placed on trucks and normally delivered within a week, ten days, or two-week period after receipt of order by respondents;

3. That food or other merchandise will be delivered to properly enrolled, nondefaulting purchasers of freezer food plans or memberships;

4. That name brand, high quality food and graded meats will be delivered to purchasers of freezer food plans or memberships in response to their orders;

5. That freezer, membership, and food contract payments, as well as related promissory note payments by purchasers of freezer food plans or memberships will be paid only to respondents.

PAR. 7. In truth and in fact:

1. Food order forms and current price lists were not forwarded promptly in response to requests by purchasers of freezer food plans or memberships. Such requests were frequently ignored or were not answered until one or two months after requests were mailed;

2. Food and grocery orders received from purchasers of freez-

er food plans or memberships were not filled promptly by respondents. Deliveries of such orders by respondents were frequently delayed as much as two to three months from the date the order was requested:

3. Food or other merchandise was not delivered to properly enrolled, nondefaulting purchasers of freezer food plans or memberships in response to orders made by such purchasers;

4. Name brand, high quality food and graded meats were not delivered as requested to purchasers of freezer food plans or memberships in response to their orders. Substitutions of different or lesser quality food or other merchandise were delivered to purchasers without prior acceptance by such purchasers;

5. Payments for memberships, freezers or food by purchasers of freezer food plans or memberships are not necessarily made only to respondents but are frequently required to be made to finance companies to which respondents have assigned contracts or negotiated promissory notes.

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. In the course and conduct of their business respondents have caused, and do cause, purchasers to sign promissory notes in blank or in such other form that does not set forth the full purchase price and all of the terms and conditions connected with the purchase. Such acts and practices by respondents have the capacity and tendency to mislead and deceive purchasers in regard to the total purchase price and in regard to the terms and conditions connected therewith.

PAR. 9. 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 respondents by reason of said erroneous and mistaken belief.

PAR. 10. 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 con-

stituted, 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts sets forth in the aforesaid draft of complaint, a statement that the signing said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Foods, Inc., which corporation was formerly known as American Food Plan of Minnesota, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 1255 East Highway 36, St. Paul, Minnesota.

Respondent American Food Plan of Iowa, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 337 University Avenue, Des Moines, Iowa.

Respondent American Foods of Nebraska, Inc., is a corpora-

tion organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at Post Office Box 307, South Sioux City, Nebraska.

Respondent American Foods, Inc., of South Dakota is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Dakota, with its office and principal place of business located at 1815 East 10th Street, Sioux Falls, South Dakota.

Respondent American Foods of North Dakota, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, with its principal place of business located at 737 20th Street, N., Fargo, North Dakota.

Respondent Walter L. Lange is an officer of said corporations; his business address is the same as the corporate address of American Foods, Inc.; and his home address is 1282 Sherburne Avenue, St. Paul 4, Minnesota.

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 Foods, Inc., a corporation, American Food Plan of Iowa, Inc., a corporation, American Foods of Nebraska, Inc., a corporation, American Foods, Inc. of South Dakota, a corporation, American Foods of North Dakota, Inc., a corporation, and their officers, and Walter L. Lange, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of freezers, food or freezer food plans, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that food order forms and current price lists will be forwarded in response to telephone or post card requests to purchasers of freezer food plans or memberships promptly or by return mail: *Provided however*, That it shall be a defense in any enforcement procedure instituted hereunder for respondents to establish that such order forms and price lists were in fact forwarded promptly upon request or by return mail;

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2. Representing, directly or by implication that if a freezer food plan or membership is purchased, food and grocery orders received from purchasers of food plans or memberships will be filled promptly, or normally delivered within a week (or any other stated brief period of time) after being placed: *Provided however*, That it shall be a defense in any enforcement procedure instituted hereunder for respondents to establish that such orders were filled and delivered within the time, or times represented;

3. Failing or refusing to deliver food or other merchandise ordered by properly enrolled, nondefaulting purchasers of freezer food plans or memberships;

4. Delivering or substituting food or other merchandise of different or lesser quality (a) than that represented as being available to prospective purchasers at the time they were induced to become purchasers of freezer food plans or memberships; or (b) than food or other merchandise actually ordered by purchasers of freezer food plans or memberships;

5. Failing to disclose orally at the time of the sale and in writing on any conditional sales contract, promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser that:

(a) Such conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party;

(b) If such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like;

6. Inducing purchasers of a freezer food plan, food, freezers or other merchandise to sign any promissory note or instrument of like nature unless said instrument contains all of the terms and conditions of the promise and unless purchasers are fully apprised of the nature and contents thereof.

PART II

It is further ordered, That respondents American Foods, Inc., a corporation, American Food Plan of Iowa, Inc., a corporation, American Foods of Nebraska, Inc., a corporation, American

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Foods, Inc., of South Dakota, a corporation, American Foods of North Dakota, Inc., a corporation, and their officers, and Walter L. Lange, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or any other device, in or in connection with the offering for sale, sale or distribution of any food or 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 representation or misrepresentation prohibited in Part I of this order.

2. Disseminating or causing the dissemination of 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 Part I of this order.

3. Failing to deliver a copy of this Order to Cease and Desist to all operating divisions of each corporate respondent, and to all officers, managers and salesmen, both present and future, of each franchised dealer, distributor and licensee; and to any other person now engaged or who becomes engaged in the sale of meat or other food products as respondents' agent, representative or employee; and to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

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.

IN THE MATTER OF
ALLIED-KANTOR TEXTILE & NOTIONS, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION AND THE
WOOL PRODUCTS LABELING ACTS

Docket C-1373. Complaint, July 12, 1968—Decision, July 12, 1968

Consent order requiring a New York City converter of wool products to
cease misrepresenting the fiber content of its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Allied-Kantor Textile & Notions, Inc., a corporation, and Harry Rosenshein and Morris Kantor, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 as follows:

PARAGRAPH 1. Respondent Allied-Kantor Textile & Notions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 535 Eighth Avenue, New York, New York.

Individual respondents Harry Rosenshein, and Morris Kantor are officers of said corporation. They formulate, direct and control the acts, practices and policies of said corporation. Their office and principal place of business is the same as that of said corporation.

The respondents are converters of wool products which include, among other items, woolen interlinings.

PAR. 2. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.