

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

Docket C-1479. Complaint, Jan. 21, 1969—Decision, Jan. 21, 1969

Consent order requiring three affiliated meat retailers in Massachusetts to cease using bait advertising, misrepresenting the price, quantity and quality of their products, and the terms and requirements of their installment payment contracts.

Complaint

75 F.T.C.

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 Western Star Beef, Inc., a corporation, and Great Western Beef Provisioners, Inc., a corporation, and Western Star Beef of Worcester, Inc., a corporation, and James J. Kintigos and James J. Weldon, Jr., individually and as officers 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 Western Star Beef, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, in the city of Tewksbury, Commonwealth of Massachusetts.

Respondent Great Western Beef Provisioners, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, Tewksbury, Massachusetts.

Respondent Western Star Beef of Worcester, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 276 Boston Turnpike, Route 9, Shrewsbury, Massachusetts.

Respondents James J. Kintigos and James J. Weldon, Jr., are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is 2136 Main Street, Tewksbury, 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 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 do now disseminate 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 of general circulation, for the purpose of inducing and which are 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 are 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 advertisements disseminated as aforesaid are the following:

BEEF (picture of a lean steak)
U.S.D.A. inspected
BEEF HALVES
ONLY 39¢ lb.
AVG. 350 lbs. & up.

* * * * *
U.S.D.A. PRIME BEEF HALVES
"THIS IS THE FINEST"
45¢ lb.

* * * * *
NO MONEY DOWN
105 DAYS NO INTEREST or carrying charge
OR TAKE UP TO
12 MONTHS TO PAY

* * * * *
HARVEST SALE BEEF
U.S.D.A. PRIME BEEF HALVES
ONLY 45¢ lb.
THE FINEST.

* * * * *
U.S.D.A. CHOICE
BEEF HALVES
ONLY 45¢
TENDER DELICIOUS
350 lb. Avg.

* * * * *
IF YOU'RE GUNNING FOR BEAR . . . YOU
DON'T WANT A MOUSE!
IF YOU'RE HUNTING FOR BEEF,
YOU DON'T WANT COW!
U.S.D.A. CHOICE
TENDER DELICIOUS
EXTRA LEAN

Complaint

75 F.T.C.

BEEF HALVES

41¢ lb.

350 lbs. and up

U.S.D.A. PRIME

BEEF HALVES

THIS IS THE FINEST

45¢ lb.

USE OUR BUDGET

ACCOUNT

105 Days No Interest

Or Carrying Charges.

Or take up to 12

Months to Pay.

* * * * *

HERE

WE CHOP BEEF PRICES

U.S.D.A. PRIME

EXTRA LEAN

BEEF HALVES

THE FINEST

350 lbs. Avg.

47¢ lb.

U.S.D.A. CHOICE

EXTRA LEAN

BEEF HALVES

TENDER DELICIOUS

350 lbs. Avg.

45¢ lb.

* * * * *

WESTERN STAR BEEF STAMPEDE

U.S.D.A.

EXTRA LEAN

CHOICE

BEEF HALVES . . .

\$5.63 PER WEEK

EXAMPLE

350 LBS. FOR

SIX FULL MONTHS

45¢ per LB.

(picture of thick, lean, T-bone steak)

U.S.D.A.

EXTRA LEAN

PRIME

BEEF HALVES . . .

\$6.33 PER WEEK

EXAMPLE

350 LBS. FOR

SIX FULL MONTHS

47¢ per LB.

* * * * *

WE SPECIALIZE IN
BEEF ONLY (picture of two lean steaks)
 The finest you can buy . . .
 At a price everyone
 can afford . . .
 U.S.D.A. CHOICE DELICIOUS LEAN
 BEEF HALVES
 Example: 350 lbs. at 43¢ for 9 months . . .

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

(1) Offers set forth therein are bona fide offers to sell U.S.D.A. Choice and U.S.D.A. Prime beef halves at the advertised price per pound, and that a beef half so advertised includes the hind quarter of the beef carcass, and all cuts of meat available therefrom.

(2) The advertised prices are the total prices per pound for the meat offered.

(3) Purchasers may arrange to make deferred payments for their purchases directly to the respondent, and no interest and/or carrying charges will be made on any such deferred payment obligation.

PAR. 6. In truth and in fact:

(1) The offers set forth in said advertisements, and other offers not set forth in detail herein, were not, and are not, bona fide offers to sell beef halves which include the hind quarter of the beef carcass at the advertised price, but, to the contrary, were, and are, made to induce prospective purchasers to visit respondents' stores and places of business for the purpose of purchasing such products. When prospective purchasers in response to said advertisements attempt to purchase a beef half containing the hind quarter of a beef carcass and/or the cuts of beef available therefrom at the advertised prices salesmen of respondents inform them that the advertised prices for "beef halves" apply only to the two fore quarters of a beef carcass, and to the cuts available therefrom; and such salesmen make no effort to sell such beef fore quarters but, in fact, disparage them in a manner calculated to discourage the purchase thereof, and attempt to and frequently do, sell much higher priced meats.

(2) The advertised prices are not the total prices per pound for the meat offered; to the contrary, purchasers of the advertised

meat are required to pay an additional charge for the cutting and wrapping of said meat.

(3) Purchasers learn, often after purchase, that payments on their installment contracts including interest and/or carrying charges must be made to the finance company with whom such contract are placed by respondents for collection.

PAR. 7. Respondents by their advertisements disseminated as aforesaid have represented, and now represent, directly, by implication, and by failure to disclose the average weight loss in the meat purchased due to cutting, dressing and trimming, that the beef halves advertised will weigh approximately 350 pounds or more when cut and trimmed, and/or that other meat purchases when ready for home freezer storage will equal or approximate their total purchase weight.

Said representations were, and are, contrary to the fact as the said "beef halves" and other beef carcass sections are sold by the pound at their carcass or uncut weight; the cutting, trimming and removing of fat, bone and waste materials greatly reduces the total weight, and a meat order when cut, trimmed and ready for home freezer storage is not equal to, nor does it approximate the total weight of said meat at the time of purchase.

Therefore, the advertisements referred to in Paragraphs Four and Seven 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 representations referred to in Paragraphs Five and Seven 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 such statements and representations were, and are, true and into the purchase of substantial quantities of the aforesaid products, including higher priced products because of said mistaken and erroneous 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 constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and having thereupon placed such agreement on the public record and having duly considered the comment filed thereafter pursuant to § 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Western Star Beef, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, in the city of Tewksbury, Commonwealth of Massachusetts.

Respondent Great Western Beef Provisioners, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 2136 Main Street, Tewksbury, Massachusetts.

Respondent Western Star Beef of Worcester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 276 Boston Turnpike, Route 9, Shrewsbury, Massachusetts.

Respondents James J. Kintigos and James J. Weldon, Jr., are officers of said corporations. Their address is 2136 Main Street, Tewksbury, 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

It is ordered, That respondents Western Star Beef, Inc., a corporation, Great Western Beef Provisioners, Inc., a corporation, and Western Star Beef of Worcester, Inc., a corporation, and their officers, and James J. Kintigos and James J. Weldon, Jr., individually and as officers 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 any other food product, do forthwith cease and desist from:

1. 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 represents, directly or by implication:

(a) That any products are offered for sale when the purpose of such representation is not to sell the offered products, but to obtain prospects for the sale of other products at higher prices.

(b) That any product is offered for sale when such offer is not a bona fide offer to sell such product.

2. 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 fails to clearly and conspicuously disclose:

(a) That under respondents' sale policy, meat advertised as "beef halves" will be sold only as two fore quarters of a beef carcass; that such sections of beef are subject to much waste by way of fat and bone, and contain the least desirable cuts of beef.

(b) Charges for cutting, trimming, wrapping or for any other service or process performed by respondents which are not included in the advertised prices, and which are required to be paid by the purchaser.

(c) That interest and/or carrying charges will be included in the installment payments if an account is not paid within either 105 days, or any other specified

period of time, said time period to appear in purchasers' installment contracts.

(d) That beef halves and other untrimmed meats are sold subject to weight loss due to cutting, dressing and trimming.

(e) That the price charged for such meat is based on the weight thereof before cutting, dressing and trimming occurs.

(f) The average percentage of weight loss of such meat due to cutting, dressing and trimming, or, in the alternative, the range of percentages, minimum to maximum, of weight lost due to cutting, dressing, and trimming.

3. Disseminating, or causing the dissemination of 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 misrepresents in any manner the price, quantity, or quality of any such products, or the terms, conditions and requirements of installment payment contracts executed by purchasers thereof.

4. Disseminating, or causing to be disseminated by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any meat or other food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order, which fails to comply with the affirmative requirements of Paragraph 2 or which contains any of the misrepresentations prohibited in Paragraph 3 hereof.

5. Discouraging the purchase of, or disparaging in any manner, any meat or other food products which are advertised or offered for sale in advertisements, disseminated or caused to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents and to all officers, managers and salesmen, both present and future, 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 respondents Western Star Beef, Inc., a corporation, Great Western Beef Provisioners, Inc., a corporation, Western Star Beef of Worcester, Inc., a corporation and, their officers, and James J. Kintigos and James J. Weldon, Jr., individually and as officers 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 meat or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose orally at the time of 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.

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.