

Complaint

75 F.T.C.

IN THE MATTER OF

CONSUMERS FOOD, INC., ET AL.

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

Docket C-1499. Complaint, Feb. 25, 1969—Decision, Feb. 25, 1969

Consent order requiring a Washington, D.C., distributor of food freezers, freezer food plans and food to cease using false pricing and savings claims and failing to disclose that its sales contracts may be sold to a finance company.

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 Consumers Food, Inc., a corporation, and George Sharkey, 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 Consumers Food, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 6234 3rd Street, NW., Washington, D.C.

Respondent George Sharkey is an individual and president-treasurer of Consumers Food, Inc. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His business 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 food freezers, freezer food plans, and food as the term "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past have caused their said products when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located within the District of Columbia and in various

States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning freezers, freezer food plans, and food, 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 said products; and have disseminated, and caused the dissemination of, advertisements concerning said products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of the statements and representations contained in said advertisements, but not all inclusive thereof, are the following:

11th ANNIVERSARY SALE SPECIAL

72¢ lb. *SIDE OF BEEF*

APPROXIMATELY 285 LBS. 72¢ lb.

* * * * *

150 LB. HINDQUARTER BEEF * * *

79¢ lb.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents' products are being offered for sale at special or reduced prices, and that savings are realized by respondents' customers because of a reduction from respondents' regular selling price.

2. Meat prices set forth in advertisements are based on net weight after trimming.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at a special or reduced price and savings are not realized by respondents' customers because of a reduction from respondents' regular selling price.

2. Meat prices set forth in advertisements are based on gross weight before trimming.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the further course of respondents' business, and by means of advertisements disseminated as aforesaid, and by the oral statements of sales representatives, respondents have represented, directly or by implication that:

1. Purchasers of respondents' 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 food alone.

2. Purchasers of respondents' freezer food plan can buy meat and other food products at prices significantly lower than the prices which they have been paying for such products.

3. Purchasers cannot participate in the food plan unless a freezer is purchased from the respondents.

PAR. 8. 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 lesser amount of money than they have been paying for food alone.

2. Purchasers of respondents' freezer food plan cannot buy meat and other products at prices significantly lower than the prices which they have been paying for such products.

3. Food can be purchased from respondents without the necessity of purchasing a freezer from respondents.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the course and conduct of their business, as aforesaid, respondents or their salesmen in a substantial number of cases fail to disclose orally at the time of sale, or 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 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 and that 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, non-delivery or the like.

The aforesaid failure of the respondents or their representatives to reveal said facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the respondents will not negotiate or transfer such documents, as aforesaid, and that legal obligations and relationships will exist only between such respondents and purchasers and will remain unchanged and unaltered, and has the tendency and capacity to induce a substantial number of such persons to enter into contracts or execute promissory notes for the purchase of respondents' products.

PAR. 10. In truth and in fact, respondents frequently and in a substantial number of cases and in the usual course of their business sell, transfer and assign said notes and contracts to finance companies or third parties so as to bring about the aforementioned changes in legal obligations and relationships.

Therefore, the failure of respondents or their representatives to reveal such facts to prospective purchasers, as aforesaid, was and is an unfair and false, misleading and deceptive act or practice.

PAR. 11. 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. 12. 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. 13. 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, 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 set forth in the aforesaid draft of complaint, 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 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 Consumers Food, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business formerly located at 2951 V Street, NE., Washington, D.C., and presently located at 6234 3rd Street NW., Washington, D.C.

Respondent George Sharkey 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 Consumers Food, Inc., a

corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of freezers, freezer food plans, food or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of terms such as "ANNIVERSARY SALE SPECIAL" or in any other manner, that any price is a special or reduced price unless such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

2. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

3. Representing, directly or by implication, in any manner, that the price per pound of meat is a net weight price when in fact the price per pound of meat is based on the weight of the meat before trimming.

4. Failing to clearly and conspicuously disclose, in the body of any advertisement for meat that is to be sold by gross weight, the average percentage of weight loss that results from trimming.

5. Representing, directly or by implication, that purchasers of respondents' 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.

6. Representing, directly or by implication, that food prices charged by respondents are significantly lower than the prices which they have been paying.

7. Representing, directly or by implication, that purchasers cannot buy food under respondents' food plan unless a freezer is purchased from respondents.

8. Failing to disclose orally, prior to the time of sale,

and in writing with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

A. on any conditional sale contract, and

B. on a separate document presented to a purchaser of respondents' merchandise concurrent with the execution of any promissory note or other instrument of indebtedness executed by such purchaser, that such conditional sale contract, promissory note or other instrument of indebtedness, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to whom the purchaser will thereafter be indebted and against whom the purchaser's claims or defenses may not be available.

PART II

It is further ordered, That respondents Consumers Food, Inc., a corporation, and its officers, and George Sharkey, 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 the offering for sale, sale or distribution of food, or any purchasing plan involving food, do forthwith cease and desist from directly or indirectly:

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 of the representations or misrepresentations prohibited in Paragraphs 1 through 7 of 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 contains any of the representations prohibited in Paragraphs 1 through 7 of this Order.

PART III

It is further ordered, That respondents Consumers Food, Inc., a corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, do forthwith deliver a copy of this Order to cease and desist to each of its operating divisions

and to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and secure from each such salesman or other person a signed statement acknowledging receipt of said 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.
