

IN THE MATTER OF

MEAL OR SNACK SYSTEM, INC., ET AL.

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

Docket C-1511. Complaint, Apr. 1, 1969—Decision, Apr. 1, 1969

Consent order requiring two affiliated Scarsdale, N.Y., franchisers of hamburger-pizza drive-in restaurants to cease using exaggerated earning claims, deceptive offers of employee training and supervision, advertising and promotional programs, and other deceptive means to promote the sale of its franchises, buildings and equipment.

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 Meal or Snack System, Inc., a corporation, and Franchise Development Corporation, a corporation, and Joshua Benanav, individually and as an officer of said corporations, and Ernest Halpern, individually and as an officer of Meal or Snack System, 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. Respondents Meal or Snack System, Inc., and Franchise Development Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 791 Central Avenue, Scarsdale, New York, 10584.

The corporate respondents, until December 1967, were known as Jolly Giant System, Inc., and Jolly Giant System Franchises, Inc., respectively. Their principal office and place of business was located at the above-stated address.

Respondent Joshua Benanav is an individual and officer of the corporate respondents. Respondent Ernest Halpern is an individual and officer of Meal or Snack System, Inc. Respondent Joshua Benanav formulates, directs and controls the acts and practices of Franchise Development Corporation, including the acts and practices hereinafter set forth, and with respondent Ernest Halpern formulates, directs and controls the acts and practices of Meal or Snack System, Inc., including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents. The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of franchises for restaurants and the restaurant buildings and equipment for use in connection therewith to the public.

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 State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned hereinafter 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 aforesaid business, and for the purpose of inducing the purchase of their products and franchises, the respondents have made, and are now making, numerous statements and representations in oral sales presentation by respondents or their salesmen and in advertisements inserted in magazines and newspapers and in promotional material with respect to the franchisee's profit, the training, assistance and supervision provided to franchisees, the franchisee's sales volume, the amount of money required to purchase a franchise, the success of respondents' plans and methods for operating drive-in restaurants, the discounts on restaurant's supplies and provisions that are available to franchisees, the advertising material provided to franchisees and the fame of the "Jolly Giant" trade name, trademark and products.

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

THEY SAID IT COULDN'T BE DONE! * * *, but we did it * * * we can offer a complete JOLLY GIANT Hamburger-Pizza Drive-In that you can own with an investment of ONLY \$9,500.00

And—we mean complete—ready to operate * * *

Start a business of your own! Earn as much as \$30,000.00 a year, more than three times your original investment. * * *

This is JOLLY GIANT, the Hamburger-Pizza Drive-In with completely new ideas organized into a package that puts you into business fast—at a reasonable cost—at a minimum risk and with proven methods to help bring about the successful and profitable operation. * * *

This Is How We Get Together * * *

We prepare the unit for opening in accordance with franchise agreement and lease agreement. Completely train you and your staff. Assist you in your opening and provide periodic supervision and assistance thereafter.

We have shown that when you are finished with our training course, you are ready—and we mean ready—to make money.

\$9,500—is all you need to own a Jolly Giant ECONOMY UNIT, suitable for areas with expected volume below \$150,000—

WHY THE JOLLY GIANT SYSTEM?

THE ANSWER IS QUITE SIMPLE * * *

TRAINING PROGRAM

A training program is provided for you as well as your key employees at our pilot operation. A trained Jolly Giant consultant is sent to your unit and stays with you during your opening and the following days as long as needed. * * *

ADVERTISING

Jolly Giant has a full proven and tested system for grand openings pro-

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viding free drinks or hamburgers—supplies, banners, posters, newspaper releases and mats for advertising.

VOLUME PURCHASE

Jolly Giant System negotiates national contracts with leading suppliers on a volume purchase basis, although a manager may purchase his supplies from sources preferred by him providing they meet set quality standard and price, he may also take advantage of the volume contracts and purchase his supplies, directly from the various suppliers with whom Jolly Giant System has entered into such contracts.

JOLLY GIANT products, its trademark and name are nationally known and enjoy a wide consumer acceptance. * * *

* * * JOLLY GIANT will supply you with: All advantages of brand identification.

\$8,500 IS ALL YOU NEED TO OWN A 15¢ HAMBURGER-PIZZA DRIVE-IN. NO FRANCHISE FEE—BE YOUR OWN BOSS—EARN \$20,000 to \$30,000 YEARLY

Questions and Answers about JOLLY GIANT franchises.

1. Do I have to be an experienced restaurant operator to be eligible for a Jolly Giant Drive-In?

No, you don't have to be experienced. You will be trained and schooled by our expert staff at an operating Jolly Giant and your own help will be trained by our supervision at your location when you open for business. * * *

2. What assistance do you give in promotion and advertising?

Our company has developed an extensive program in merchandising the product—advertising mats, banners, point of sale advertising (show cards) and radio jingles and they are all supplied free to each unit.

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, separately and in connection with the oral statements of respondents or their representatives, the respondents have represented, and are now representing, directly or by implication that:

1. The “Jolly Giant” trade name, trademark and products are known throughout the country.

2. A purchaser can obtain a complete ready-to-operate Jolly Giant Hamburger-Pizza Drive-In restaurant for a total investment of only \$8,500 or \$9,500.

3. Jolly Giant franchisees investing \$9,500 will earn \$30,000 a year or three times their original investment.

4. The Jolly Giant methods and plans for operating hamburger-pizza drive-in restaurants have proved to be successful and that franchisees employing such methods and plans are financially successful.

5. Franchisees are provided with a complete training program in the management of Jolly Giant restaurants for themselves and their employees.

6. Through the training furnished to franchisees by respondents, franchisees are able to operate a restaurant as a commercially profitable enterprise.

7. Respondents provide franchisees with supervision and assistance in the management and operation of a Jolly Giant drive-in restaurant.

8. Jolly Giant franchises have a minimum sales volume of \$100,000.

9. Franchisees are provided with an extensive, planned advertising promotional program designed to publicize the franchisee's restaurant.

10. Because of national contracts between leading suppliers and the respondents, franchisees are able to purchase their restaurant supplies and provisions at lower prices than those charged to other restaurants.

PAR. 6. In truth and in fact:

1. The Jolly Giant trade name, trademark and products are not known throughout the country. The small number of Jolly Giant drive-in restaurants that were in existence were restricted to the States of New Jersey, New York and Massachusetts.

2. A complete ready-to-operate Jolly Giant Hamburger Pizza Drive-In restaurant cannot be purchased for the represented prices of \$8,500 or \$9,500. Such franchises cost substantially more than said amounts.

3. Jolly Giant franchisees investing \$9,500 do not earn an income of \$30,000 a year but substantially less than that amount; neither do they earn three times their original investment.

4. The Jolly Giant methods and plans for operating hamburger-pizza drive-in restaurants have not been successful and franchisees employing such methods and plans are not financially successful. All of the franchisees employing respondents' methods and plans are out of business and when in business such methods and plans did not enable them to be financially successful.

5. Franchisees are not provided with a complete training program in the management of Jolly Giant restaurants for themselves and their employees. Such training as is provided is inadequate and incomplete.

6. Franchisees are not able, through the training furnished by respondents, to operate a restaurant as a commercially profitable enterprise. All of the franchisees receiving such training are now out of business and such franchises, when in existence, were not commercially profitable enterprises.

7. Respondents provide franchisees with little, if any, supervision and assistance in the management and operation of a Jolly Giant drive-in restaurant.

8. Jolly Giant franchisees do not have a minimum sales volume of \$100,000 but generally less than that amount.

9. Franchisees are not provided with an extensive, planned advertising promotional program designed to publicize the franchisee's restaurant. Said program consisted of one plastic advertising mat and one cloth banner.

10. Respondents do not have national contracts with leading suppliers which enable franchisees to purchase their restaurant supplies at lower prices than those charged to other restaurants.

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 course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale of restaurant equipment, drive-in restaurant buildings and franchises in relation thereto of the same general kind and nature as that sold by respondents.

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 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.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods in competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission 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. Respondents Meal or Snack System, Inc., and Franchise Development Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 791 Central Avenue, Scarsdale, New York, 10584. Corporate respondents until December 1967 were known as Jolly Giant System, Inc., and Jolly Giant System Franchises Inc., respectively.

Respondent Joshua Benanav is an officer of said corporations and respondent Ernest Halpern is an officer of Meal or Snack System, Inc. Their address is the same as that of said corporations.

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 Meal or Snack System, Inc., a corporation formerly known as Jolly Giant System, Inc., and its officers, and Franchise Development Corporation, a corporation formerly known as Jolly Giant System Franchises, Inc., and its officers and Joshua Benanav, individually and as an

officer of said corporations, and Ernest Halpern, individually and as an officer of Meal or Snack System, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of restaurant equipment, restaurant buildings or franchises or licenses in relation thereto, or any other product, franchise or license, 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. The "Jolly Giant" trade name, trademark or products are known throughout the country; or misrepresenting, in any manner, the fame, renown or reputation of respondents' franchises, licenses, trade name, trademark or products.

2. Purchasers can obtain a complete ready-to-operate Jolly Giant Hamburger-Pizza Drive-In restaurant for \$8,500 or \$9,500; or misrepresenting, in any manner, the investment required to purchase any franchise, license, business or products from respondents.

3. Persons investing \$9,500 in respondents' franchises, buildings and equipment will earn \$30,000 each year or three times their original investment each year.

4. Purchasers of respondents' franchises, licenses or products will realize a gross, net or minimum income, earnings, profits or ratio of profits to investment in any amount or range of amounts: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented amount or range of amounts of income, earnings or profits are actually and usually realized by purchasers of respondents' franchises, licenses or products.

5. Respondents' methods or plans for operating franchised or licensed businesses are or have been successful; or that franchisees or licensees employing such methods or plans are or have been financially successful.

6. Purchasers of respondents' franchises or licenses and their employees are given training in the management of their businesses.

7. The training furnished to purchasers of respondents' franchises or licenses will enable purchasers to

operate their businesses as a commercially profitable enterprise.

8. Purchasers of respondents' franchises or licenses are provided with supervision, assistance or advice in the management and operation of their franchised or licensed businesses.

9. Purchasers of respondents' franchises or licenses have a minimum sales volume of \$100,000.

10. Purchasers of respondents' franchises or licenses have a minimum, average or maximum sales volume in any amount or range of amounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that their franchisees or licensees do have the represented sales volume or volumes.

11. Purchasers of respondents' franchises or licenses are provided with an advertising promotional program or that they are provided with advertising of any kind or type.

12. Purchasers of respondents' franchises or licenses will be able to purchase their provisions, supplies or equipment through respondents or through arrangements made by respondents at lower prices than others in the same kind of type of business as that of the purchaser.

B. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' products, services or franchises and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.

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IN THE MATTER OF

GIANT TELEVISION COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1512. Complaint, Apr. 3, 1969--Decision, Apr. 3, 1969*

Consent order requiring a Washington, D.C., retailer of TV sets and other small appliances to cease falsely advertising the terms of its credit sales, failing to deliver copies of sales contracts to their customers and failing to disclose that such contracts might 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 Giant Television Company, Inc., a corporation, and James A. Taylor, 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. Giant Television Company, 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 4019 South Capitol Street, SW., in the city of Washington, District of Columbia.

Respondent James A. Taylor is an individual and 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 television sets, radios, stereos, radio/television/stereo combinations or other articles of merchandise to the public at retail.

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 merchandise, when sold, to be shipped from their place