

Complaint

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IN THE MATTER OF

WILLIAM T. COLBERT TRADING AS TASTY FREEZER MEATS,
ET AL.

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

Docket C-1637. Complaint, Nov. 21, 1969—Decision, Nov. 21, 1969

Consent order requiring a Richmond, Va., meat retailer to cease using bait tactics in its advertising, failing to disclose the weight loss of his meats due to cutting and trimming, and failing to disclose that his meat has not been graded by U.S. Department of Agriculture standards.

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 William T. Colbert trading and doing business as Tasty Freezer Meats, and under other names as herein set forth, hereinabove referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William T. Colbert is an individual trading and doing business under the name of Tasty Freezer Meats. His office and principal place of business is located at 1010 West Cary Street, Richmond, Virginia. The said individual trades, and has traded and done business, under various other names in various States of the United States, including but not limited to, Cattlemen's Meats, Quality Freezer Meats and Beef Haven. He formulates, directs and controls the acts and practices of Tasty Freezer Meats, and of similar businesses under the trade names set forth above, and/or under other names, and at all times pertinent hereto has formulated, directed and controlled said acts and practices including those hereinafter set forth.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, offering for 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.

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PAR. 3. In the course and conduct of this business, respondent has disseminated and does 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 has 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:

U.S. GOVT. INSPEC.
GUARANTEED TENDER DELICIOUS BEEF HALVES
33¢ lb.

TENDER DELICIOUS
USDA CHOICE
HEAVY BEEF HALVES
42¢ lb.

* * * * *

HEAVY BEEF HALVES
33¢ lb.

USDA INSPECTED
GUARANTEED TENDER AND DELICIOUS HEAVY BEEF
USDA CHOICE HEAVY BEEF HALVES
42¢ lb.

* * * * *

WE ALSO FEATURE
USDA PRIME

* * * * *

U.S. INSPECTED
HEAVY BEEF HALVES
300 lb. up
33¢ lb.

(Many of the above advertisements feature the picture of a beef steer and/or the picture of a lean T-bone steak.)

PAR. 5. Through the use of the aforesaid advertisements and others of similar import and meaning not specifically set out herein respondent has represented directly and by implication

that 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.

Said representations were and are contrary to the fact as the said 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 the aforesaid beef halves at the advertised prices, but were, and are, made to induce prospective purchasers to visit respondent's store and place of business for the purpose of purchasing such products. When prospective purchasers in response to said advertisements attempt to purchase beef halves of the grade and quality advertised at the advertised prices respondent's salesmen display meat sections of unsightly appearance and poor quality as the advertised beef halves and make no effort to sell such products at the advertised prices, but, in fact disparage such displayed meat in a manner calculated to discourage the purchase thereof, and attempt to and frequently do sell much higher priced meats.

PAR. 6. Respondent by his advertisements disseminated as aforesaid has represented, and now represents, directly, and by implication, and by failure to disclose the average weight loss due to cutting, dressing and trimming, that the beef halves advertised and sold by respondent will on receipt by the purchaser weigh approximately their advertised and/or purchased weight; and that other meat purchases when ready for home freezer storage will equal or approximate their total purchase weight.

Such representations were, and are, contrary to the fact as respondent's beef sections are sold 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 section when cut, trimmed and ready for home 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, Five and Six 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 Six were and are false, misleading and deceptive.

PAR. 7. The use by respondent 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. 8. The aforesaid acts and practices of respondent, as herein alleged, including the dissemination by respondent 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 respondent 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 respondent has 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 Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent William T. Colbert is an individual trading and doing business under the name of Tasty Freezer Meats. His office

and principal place of business is located at 1010 West Cary Street, Richmond, Virginia.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent William T. Colbert, an individual, trading and doing business as Tasty Freezer Meats, or under any other name or names, and respondent's 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 the average percentage of weight loss of such meat due to cutting, dressing and trimming.

3. 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 include:

(1) When United States Department of Agriculture graded meat is advertised which is below the grade of "U.S.D.A. Good," the statement "This meat is of a grade below U.S. Prime, U.S. Choice, and U.S. Good."

(2) When meat not graded by United States Department of Agriculture is advertised:

(a) The statement "This meat has not been graded by the United States Department of Agriculture" and,

(b) If such meat is a portion of the total meat offered a statement indicating the portion which is ungraded and the percentage, by weight, of the total meat offered.

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 or fails to comply with the affirmative requirements of Paragraphs 2 and 3 hereof.

5. Discouraging the purchase of, or disparaging in any manner, or encouraging, instructing or suggesting that others discourage or disparage 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 of respondent's 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 respondent's 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 respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

ASSOCIATED PEST CONTROL SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 2(f) OF THE CLAYTON ACT*Docket C-1638. Complaint, Nov. 26, 1969—Decision, Nov. 26, 1969*

Consent order requiring a Memphis, Tenn., association of pest controllers to cease inducing and receiving discriminatory prices for pesticides and related products from suppliers of such products.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Associated Pest Control Services, Inc., hereinafter referred to as "Associated," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee.

Respondent Associated is an association of pest control organizations which was ostensibly organized to further the interests and development of the members of the association, through the interchange of ideas, the dissemination of scientific information and other services and purposes incidental to the general welfare of its members. Its membership is comprised of persons, partnerships and corporations engaged in the performance of pest control, industrial sanitation and exterminating services. Associated also performs other services for its members, including the negotiation of discounts for its members from distributors of pesticides, application equipment and other necessary supplies.

Respondent Associated had approximately 37 members in October 1967, which members were located in 17 States of the United States, the Dominion of Canada, and the Bahamas. The membership of Associated constitutes a class so numerous and changing as to make it impracticable to specifically name and describe each and all of such members as parties respondent herein.