

Docket C-1499. Complaint, Feb. 25, 1969—Decision, Sept. 1, 1970

Order modifying an earlier consent order dated February 25, 1969, 75 F.T.C. 364, by adding a paragraph thereto which forbids respondents from failing to maintain adequate records which disclose the facts on which its prices and savings to customers are based.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on February 25, 1969, having issued its order in this matter requiring respondents, in connection with the offering for sale, and sale and distribution of merchandise, in commerce, to 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.

Modifying Order

77 F.T.C.

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.

And the Commission on June 8, 1970, having issued its order to show cause why this proceeding should not be reopened and its order of February 25, 1969, modified by the addition of a new paragraph

9. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1, 2 and 6 of Part I of this order, are based and from which the validity of any such claim can be established.

Respondents having filed an answer in which the order to show cause is not opposed; and more than thirty days having expired since service of the order to show cause upon the respondents; and

The Commission being of the opinion that the public interest will be served best by modifying its order of February 25, 1969:

It is ordered, That this proceeding be, and it hereby is reopened.

It is further ordered, That the Commission's order of February 25, 1969 [75 F.T.C. 364], be and it hereby is, modified by adding thereto as Paragraph 9 of Part I the following:

9. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1, 2 and 6 of Part I of this order, are based and from which the validity of any such claim can be established.
