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Complaint

IN THE MATTER OF

MR. BEEF, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-2020. Complaint, Aug. 27, 1971—Decision, Aug. 27, 1971*

Consent order requiring a Toledo, Ohio, seller and distributor of meat and meat products to cease deceptively advertising and falsely guaranteeing its products, failing to disclose the weight loss of its untrimmed meat, discouraging the purchase of any of its advertised food, and failing to give notice to purchasers who sign promissory notes that such notes may be sold to third parties; the respondent is also required to cease violating the Truth in Lending Act by failing to use the terms cash price, downpayment, the number, amounts and due dates of the scheduled payments, the finance charge expressed as an annual percentage rate, and failing to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mr. Beef, Inc., a corporation, and Donald Bevelheimer individually and as an officer of said corporation hereinafter referred to as respondents, have violated the provisions of said Acts and regulations, 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:

COUNT I

PARAGRAPH 1. Respondent Mr. Beef, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1928 Sylvania Avenue, Toledo, Ohio.

Respondent Donald Bevelheimer, is an officer of the corporate respondent. Said individual respondent formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 31503 Plymouth Rd., Livonia, Michigan.

PAR. 2. Respondents, for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of meat and meat products, to members of the purchasing public. Said meat and

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meat products come within the classification of food, as "food" is defined in the Federal Trade Commission Act

PAR. 3. In the course and conduct of their business and at all times mentioned herein, respondents have disseminated advertising by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including advertising material for use in newspapers of general circulation, for the purpose of inducing, or which was 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. Among and typical of the statements and representations contained in said advertising disseminated as hereinabove set forth were the following:

U.S.D.A. Choice BEEF SIDES 48¢ lb.

U.S.D.A. Choice BEEF HINDS 58¢ lb.

U.S.D.A. Choice STEAK LOINS 69¢ lb.

GUARANTEE If not completely satisfied return within 10 days and your order will be replaced.

90 Days Same as Cash.

PAR. 5. By and through the use of the aforesaid statements, and others of similar import and meaning not specifically set forth herein, respondents have represented directly or by implication that:

(1) Offers set forth in said advertisements were bona fide offers to sell beef sides, halves and other cuts described therein at the advertised prices.

(2) The advertised meats were guaranteed and a purchaser who was not satisfied with the product purchased by him would, upon request, receive a substitute order of meat weighing as much as the original order, upon tendering the balance of the unsatisfactory order.

(3) Persons purchasing on same as cash terms would be able to pay the balance owed on their accounts in any form at any time during the 90 day period, up to and including the 90th day, without any further 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 the meat products featured in said advertisements, but to the contrary were made to induce prospective purchasers to visit respondents' place

of business for the purpose of purchasing said advertised meat. When prospective purchasers, in response to said advertisements attempted to purchase the advertised products, respondents informed them that the advertised prices applied only to meat which would sustain large losses due to cutting, dressing and trimming. Respondents and their salesmen made no effort to sell such advertised meat but in fact described it in a manner calculated to discourage the purchase thereof, and attempted to and frequently did sell much higher-priced meats.

(2) The advertised guarantee failed to clearly and conspicuously set forth the nature and extent of said guarantee. Contrary to the representation appearing therein that the entire original order would be replaced at the request of an unsatisfied purchaser, any replacement was subject to limitations and conditions which were not clearly revealed in their advertising of said guarantees.

(3) Persons purchasing on same as cash terms were not free to pay the balance owed on their accounts in any form at any time but were required to pay the balance owed on their accounts in three monthly installments and failure to meet any installment resulted in further obligations on said persons.

PAR. 7. Respondents, by their advertising disseminated as aforesaid, have represented directly or by implication by failure to disclose the particular normal average percentage weight loss due to cutting, dressing and trimming of untrimmed meat offered for sale, that said meat advertised and sold would upon delivery to purchasers weigh approximately its advertised or purchased weight. Said representations were contrary to fact as the cutting, dressing and trimming of meat offered for sale materially reduced the total weight purchased and persons purchasing said meat did not realize a net quantity which was approximately equal to the total weight of the meat at the time of purchase.

Therefore, the advertisements referred to in Paragraphs Four and Seven were and have been misleading in material respects and have constituted "false advertisements" as that term is defined in the Federal Trade Commission Act, and the representations referred to in Paragraphs Five and Seven were and have been false, misleading and deceptive.

PAR. 8. In the course and conduct of their business and at all times mentioned herein, respondents have, without notice to their customers, negotiated to third parties conditional sales contracts, promissory notes and other instruments of indebtedness, with consequent limitation of the legal defenses of those customers resulting from such negotiation.

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PAR. 9. Use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices have had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of the aforesaid products, including higher priced products than those advertised because of said mistaken and erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

COUNT II

PAR. 11. Paragraph One of COUNT I of this complaint is hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 12. Respondents are now and for some time last past have been engaged in the offering for sale, sale and distribution of meat and meat products to the purchasing public.

PAR. 13. In the ordinary course and conduct of their aforesaid business, respondents regularly extend or arrange for the extension of consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 14. In the ordinary course of their aforesaid business, respondents caused advertisements to be published, as "advertisement" is defined in Regulation Z. These advertisements aid, promote or assist directly or indirectly extensions of consumer credit in connection with the sale of said products. By and through the use of the advertisements, respondents state that no down payment is required in connection with an extension of consumer credit, or that an extension of consumer credit is or may be payable in more than four installments without also stating all of the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d) (2) thereof:

- (i) The cash price;
- (ii) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iii) The amount of the finance charge expressed as an annual percentage rate; and
- (iv) The deferred payment price.

PAR. 15. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of the Act and, pursuant to Section 108(c) thereof respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging Mr. Beef, Inc., a corporation and Donald Bevelheimer individually and as an officer of said corporation, respondents herein, with violation of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulation promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mr. Beef, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1928 Sylvania Avenue, Toledo, Ohio.

Respondent Donald Bevelheimer is an officer of respondent corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 31503 Plymouth Road, Livonia, Michigan.

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 respondent Mr. Beef, Inc., a corporation and its officers, and Donald Bevelheimer, 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 offering for sale, sale or distribution of meat or other food products, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination, by means of United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any advertisement which represents directly or by implication:

(a) That any products are offered for sale, when the purpose of such representations 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 an offer is not a bona fide offer to sell such product.

(c) That any product is guaranteed unless the nature, conditions and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

2. 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 fails to clearly and conspicuously disclose the particular normal average percentage of weight loss of each untrimmed piece of meat offered for sale therein.

3. 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.

4. Misrepresenting in any manner the terms of payment available to purchasers of respondents' meat or other food products.

5. Disseminating or causing the dissemination of advertisements by any means, including those aforesaid, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 or the misrepresentations prohibited in Paragraph 4, or fails to comply with the disclosure requirements of Paragraph Two hereof.

6. Failing to incorporate the following statement on the face of all contracts executed by respondents' customers with such con-

spicuousness and clarity as is likely to be observed, read and understood by the purchaser:

“Important Notice”

“If you are obtaining credit in connection with this contract, you will be required to sign a promissory note. This note may be purchased by a bank, finance company or any other third party. If it is purchased by another party, you will be required to make your payments to the purchaser of the note. You should be aware that if this happens you may have to pay the note in full to the new owner of the note even if this contract is not fulfilled.”

It is further ordered, That respondents and respondents’ agents, representatives and employees directly or through any corporate or other device in connection with any advertisement of consumer credit sale of bulk beef or other meat products as “advertisement” and “credit sale” are defined in Regulation Z of the Truth in Lending Act do forthwith cease and desist from:

1. Stating directly or indirectly in any advertisement the amount of the down payment required or that no down payment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless all of the following items are stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) of Regulation Z:

- (i) The cash price or the amount of the loan, as applicable;
- (ii) The amount of the down payment required or that no down payment is required, as applicable;
- (iii) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;
- (iv) The amount of the finance charge expressed as an annual percentage rate;
- (v) Except in connection with the sale of a dwelling, on a first lien loan to purchase a dwelling, the deferred payment price or the sum of the payments, as applicable.

2. Failing, in any consumer credit transaction or advertisement, to make all disclosures in the manner and form required by Sections 226.8 and 226.10 of Regulation Z.

It is further ordered, That a copy of this order to cease and desist be delivered to all operating divisions of the corporate respondent, and to

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all officers, managers, and salesmen thereof, 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 from each of said persons a signed statement acknowledging receipt of a copy thereof.

It is further ordered, That respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the 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.
