

Complaint

87 F.T.C.

IN THE MATTER OF
MAYFAIR SUPER MARKETS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2796. Complaint, Feb. 24, 1976—Decision, Feb. 24, 1976

Consent order requiring a Union, N.J., chain of retail food stores trading under the name Foodtown, among other things to cease failing to have items advertised as being on sale readily available. Further, the order requires that items customarily price-marked be marked with the advertised prices; respondent provide customers with rainchecks for unavailable merchandise; and that respondent post at each store's public entrances (1) a copy of sale ads, (2) a list of those items unavailable, and (3) a notice that rainchecks will be issued.

Appearances

For the Commission: *Myer S. Tulkoff.*

For the respondent: *Ravin & Davis*, Edison, N.J.

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 Mayfair Super Markets, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act (15 U.S.C. §§45;52).

PARAGRAPH 1. Respondent Mayfair Super Markets, 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 1441 Morris Ave., Union, New Jersey.

PAR. 2. Respondent has been and is now operating a chain of retail food stores in the State of New Jersey under the trade name Foodtown. In the operation of its retail food stores, respondent offers to its customers an extensive line of products, including food, as that term is defined in the Federal Trade Commission Act, groceries and other products.

Respondent is the largest member and a part owner of Twin County

Grocers, Inc., a wholesale purchasing, warehousing and distribution cooperative which provides respondent with substantial quantities of food, groceries and other products. The president of Mayfair currently heads the governing board of Twin County Grocers, Inc. Twin County Grocers, Inc. purchases food, groceries and other products from numerous suppliers and manufacturers located throughout the United States.

Respondent is also a member and part owner of Foodtown, Inc., an advertising and promotion cooperative which provides advertising services for Mayfair. Foodtown, Inc. provides respondent with the trade name Foodtown. Foodtown, Inc. contracts to have advertisements placed in newspapers of interstate circulation.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and has been causing, directly or indirectly, the aforesaid food, groceries and other products to be shipped and distributed from the aforesaid manufacturers and other sources of supply to the warehouse of Twin County Grocers, Inc. and thereafter to respondent's retail food stores located in a State other than the State of origin of such products. Respondent also causes food, groceries and other products to be shipped from suppliers directly to respondent's retail food stores located in a State other than the State of origin of such products. Respondent also disseminates or causes to be disseminated by United States mails, advertisements for the sale of food, groceries and other products.

Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in the distribution, advertising, offering for sale, and sale of the aforesaid food, groceries and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has been and is now disseminating, and causing the dissemination of, certain advertisements concerning the aforesaid food, groceries and other products by United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements in newspapers of general and interstate circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase from respondent of said products. Said advertisements list or depict the aforesaid food, groceries and other products, and also contain statements and representations concerning the price or terms at which said products are offered for sale. The aforesaid advertisements contain further direct statements and representations concerning the time periods during which the offers are in effect.

PAR. 5. Through the use of such advertisements which have been and are now being disseminated in that area of the United States served by respondent's retail food stores respondent has represented and is now representing directly or by implication, that in its retail food stores in the marketing and trading area in which said advertisements were and are being disseminated, in those stores covered by the said advertisements, throughout the effective periods of the advertised offers, the items listed or depicted in the said advertisements would be or are:

1. Readily available for sale, and
2. Readily available for sale at or below the advertised prices.

PAR. 6. In truth and in fact, in a number of respondent's retail food stores located in the aforesaid area in which the aforesaid advertisements were and are being disseminated, in stores covered by the said advertisements, at some time during the effective periods of the advertised offers, a substantial number of items listed or depicted in the said advertisements were or are:

1. Not readily available for sale, or
2. Not readily available for sale at or below the advertised prices.

Therefore, the statements and representations as referred to herein, were and are false, misleading and deceptive, and each of the said advertisements was and is misleading in material respects and constituted, and now constitutes, a "false advertisement," as that term is defined in the Federal Trade Commission Act.

PAR. 7. By disseminating or causing the dissemination of advertisements which offer or present for sale, food, groceries or other products, as aforesaid, and by failing to have in each of its stores located within the area covered by such advertisements, throughout the effective periods of the advertised offers, in quantities sufficient to meet reasonably anticipated demands, the advertised items:

1. Readily available for sale to customers, or
2. Readily available for sale at or below the advertised prices;

Respondent has been and now is engaged in unfair acts and practices.

PAR. 8. In the course and conduct of its business, and at all times referred to herein, respondent has been, and now is, in substantial competition in commerce, with corporations, partnerships, firms and individuals in the retail food and grocery business.

PAR. 9. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations, acts and practices including the dissemination of the aforesaid "false advertisements," has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were and are true,

and to induce such persons to go to respondent's stores and to purchase from respondent substantial quantities of the advertised items at prices in excess of the advertised prices and substantial quantities of items other than the advertised items.

PAR. 10. The acts and practices as aforesaid, and the dissemination by respondents of the false advertisements, as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors and have constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

COUNT II

Alleging violation of the Federal Trade Commission Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices (16 C.F.R. 424), the allegations of Paragraphs One, Two, Three, Four and Eight, respectively, of Count I hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. §41, *et seq.*, and the provisions of Subpart B, Part 1, of the Commission's Procedures and Rules of Practice, 16 C.F.R. §1.11, *et seq.*, conducted a proceeding for the promulgation of a trade regulation rule regarding retail food store advertising and marketing practices. Notice of this proceeding, including a proposed rule, was published in the *Federal Register* on November 14, 1969 (34 F.R. 18252). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions, and additions thereto.

The Commission considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notice, as prescribed by law, determined that the adoption of the trade regulation rule and statement of its basis and purpose is in the public interest, and, accordingly, promulgated the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices on May 13, 1971, effective July 12, 1971.

PAR. 12. Respondent is a member of the retail food store industry, and its acts and practices in connection with the sale and offering for sale of food and grocery products or other merchandise being subject to the jurisdiction of Sections 5 and 12 of the Federal Trade Commission

Act are within the intent and meaning of, and are subject to, the provisions of the aforesaid Trade Regulation Rule.

PAR. 13. In connection with its aforesaid advertisements, respondent, in a substantial number of instances, has failed to comply with the aforesaid Trade Regulation Rule by offering food and grocery products or other merchandise for sale at a stated price by means of advertisements disseminated in areas served by certain of its stores which were covered by the advertisement but which did not have such products in stock and readily available for sale to customers during the effective period of the advertisement.

PAR. 14. In connection with its advertisements disseminated as aforesaid, respondent, in a substantial number of instances, has failed to comply with the aforesaid Trade Regulation Rule by failing to make certain of the advertised items conspicuously and readily available for sale at or below the advertised prices.

PAR. 15. Respondent's aforesaid violations of the Trade Regulation Rule Concerning Retail Food Store Advertising and Marketing Practices constitute violations 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 New York Regional Office 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mayfair Super Markets, 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 located at 1441 Morris Ave., Union, New Jersey.

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

ORDER

A. *It is ordered*, That respondent Mayfair Super Markets, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of food, groceries or other products, hereafter sometimes referred to as items, offered or sold in its retail stores in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Disseminating, or causing the dissemination, directly or indirectly of any advertisement by any means which offers any such products for sale at a stated price, unless throughout the effective period of the advertised offer at each retail store covered by the advertisement:

1. Each advertised item is readily available for sale to customers in the public area of the store, or if not readily available there, a clear and conspicuous notice is posted where the item is regularly displayed which states that the item is in stock and may be obtained upon request, and said item is furnished on request;

2. Each advertised item, which is usually and customarily individually marked with a price, is individually, clearly, and conspicuously marked with the advertised price;

3. Each advertised item is sold to customers at or below the advertised price;

4. A "raincheck" is offered to customers for each advertised item which is unavailable. Such "rainchecks" should enable the holder to purchase the item in the near future at or below the advertised price.

Unless, with respect to 1, 2, 3 and 4 above, there are clear and conspicuous disclosures in all such advertisements as to all exceptions and/or limitations or restrictions with respect to stores, products or prices otherwise included within the advertisement.

Provided, It shall constitute a defense to a charge of unavailability

under subparagraph (1) if respondent maintains and furnishes or makes available for inspection and copying upon the request of the Federal Trade Commission, such records as will show that (a) the advertised items were delivered to its stores in quantities sufficient to meet reasonably anticipated demand but were "sold out," or (b) the advertised items were ordered but not delivered due to circumstances beyond respondent's control, and that respondent, upon notice or knowledge of such non-delivery acted immediately to contact the media to revise the advertisement or proposed advertisement to reflect the limited availability or unavailability of each advertised item, and (c) if revision of the advertisement was not possible, respondent immediately offered to customers on inquiry a "raincheck" for each unavailable item which entitled the holder to purchase the item in the near future at or below the advertised price. If respondent or any of its employees, agents, or representatives are not advised of an alleged instance of unavailability through any source including the Federal Trade Commission within three months of its occurrence, it shall be presumed that the records called for by this proviso were in the possession of respondent showing (a) or (b), and (c) *unless* clear and convincing evidence establishes the contrary.

B. *It is further ordered*, That respondent Mayfair Super Markets, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or drugs, as those terms are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated by United States mails or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of any such product, any advertisement which contains any of the offers prohibited by Section A of this order;

2. 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 such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the offers prohibited by Section A of this order.

C. *It is further ordered*, That throughout each advertised sale period in each of its retail stores, respondent shall post conspicuously, at or near each doorway affording entrance to the public, notices which contain the following:

1. A copy of the advertisement.
2. The following statement:

All items advertised are readily available for sale at or below the advertised price except the following items:

Rainchecks will be gladly issued for these items which will enable you to purchase these items at or below the advertised price in the near future. If you have any questions, the store manager will be glad to assist you.

D. *It is further ordered, That:*

1. Respondent deliver a copy of this order to each of its present and future officers, agents, representatives and employees down to the level of and including department managers within stores who, directly or indirectly, have any supervisory responsibilities as to individual grocery stores of respondent;

2. Respondent shall institute a program of continuing surveillance adequate to reveal whether the business practices of each of the persons so engaged conform with this order;

3. Respondent shall submit to the Commission a detailed report every six months for a period of three years from the date this order becomes final demonstrating the effectiveness of the steps or actions taken by respondent with regard to the aforesaid surveillance program;

4. Respondent shall, for a period of three (3) years subsequent to the date of this order:

- a. Maintain business records which show the efforts taken to insure continuing compliance with the terms and provisions of this order; except that this provision shall not be construed to limit or affect in any way those records which are referred to in the proviso paragraph of Section A or any obligations imposed thereunder.

- b. Grant any duly authorized representative of the Federal Trade Commission access to all such business records;

- c. Furnish to the Federal Trade Commission copies of such records which are requested by any of its duly authorized representatives.

E. *It is further ordered, That* respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the 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 respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

87 F.T.C.

IN THE MATTER OF
TARRA HALL CLOTHES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS
LABELING ACTS

Docket C-2797. Complaint, Feb. 24, 1976—Decision, Feb. 24, 1976

Consent order requiring a New York City importer of wool products and manufacturer and seller of wool clothing, among other things to cease misrepresenting the wool content of their clothing products and to notify their customers that the clothing they have purchased was misbranded. Further, the order prohibits them from importing wool products except upon filing a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Hahn, Margolies & Ryan, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tarra Hall Clothes, Inc., a corporation, and Abraham Cohen, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling of 1939, 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 Tarra Hall Clothes, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Ave., New York, New York.

Respondent Abraham Cohen is 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.

Respondents are engaged in the importation of wool products, namely wool blend fabrics, the manufacturing of said products into clothing, and the sale and distribution of said items of clothing.

PAR. 2. Respondents, now and for some time last past, have imported