

Complaint

96 F.T.C.

IN THE MATTER OF
FRED MEYER, INC.

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

Docket C-3028. Complaint, July 23, 1980—Decision, July 23, 1980

This consent order requires, among other things, a Portland, Ore. operator of a chain of retail stores to provide each charge account customer having an outstanding credit balance with a periodic statement setting forth the amount of the credit balance; and enclose with regular monthly statements, a notice advising that credit balances are refundable upon request. Refunds of credit balances must be made upon request or automatically at the end of a six-month period. The firm is further required to refund, with interest, all unpaid credit balances existing between January 1, 1974 and the effective date of the order. The order additionally requires that the firm notify layaway customers who had not completed their purchases during the fourteen (14) months prior to entry of the order that they have the option of either completing the transaction or receiving a refund of the layaway account credit balance; refund credit balances to any customer who indicates, in response to a notice, that the purchase was not completed and the customer received no reimbursement or credit on other merchandise; and maintain specified records for at least three years.

Appearances

For the Commission: *Dennis D. McFeely, Ivan L. Orton, and James M. Cox.*

For the respondent: *Robert Ridgley, Davies, Biggs, Strayer, Stoel & Bollie, Portland, Oreg.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Fred Meyer, Inc., a corporation, has violated the provisions of the Federal Trade Commission 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 as follows:

PARAGRAPH 1. Respondent Fred Meyer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 3800 S.E. 22nd, Portland, Oregon.

All allegations herein made in the present tense include the past tense.

PAR. 2. Respondent Fred Meyer, Inc. operates a chain of retail

stores selling food, drug, variety goods and other general merchandise in Oregon, Montana and Washington. It also operates a wholesale grocery business in Spokane, Washington. The volume of its wholesale and retail business is substantial.

PAR. 3. In the course and conduct of its business as aforesaid, respondent causes, directly and indirectly, merchandise to be shipped and distributed from manufacturing and processing plants or from other sources of supply to its warehouses and distribution centers or retail stores located in states other than the state of origination, distribution or storage of said merchandise. Purchasers of some merchandise sold by respondent reside outside the state where the merchandise is purchased and soon after such purchase, transport the merchandise across state lines to their place of residence. By these and other acts and practices, respondent maintains a substantial course of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the ordinary course and conduct of its business described above, respondent permits certain of its customers who qualify for credit to charge purchases to revolving credit accounts. These customers are individuals, municipalities, charities, and businesses. On occasion, customers' charge account balances consist of credits to the customers' account which represent an amount of money owed to the customer by the respondent. These credit balances are the result of, among other things, overpayments by the customer or credits for the purchase price of returned merchandise.

PAR. 5. Typical and illustrative of respondent's practices in handling the credit balances of its customers are the following:

1. Respondent regularly fails to send out any statement or notification to its customers of the existence of a credit balance in the customers' account.
2. Respondent fails to inform charge customers that they have a continuing right to request and receive a refund in the amount of their credit balances.
3. Respondent transfers credit balances out of charge customers' accounts without notice to the charge customers.
4. Except upon request, respondent does not refund credit balances to charge customers.

Through such acts and practices, respondent has retained in its possession substantial dollar amounts of credit balances belonging to its customers and has consequently deprived customers of substantial sums of money belonging to those customers. Therefore, the acts and practices described in this paragraph are unfair and deceptive.

PAR. 6. In the ordinary course and conduct of its business described above, respondent permits its customers to make purchases under a layaway plan. Under the plan a customer makes a downpayment which reserves the merchandise. The customer makes payments on the layaway account until the merchandise is paid for. The merchandise is then given to the customer. On occasion, customer's layaway account balances consist of credits to the customers' account which represent an amount of money owed to the customer by the respondent. These credit balances are the result of, among other things, cancellation of the layaway by the customer or respondent, resulting in a credit to the layaway account.

PAR. 7. Typical and illustrative of respondent's practices in handling the credit balances of its layaway customers are the following:

1. Respondent fails to inform layaway customers that they have a continuing right to request and receive a refund in the amount of their credit balances.
2. Respondent transfers credit balances out of layaway customers' accounts without notice to the customers.
3. Except upon request, respondent does not refund credit balances to layaway customers.

Through such acts and practices, respondent has retained in its possession substantial dollar amounts of layaway credit balances belonging to its customers and has consequently deprived customers of substantial sums of money belonging to those customers. Therefore, the acts and practices described in this paragraph are unfair and deceptive.

PAR. 8. The acts and practices of respondent as set forth in Paragraphs Four, Five, Six and Seven above, were and are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5(a)(1) 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 Seattle Regional Office 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, its attorney, 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 Fred Meyer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 3800 S.E. 22nd, in the City of Portland, State of Oregon.
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

I.

Charge Account Credit Balances

It is ordered, That respondent Fred Meyer, Inc., a corporation, its successors and assigns, and its representatives, officers, agents, and employees, directly or through any corporation, subsidiary, division or other device, except for Fred Meyer Savings & Loan Association and the wholesale division of Round-Up Company, in connection with the management of credit balances arising subsequent to the service of this Order, on charge accounts created or maintained incident to the sale of merchandise or services to credit customers for use or consumption, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall:

- A. Mail or deliver to each credit customer before the end of the next billing cycle, for each credit customer's billing cycle at the end

of which there is an outstanding credit balance in excess of one dollar (\$1.00):

1. a periodic statement which clearly sets forth the amount of the credit balance, and
2. include the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on the front side of, or enclosed with, the periodic statement reflecting a credit balance, separated from any other written matter, and accompanied by a pre-addressed return envelope:

WE OWE YOU MONEY

The enclosed statement shows a "credit balance." This is money we may owe you. If you want a refund now, please mail this statement back to us in the enclosed envelope. Write on it that you want a refund.

If you don't ask for a refund and if you don't buy anything more from us through your account, we will send you your refund automatically within 6 months if it's over \$1 (and is still due you).

If your credit balance is \$1 or less, we won't send it to you if you don't ask for it. But even if we don't hear from you, we will credit it against your next purchase.

B. If a purchase is made on an account in which there is a credit balance, apply the amount of that balance to such purchase.

C. Refund the full amount of each credit balance within thirty (30) days after receiving a credit customer's written request except to the extent that such amount has already been credited against further purchases on the account.

D. Refund the full amount of each credit balance in excess of one dollar (\$1.00) within thirty (30) days after the end of the sixth consecutive monthly billing cycle at the end of each of which a credit balance has existed. The amount to be refunded shall be the credit balance existing at the end of the sixth month.

E. Refrain from writing off, deleting or transferring any credit balance in excess of \$1.00 until a refund has been made or until the credit customer has made a fully offsetting purchase unless respondent has taken all actions required by Paragraph III of this Order with respect to that account.

F. If respondent believes a credit balance to be not owed it need not:

1. apply the amount of the credit balance to the purchase pursuant to I.B if respondent sends to the credit customer an individualized written explanation and supporting documentation in support of its belief. This documentation shall be provided in the

manner described in III.B and shall be mailed within 30 days of the purchase. Respondent may, if it otherwise complies with this paragraph, send corrected billings to credit customers which respondent subsequently believes were sent erroneous billings.

2. refund pursuant to I.C and I.D if respondent sends to the credit customer an individualized written explanation and supporting documentation. This documentation shall be provided in the manner described in III.B and within the time that Paragraphs I.C and I.D require that refunds be made.

G. Paragraph F does not permit respondent to collect or attempt to collect (including charging to a customer's account) any amounts paid to a customer which respondent subsequently believes were paid in error.

II.

Definition

"Credit customer" as used in Section II only shall exclude all firms from which respondent purchased merchandise or services since January 1, 1974.

It is further ordered, That respondent shall:

A. Refund to each credit customer the amount of each credit balance in the amount of more than one dollar (\$1.00):

1. which was created or existed at any time between January 1, 1974 and the date of service of this Order,
2. and which has not been fully refunded to a credit customer prior to the date of the service of this Order,
3. unless such credit balance is not owed to the credit customer as determined by the procedures provided in Paragraph II.D, or
4. unless the credit customer makes or has made a fully offsetting purchase on the account between January 1, 1974 and the time provided in Paragraph VII.C for the filing of a compliance report.

B. Pay to each credit customer to whom a credit balance is refunded, interest on the amount of the credit balance computed at the rate of .5 percent per month from the date the credit balance was transferred out of each credit customer's account.

C. Effect complete compliance with the provisions of Paragraphs

II.A and B of this Order within one hundred eighty (180) days after the date of service of this Order.

D. For the purposes of II.A.3 of this Order, whether a credit balance is not owed to a credit customer shall be determined by a firm of Certified Public Accountants acceptable to the Regional Director of the Seattle Regional office of the Commission. Respondent shall retain such firm to examine such originals or copies of records and papers which respondent believes justify a determination that any credit balance covered by this Order is not in fact owed to a credit customer. If the CPA firm agrees with respondent, respondent is not required to refund the credit balance. As an alternative to requesting a determination from a CPA firm, the respondent may pay the credit balance.

All credit balances other than those which the CPA firm agrees are not owed shall be considered, for the purposes of this Order, to be owed to the credit customer and shall be refunded pursuant to Paragraph II.A. The CPA firm shall be directed by respondent to make a written report of each finding in agreement with respondent through use of the certifying form attached as Exhibit A. Such report shall be included as part of the compliance report required by Paragraph VII.

III.

It is further ordered, That:

A. Each refund required by this Order shall be given to the credit customer by mailing a check payable to the order of the customer.

B. Each check sent pursuant to Paragraphs I.C, I.D, II.A, II.B, IV.C, and V.B and each disclosure and letter sent pursuant to Paragraphs I.A and V.A of this Order, shall be mailed First Class in an envelope which clearly states respondent's name and address in the upper lefthand corner, to the customer's most recent address shown in respondent's records, with the notation "Address Correction Requested" on the envelope. In the event that any such check, disclosure or letter concerning a credit balance or payment in the amount of ten dollars (\$10.00) or more is returned to respondent undelivered, respondent shall seek to obtain the most current address available for the customer by consulting, in the following order, (1) telephone directories and city directories, and (2) a consumer reporting agency. If a new address is obtained, respondent shall then remail such check, disclosure, or letter First Class to the customer at the most current address obtained.

C. For each credit balance unpaid despite performance of the steps set out in Paragraphs III.A and III.B, respondent:

1. shall maintain the full amount of the credit balance in the customer's account for one year from the date on which the most recent mailing was returned; and

2. need not send any additional disclosure or refund with respect to that credit balance except as provided in Paragraph III.D of this Order.

D. Respondent shall, within thirty (30) days of any credit customer's written request for a refund of a credit balance which had been reflected at any time on the customer's account, either refund the amount requested or send the customer an individualized written explanation, with supporting documentation, when available, of the reason(s) for refusing to refund the amount requested.

IV.

Layaway Account Balances

For the purpose of this Order, the term "layaway" shall mean any transaction whereby the customer agrees to purchase merchandise at the time of the transaction, by means of a downpayment and subsequent payment or payments, with the respondent retaining possession of the merchandise until the agreed payment or payments are completed.

It is ordered, That respondent Fred Meyer, Inc., a corporation, its successors and assigns, and its representatives, officers, agents, and employees, directly or through any corporation, subsidiary, division or other device, except for Fred Meyer Savings & Loan Association and the wholesale division of Round-Up Company, in connection with the management of layaway balances arising subsequent to the service of this Order, on layaway accounts created or maintained incident to the sale of merchandise to layaway customers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall:

A. Mail to each layaway customer:

1. within twenty (20) days after the end of the period designated in the layaway agreement to make full payment for the merchandise,

2. if the payments received by respondent have not been returned to the customer, and

3. if the merchandise has not been delivered to the customer, and
4. before the merchandise is returned to stock and before making any entries in the layaway account which would close out the account,

the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on one side of a single piece of paper, separated from any other written matter:

WE OWE YOU MONEY

(Date of mailing to
be inserted here)

You haven't fully paid for your recent layaway purchase at our (name of store) store. You can fully pay for your purchase within 10 days from the above date. Or you can get a refund from us for the amount you have paid (less 35 cents handling charge). If you want a refund, come to the department of the store where you have the layaway not later than (insert date 10 days from notice) and ask for your money. You also have the choice of getting a credit to purchase other merchandise. Please bring this notice with you. If you don't ask for a refund or a credit, we will send you a check automatically within 45 days if the amount we owe you is more than \$1.00.

Respondent may insert in the above notice a different handling charge that is reasonable in comparison with a 35 cent charge.

B. Defer returning layaway merchandise to stock until 11 days after the mailing of the notice specified in IV.A. and allow completion of the layaway purchase within 10 days after the mailing of the notice.

C. Refund the full amount paid by the layaway customer (less 35 cents or other charge that is reasonable in comparison with a 35 cent charge) if the amount is in excess of one dollar (\$1.00) within 45 days of the date of the notice specified in Paragraph IV.A unless the layaway customer has completed the purchase of the layaway merchandise. Such refund shall be made by sending a check in the amount of the layaway balance to each customer owed a refund. Respondent shall thereafter follow the provisions of Paragraph III.B (pertaining otherwise to credit balances) with respect to such checks. A credit issued by respondent at its store for the purchase of other merchandise in lieu of a cash refund, solely at the option of the layaway customer, shall be considered a refund for purposes of this Section IV.

D. Refrain from writing off, deleting, or transferring any layaway account balance until a refund has been made, or until 30 days after the procedures of Paragraphs III.A and III.B are fully complied

with, or until the customer has completed the purchase of the layaway merchandise.

V.

It is further ordered, That respondent:

A. Identify all layaway account customers which are included in all the layaway account master listings printed out during the 14 months prior to the entry of this order as having layaway balances in excess of \$1.00. Mail to each customer so identified a letter identical to Attachment B in form, spacing, and layout, without the inclusion of any other written material. In sending out Attachment B, respondent shall fill in at the end of question 1 the month or months and year that the layaway account first appeared on its records. Respondent shall thereafter follow the provisions of Paragraph III.B (pertaining otherwise to credit balances) with respect to each such letter.

B. Make payment in full by sending a check in the amount of the layaway balance to each customer identified by the procedure in Paragraph V.A who has responded negatively to questions 5(a) and 5(b) on Attachment B, unless question 1 is answered negatively or 4 is answered affirmatively. Respondent shall thereafter follow the provisions of Paragraph III.B (pertaining otherwise to credit balances) with respect to each such check.

VI.

It is further ordered, That respondent shall maintain complete business records relative to the manner and form of its continuing compliance with this Order, including but not limited to the name and address of each credit and layaway customer who requested a refund of a credit or layaway balance but whose request was refused, the date and amount of the request, and the date and reason(s) for the refusal. Respondent shall retain all such records and data for at least three years and shall, upon reasonable notice, make them available for examination and copying by representatives of the Federal Trade Commission. Upon the request of a representative of the Federal Trade Commission, respondent shall compile a list of the credit and layaway balances refunded, to include the account number and dollar amount of each such account.

VII.

It is further ordered, That respondent shall:

A. Forthwith distribute a copy of this Order to each of its present and future personnel having policy responsibilities with respect to the subject matter of this Order, including but not limited to the Vice-President for Finance, Controller, Accounting Operations Manager, Accounts Payable Supervisor, Accounts Receivable Supervisory Clerk, and the assistants to the above.

B. 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.

C. File with the Commission a written report, within sixty (60) days after service of this Order, setting forth in detail the manner and form in which it has complied with this Order to that time, *provided, however*, respondent shall file with the Commission within 180 days after service of this Order, a written report setting forth the following data:

1. The number of accounts and total dollar amounts of credit balances identified pursuant to Paragraph II.A of this Order and:

- a. refunded by respondent;
- b. determined to be not owed pursuant to the procedures of Paragraph II.D;
- c. offset by further purchases made on the customer's account; or
- d. retained by respondent because the customer could not be located pursuant to the procedures of Paragraph III.B.

2. The number of accounts and total dollar amounts of layaway balances identified pursuant to Paragraph V.A of this Order and

- a. refunded by respondent;
- b. determined to be not owed because the layaway merchandise was received;
- c. determined to be not owed because a credit was issued for the purchase of other merchandise;
- d. determined to be not owed because a refund had already been received.

FRED MEYER, INC.

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Decision and Order

ATTACHMENT A

This certifies that I have reviewed the following accounts and find them to be excluded from the Consent Decree pursuant to Paragraph II.D for the reason indicated:

ACCOUNT
NUMBER

BALANCE

REASON

Dated this _____ day of _____, 19____.

ATTACHMENT B

Dear Customer:

We may owe you some money. Our records show that you may have started making payments on a layaway numbered _____.

Please answer the questions below. Return the bottom part of this page in the enclosed envelope. We will then check our records. If we owe you money we will mail it to you. We will not try to collect any money from you.

Sincerely yours,

Fred Meyer, Inc.

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Decision and Order

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Your Name _____
(Print)

(Address)

1. Did you start a layaway purchase during the months of _____ or _____, 197 ____? Yes ____ No ____
2. Name of store _____
3. Item _____
4. Did you complete the purchase and get the item?
Yes ____ No ____
5. If not, did you:
 - a. Get a refund of any payments you made?
Yes ____ No ____
 - b. Apply any payments to the purchase of some other item?
Yes ____ No ____
 - c. Other? _____

Signed _____

Date _____

IN THE MATTER OF
TERRANCE D. LESKO, M.D.

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

Docket C-3031. Complaint, July 28, 1980—Decision, July 28, 1980

This consent order requires, among other things, a medical doctor affiliated with two California firms engaged in the sale of hair replacement services, to cease soliciting, selling or performing hair implants; or misrepresenting, in advertising or otherwise, the safety or effectiveness of the hair implant process in the treatment of baldness. Should Dr. Lesko engage in any hair replacement business during period specified in the order, he must expend at least \$8,000 on corrective advertising warning consumers that "Hair Implants Are Unsafe." The order also requires that the respondent notify past hair implant customers that the process is unsafe and that they should seek prompt medical attention.

Appearances

For the Commission: *George E. Schulman and Anne B. Roberts.*

For the respondent: *Pro se.*

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 Terrance D. Lesko, M.D., an individual, 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Terrance D. Lesko, M.D. is an individual and a medical doctor who was affiliated with Hair Extension of Beverly Hills, Inc. and Hair Extension, Inc. His address is 1737 Clarion Loop, Cannon Air Force Base, New Mexico.

PAR. 2. Respondent is now, and for some time last past has been engaged in performing hair replacement processes, operations and surgical procedures for the treatment of baldness, thinning hair or loss of hair, or for the replacement of lost hair, including a process or operation which is known as a "hair implant" or "dermis inversion" process ("the Hair Implant Process").

For the purpose of this complaint, the Hair Implant Process is