

*It is further ordered,* That the respondent corporation shall forthwith distribute a copy of this order to each of their operating divisions.

*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.

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IN THE MATTER OF

SEEKONK FREEZER MEATS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

*Docket 8880. Complaint, March 23, 1972—Decision, March 15, 1973.*

Order requiring a Seekonk, Massachusetts, seller and distributor of meat and meat products, among other things to cease using "bait and switch" tactics in selling and advertising its products; misrepresenting the price, quantity, quality of any meat or other food products or the savings available to purchasers thereof; failing to disclose to customers that any credit transactions with respondent will be transferred to a finance company or other third party and failing to disclose a statement to the effect that any subsequent holder of a credit transaction is subject to the terms and conditions of the original contract; and failing to provide certain information required by Regulation Z of the Truth in Lending Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Seekonk Freezer Meats, Inc., a corporation, and Lawrence Fontes, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Seekonk Freezer Meats, Inc., is a corporation organized, existing and doing business under and by

Complaint

82 F.T.C.

virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 1408 Fall River Avenue, Seekonk, Massachusetts.

Respondent Lawrence Fontes 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 1408 Fall River Avenue, Seekonk, Massachusetts.

PAR. 2. Respondents, for some time last past, have been and are now engaged in the advertising, offering for sale, sale and distribution of meat and meat products (hereinafter "products") to members of the purchasing public. Said products come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

## COUNT I

Alleging violation of Sections 5 and 12 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two above are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business and at all times mentioned herein respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of such products.

PAR. 4. In the course and conduct of their business, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of, certain advertisements concerning the said products by the 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 circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and have disseminated and now disseminate, and have caused and now cause the dissemination of, advertisements concerning said products by various means, including the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Also in the course and conduct of their business, respondents have caused and now

cause customers' notes, contracts, payments, checks, credit reports, correspondence and other documents relating to payment of the purchase price for respondents' products to be transmitted by various means, including but not limited to the United States mails, in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Typical of the statements and representations in said advertisements, disseminated as aforesaid, but not all inclusive thereof, are the following:

Invitation to Save on Your Meat Bill. Loin & Rib—Club Steaks—Rib Steaks—Rib Roast—Porterhouse Steak—T-Bone Steaks—Short Cut, Rump Steaks—Sirloin Steaks—Filet Mignon—Sirloin Tip Roast—also a Small Amount of Ground Beef—50¢ per lb.

Feed the Whole Family Choice Beef for Only \$24.69 per Month. Choose From Three Bundles—Rib & Chuck 69¢ per lb.—Loin & Rib 75¢ per lb.—Loin & Rounds 79¢ per lb.

Beat Inflation! Beef Sale 7 days Only! Three Bundles to Choose From—Rib & Chuck 43¢ per lb.—Loin & Rib 50¢ per lb.—Loin & Rounds 52¢ per lb. Select Cut Choice & Prime Beef Orders 45¢ per lb. & Up.

USDA Prime Variety Order Only \$8.80 per Week for 52 Weeks.

Money Saving Beef Sale \* \* \* 3 Bundles to Choose From. Your Choice for only \$16.25 per Month for 4 Months.

PAR. 6. By and through the use of the aforesaid statements, and others of similar import and meaning not specifically set forth herein, respondents have represented, and now represent, directly or by implication that:

(1) Offers set forth in said advertisements are bona fide offers to sell products of the kind therein described at the prices stated therein.

(2) The advertised meat is high quality meat.

(3) Meat advertised consists entirely or primarily of high quality cuts of meat including steaks.

(4) Persons purchasing meat from respondents at a stated price per week or per month are paying a significantly lower total price for meat than the price they had been paying.

PAR. 7. In truth and in fact:

(1) The offers set forth in said advertisements and other offers not set forth in detail herein are not bona fide offers to sell said meat products but to the contrary are 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 attempt to purchase the advertised products, respondents inform them that the advertised prices apply only to very low quality meat and respondents make no effort to sell such low quality advertised meat but in fact disparage it in a manner calculated to discourage the purchase thereof, and attempt to and frequently do sell much higher priced meats.

(2) Meat advertised is not high quality meat. The meat selected by respondents for advertising is in some instances meat which has not been graded by the United States Department of Agriculture, and in other instances graded meat which is below the grade of Prime, Choice and Good.

(3) The meat advertised does not consist entirely or primarily of high quality cuts of meat, including steaks.

(4) The advertised prices per week or per month only relate to ungraded or low grade meat and do not represent a significant saving to prospective purchasers over the price of similar meat available to such purchasers.

PAR. 8. Respondents in some instances by their advertising disseminated as aforesaid have represented, and now represent, directly or by implication, and by failure to disclose the average weight loss in meat due to cutting, dressing and trimming, that the meat advertised and sold by respondents would weigh approximately its advertised or purchased weight, and that other meat purchases when ready for home freezer storage would equal or approximate their total purchase weight. Said representations are contrary to the fact, as respondents' beef sides are sold by the pound at their carcass or uncut weight. The cutting, dressing and removal of fat, bone and waste materials greatly reduce the total weight; and a meat order when ready for home freezer storage is neither equal to nor does it approximate the total weight of said meat at the time of purchase.

Therefore the advertisements referred to in Paragraphs Five and Eight 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, acts and practices referred to in Paragraphs Six through Eight were, and are, false, unfair, misleading and deceptive.

PAR. 9. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase

of their meat and meat products, respondents have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

Therefore, the acts and practices as set forth in Paragraph Nine hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 10. Use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete 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. 11. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public and of respondents' competitors 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.

#### COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the ordinary course and conduct of their business

Initial Decision

82 F.T.C.

as aforesaid, respondents arrange for, and for some time last past have arranged 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. Respondents regularly place, and for some time last past have placed, for publication in newspapers of general circulation advertisements to aid, promote, and assist credit sales, as "credit sale" is defined in the aforesaid Regulation Z.

By and through the use of certain of said advertisements respondents have represented the amount of an installment payment, the number of installments, and the period of repayment without also disclosing the following items, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10 (d) (2) of Regulation Z:

1. The cash price;
2. The amount of the downpayment required or that no downpayment is required;
3. The amount of the finance charge expressed as an annual percentage rate; and
4. The deferred payment price.

PAR. 13. Pursuant to Section 103(q) of the Truth In Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes a violation of that Act and, pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

*Mr. Martin J. Dolan, Jr.* and *Mr. Charles M. LaDue* (Boston Regional Office), for the Commission.

*Mr. Ira L. Schreiber* and *Mr. Donald J. Nasif, Schreiber, Clingham & Gordon*, Providence, Rhode Island, attorneys for respondent.

INITIAL DECISION BY DANIEL H. HANSCOM,  
ADMINISTRATIVE LAW JUDGE

JANUARY 26, 1973

PRELIMINARY STATEMENT

By its complaint issued March 23, 1972, the Federal Trade Commission charged respondents with unfair, false, misleading,

and deceptive practices in the advertising, offering for sale, sale and distribution of meat and meat products to members of the purchasing public in violation of Sections 5 and 12 of the Federal Trade Commission Act. The complaint further charged respondents with violations of the Truth in Lending Act through practices utilized to aid and promote credit sales.

The complaint alleged in substance that low prices for beef featured in respondents' advertisements were not bona fide offers to sell, but were made to get customers to visit respondents' place of business and that, when such customers did visit respondents' place of business to buy the advertised meat, they found it not as advertised and were switched by respondents to the purchase of much higher priced meat. In sum, the complaint challenged the alleged use of so-called "bait and switch" tactics in the advertising and sale of freezer meats. According to the complaint, the meat featured in respondents' advertising was misrepresented as being of high quality, and as consisting entirely or primarily of steaks and other highly desirable cuts. The complaint further alleged that respondents' advertising misrepresented that persons buying meat from respondents at a stated price per week or month would pay a significantly lower price than such persons had been paying elsewhere, and was misleading in not disclosing the average weight loss due to cutting, dressing and trimming. Finally, it was charged that the notes of purchasers who had been attracted to respondents' premises by the allegedly deceptive advertising were sold to third parties who could interpose defenses which might cut off possibly valid claims against respondents, and that respondents advertised certain credit terms and consummated sales without making the disclosures required under the Truth in Lending Act and its implementing regulations.

Respondents' answer, filed April 27, 1972, admitted that Seekonk Freezer Meats, Inc., was a corporation existing under the laws of the Commonwealth of Massachusetts, with its place of business located at 1408 Fall River Avenue, Seekonk, Massachusetts, that the individual respondent, Lawrence Fontes, was an officer and administered the business of respondent corporation, that respondents were engaged in the sale of meat and meat products to the purchasing public and disseminated advertising for the purpose of inducing the purchase of such products, and that respondents were in competition with other firms in the

sale of freezer meats. Otherwise, respondents essentially denied the material allegations of the complaint and left counsel supporting the complaint to the proof thereof.

This case was first assigned on April 3, 1972, to Administrative Law Judge (then Hearing Examiner) Walter R. Johnson, who conducted a prehearing conference and entered a prehearing order on May 12, 1972. On August 31, 1972, in view of the impending retirement of Judge Johnson, this proceeding was transferred to the undersigned. Thereafter, hearings were scheduled to commence October 10, 1972, in Providence, Rhode Island. Hearings in fact commenced on that date and continued until the case was concluded on October 17, 1972, except for one additional stipulation between counsel which was filed on October 27, 1972. On receipt of this stipulation, the record was closed. A motion to dismiss, made at the completion of the case-in-chief, was denied.

This initial decision is based on the record as a whole and on the observation by the undersigned of the witnesses and their demeanor. References to particular parts of the record are cited as examples only. Proposed findings of fact and conclusions of law submitted by complaint counsel and counsel for respondents, and not included herein in substance, or in the language proposed, are rejected as erroneous, or not in accord with the evidence, or immaterial or irrelevant. The following findings of fact and conclusions of law are made:

#### FINDINGS OF FACT

##### Respondents and their Business

1. Respondent, Seekonk Freezer Meats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 1408 Fall River Avenue, Seekonk, Massachusetts.

2. The individual respondent, Lawrence Fontes, is the proprietor and chief executive officer of respondent corporation, and has been since November 10, 1969, when he acquired the business from the preceding owner. As proprietor and chief executive officer, Lawrence Fontes at all times since he acquired the business, has formulated directed and controlled the acts and practices of Seekonk Freezer Meats, Inc. All the outstanding stock of the



corporate respondent is owned by Lawrence Fontes and his wife, and has been since the foregoing date.

3. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of meat and meat products to the purchasing public. Meat and meat products come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

4. In the course and conduct of such business, respondents now cause, and for some time last past have caused, meat and meat products, when sold, to be transported from their place of business in the Commonwealth of Massachusetts to purchasers thereof located in the State of Rhode Island, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their meat and meat products, respondents have made various representations, directly and by implication, in advertisements in newspapers of general circulation, by radio, direct mail, and on occasion over television, respecting their meat and meat products and the prices, terms, and conditions of sale thereof.

6. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms, and individuals in the sale of meat and meat products of the same general kind and nature as those sold by respondents.

7. The annual sales volume of respondents at all times mentioned herein has been substantial, amounting in 1970 to approximately \$800,000.

(For all of the foregoing see Complaint and Answer, complaint counsel's requests for admissions and responses thereto (CX 485), testimony of individual respondent commencing at Tr. 56, particularly Tr. 60-86, and citations in subsequent findings.)

#### Bait and Switch

1. The record contains many examples of respondents' advertising ranging over a considerable period of time. Much of

respondents' newspaper advertising was patterned after advertisements which Lawrence Fontes and his predecessor obtained from a clipping service, the National System, located in St. Louis, Missouri (Tr. 824). This organization provided respondents and other subscribers with tear sheets of freezer meat company advertising disseminated by firms doing business in many different geographic areas of the United States.

2. The advertising by respondents of their freezer meats and meat products at all times mentioned herein has been extensive. Advertisements were placed frequently and continuously in major newspapers serving the metropolitan area of Providence, Rhode Island, the Providence Daily Journal, the Providence Sunday Journal, the Providence Evening Bulletin, the Fall River, Mass., Herald News, the New Bedford, Mass., Standard-Times, the Pawtucket, Rhode Island, Times, and others. Radio advertising was also utilized over local stations, WICE, Providence, Rhode Island, and WSAR, Fall River, Massachusetts.

3. Exposure of these advertisements to members of the public both in Rhode Island and Massachusetts was substantial. The circulation of the foregoing newspapers is large. The Providence Sunday Journal alone reaches over 200,000 people (CX 354-355; see also CX 415, 418)<sup>1</sup> and it has been estimated that the 184 "spots" broadcast in 1970 for respondents over WICE reached approximately 64,473 people (CX 11).

4. Two examples of respondents' advertising are reproduced herein (CX 24 and CX 50) on the following pages. The first of these advertisements was disseminated in the Providence Sunday Journal TV Weekly on February 1, 1970, and the second in the Providence Journal on Wednesday, September 16, 1970. Many essentially similar advertisements were placed in the Providence Journal and other newspapers during 1970 and early 1971 (CX 23, 28, 32-34, 36, 39-41, 43-48, 50-51, 54-57, 60-61, 63-65, 67, 69, 71, 488, 490-491; RX 5; and billing statements CX 308, 310, 312-313, 315, 317, 319-320, 322-323, 333-334, 339, 344-345, 387, 389, 395-398, 402, 404-406, 408).

5. The spot radio advertising over WICE was as follows (CX 3A-B):

If you're spending more than six dollars a week on meat and not eating filet mignon, \* \* \* You're spending too much. \* \* \* Yes you're spending

<sup>1</sup> Exhibits introduced by counsel supporting the complaint are designated "CX," those offered by respondents "RX."

Providence Sunday Journal TV Weekly, February 1, 1970



**Beat Inflation!**  
**BEEF SALE** 7 DAYS ONLY!  
**NO FREEZER? FREE ... STORAGE ... BLAST FREEZING**

**Call Today [SUN.] COLLECT 336-7150**

**3 BUNDLES TO CHOOSE FROM**  
**YOUR CHOICE FOR \$65<sup>00</sup>**

**\$17.25 PER MONTH**  
**FOR FOUR MONTHS\***

**PHONE NOW!** **CALL 336-7150**

**ALL WEIGHTS APPROXIMATE**

**1.**  
 Consisting of:  
**RIB & CHUCK**  
 • CLUB STEAKS  
 • SWISS STEAKS  
 • DELMONICO STEAKS  
 • PRIME RIB ROASTS  
 • BAR-B-QUE STEAKS  
 • MINUTE STEAKS  
 • BAR-B-QUE RIBS  
 • CHUCK ROAST  
 • POT ROAST  
 • GROUND BEEF

**EXAMPLE:**  
 150 LBS.  
 @ 43¢ LB.  
**\$65<sup>00</sup>**

**2.**  
 Consisting of:  
**LOIN & RIB**  
 • CLUB STEAKS  
 • RIB STEAKS  
 • PORTERHOUSE STEAK  
 • RIB ROAST  
 • Short Cut/RUMP STEAKS

**EXAMPLE:**  
 130 LBS.  
 @ 50¢ LB.  
**\$65<sup>00</sup>**

**3.**  
 Consisting of:  
**LOIN & ROUNDS**  
 • T-BONE STEAKS  
 • ROUND STEAKS  
 • SIRLOIN STEAKS  
 • PORTERHOUSE STEAKS  
 • Small Amount of GROUND STEAK  
 • SIRLOIN TIP ROAST  
 • MINUTE STEAKS  
 • RUMP ROAST  
 • EYE ROAST  
 • ROUND ROAST  
 • FILLET MIGNON

**EXAMPLE:**  
 125 LBS.  
 @ 52¢ LB.  
**\$65<sup>00</sup>**

<b>50 PORK CHOPS</b> \$1.00 <small>Approx. wt. 4 lbs.</small>	<b>20 LBS. CHICKEN</b> \$1.00	<b>SELECT CUT CHOICE &amp; PRIME BEEF ORDERS</b> 57¢ LB. & UP	<b>10 LBS. BACON</b> \$1.00	<b>10 LBS. HOT DOGS</b> \$1.00
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**1-\$1.00 BONUS BUY With Bundle DURING OUR \$1.00 DAYS SALE**

**USDA PRIME VARIETY ORDER**

- 400 LBS. PRIME BEEF
- 60 LBS. CHICKENS
- 30 LBS. PORK
- 24 LBS. BACON
- 12 LBS. HAM
- 526 LBS. TOTAL

**ONLY \$880\* PER WEEK FOR 52 WEEKS**

**ALL BEEF SOLD HANGING WEIGHT AND SUBJECT TO CUTTING LOSS. CUT AND WRAPPED TO YOUR SPECIFICATIONS . . . FREE!**

**20 LBS. CHICKENS**  
 FOR OPENING YOUR ACCOUNT IN ADVANCE... **336-7150**

**BANKAMERICARD \*CHARGE IT!**

**SEEKONK FREEZER MEATS**

1408 FALL RIVER AVE. (Rte. 6) SEEKONK, MASS.

**DIRECTIONS:** Take 95 to 195 EAST. Take Seekonk Exit to RTE 6. In 1st mile East of Fallstaff Rest 8 mins from Prov (East of Abbe Show.

**FINANCING AVAILABLE**  
**STORE HOURS:**  
**MON. thru FRI. 10:00 A.M. to 8:30 P.M.**  
**SATURDAY 9:00 to 6:00**  
**SUNDAY 9:00 to 8:00**

48 The Providence Journal, Wednesday, Sept. 16, 1970

**CALL NOW (COLLECT) 336-7150 AND RECEIVE 20 LBS. CHICKENS FOR OPENING YOUR ACCOUNT IN ADVANCE**

**Steaks**  
**Roasts**  
**Beef**



**FOR DAD**



**FOR MOM**



**OF ALL CUTS FOR THE KIDS**

**FEED THE WHOLE FAMILY CHOICE BEEF FOR ONLY**



**\$24<sup>69</sup> PER MO.**

FOR 120 DAYS SAME AS CASH



**CHOOSE FROM 3 BUNDLES**

1 RIB & CHUCK	2 LOIN & RIB	3 LOIN & ROUNDS
<small>Consisting of: Club Steaks—Tenderloin Steaks &amp; Delmonico Steaks—Prime Rib Roast—Sprig On Steaks—Minute Steaks—Bar-B-Que Ribs—Chuck Roast—Eye Roast—Ground Beef</small>	<small>Consisting of: Club Steaks—Rib Steaks—Porterhouse Steaks—Rib Roast—Short Cut Rump Steaks—T Bone Steaks—Sirloin Steaks—Flat Mignon—Sirloin Top Roast Also small amount of Ground Beef.</small>	<small>Consisting of: T Bone Steaks—Round Steaks—Sirloin Steaks—Porterhouse Steaks—Small Amount of Ground Steak—Sirloin Eye Roast—Minute Steaks—Rump Roast—Eye Roast—Round Roast—Flat Mignon</small>
<b>143 LBS. AT .69 LB.</b>	<b>132 LBS AT .75 LB.</b>	<b>125 LBS. AT .79 LB.</b>

**\*1 BONUS BUYS WITH ANY BUNDLE PURCHASE**

<b>25 PORK CHOPS</b>	<b>5 lbs. BAR-B-QUE SPARE RIBS</b>	<b>5 lbs. SAUSAGE</b>	<b>50 HOT DOGS</b>
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**ALL TOP QUALITY PRODUCTS ALL WEIGHTS APPROXIMATE—U.S.D.A. CHOICE U.S.D.A. GOVERNMENT INSPECTED QUALITY BEEF**



**DIRECTIONS:** SEEKONK EXIT OFF 195 EAST, TAKE RTE. 6 PAST THE AUTO SHOW AND WE'RE JUST AHEAD ON THE LEFT

**NEW HOURS** MONDAY-FRIDAY 10 AM-8 PM SAT-SUNDAY 9 AM-6 PM SUNDAY'S 5 PHONE CALLS ONLY

far more than you should for your families Beef needs. \* \* \* Seekonk Meats on Route six in Seekonk is the butcher of inflation \* \* \* and can feed your family mouth watering USDA choice beef cut to your specifications. \* \* \* At Seekonk Meats you can get one hundred twenty-five pounds of USDA choice Beef cut to T-Bones, Round Steak, Sirloin, \* \* \* Filet Mignon, Eye Roast, Round Roast, \* \* \* all for only twenty-four-sixty-nine a month. \* \* \* That's twenty-four-sixty-nine a month for four months treated as a cash sale with no interest or carrying charges added or you can charge it on your Bank Americard or Mastercharge. \* \* \* Now put that in your freezer and enjoy it! \* \* \* If you don't have a freezer, Seekonk will store it for you at no charge. \* \* \* To enjoy your delicious Seekonk steak this summer Seekonk Meats will give you a beautiful outdoor Barbeque Grille with every beef order this week \* \* \* Hop on over to Seekonk Meats fourteen 0 eight Fall River Avenue Seekonk. \* \* \* and tell Rusty to roll out that free BarB-Que Grille. (Words originally crossed out in pen and ink on exhibit, apparently by WICE personnel, omitted.)

The scripts of the broadcasts over WSAR were similar in tone offering "succulent juicy fresh steaks for the price of Hamburg" (CX 1-2). See also as to radio advertising over WICE and WSAR: additional scripts, CX 4, 19-20; affidavits of performance, CX 7-8, 331; broadcast orders, CX 9, 11, 15-16; and billing statements, CX 333-334.

6. Complaint counsel subpoenaed 19 members of the public who had responded to such advertising of respondents and had traveled to respondents' place of business to purchase the advertised meat. Without exception these witnesses appeared to be responsible and sincere persons, who were drawn in good faith by the attractive presentation of respondents' meat as advertised and the low prices featured. Most of these prospective customers had seen advertising in the Providence Journal or other newspapers.

7. Although the experience of these customers upon presenting themselves at respondents' place of business varied somewhat, in general events took the following pattern: Customers, frequently a housewife accompanied by her husband, would enter respondents' premises and would make known their interest in the low priced attractive meat offered in respondents' advertising. The prospective customers would then be taken into a freezer and a "side" of beef or other large portion of a beef carcass would be shown to them. In contrast to the impression created by respondents' advertising, the meat displayed would be extremely unattractive, often very fatty, and would give the appearance of being unwholesome if even edible. Upon seeing this meat,

most prospective customers would be discouraged. On occasion, respondents' employees disparaged the advertised meat. When customers turned from the meat shown, respondents' employees would then advise that better meat was available. Thereafter prospective customers would be taken to a different area of respondents' freezer and shown other sides or quarters of beef or other sides or quarters of beef would be brought out. Invariably, this beef would be of the quality, wholesomeness, appearance and attractiveness suggested by respondents' advertising and which the prospective customers were interested in and came to see, but the price would be much higher. Respondents would then attempt to sell the prospective customers this higher priced meat, and usually would succeed, although often the higher price per pound initially quoted would ultimately be reduced somewhat, but never to the prices per pound offered in respondents' advertising. Prospective customers frequently were sold much larger quantities of meat than featured by respondents in their advertising, and such sales were at much higher prices per pound. See the following (transcript pages indicate the commencement of testimony on direct): Gauthier, Tr. 359; Le Doux, Tr. 382; Rich, Tr. 398; Cerbarano, Tr. 424; Werbinski, Tr. 448; Clark, Tr. 503; Turner, Tr. 467; Luoin, Tr. 487; Sanford, Tr. 516; Enos, Tr. 539; Alves, Tr. 553; Hebert, Tr. 585; Berek, Tr. 607; Brown, Tr. 623; Dierks, Tr. 643; Keneally, Tr. 654; Sousa, Tr. 672; Gale, Tr. 708, and Gosselin, Tr. 691.

8. The specific experiences of a number of witnesses who answered respondents' advertising are summarized in the following paragraphs:

Witness saw respondents' advertisements in the Providence Bulletin featuring three "Bundles" of beef, as in the advertisements duplicated herein, and thought the prices quoted were "very low." The advertising which attracted him featured "Rib & Chuck" at 43¢ per pound, "Loin & Rib" at 50¢ per pound, and "Loin & Rounds" at 50¢ per pound, "Your Choice For Only \$65.00." He concluded that you "don't get buys like this every day." The next day he drove to respondents' premises with his wife and asked to see the advertised meats. He described the meat shown as "bad; fatty and dark." It didn't look good to him. As he was looking at the meat, respondents' salesman said, "You people don't want this meat," and stated that he would show them a "better piece." Witness ultimately bought 199 pounds of the

better meat shown to him, paying \$256.71, \$1.29 per pound before cutting and trimming (Tr. 361-380; CX 36, 496A).

Witness saw one of respondents' advertisements in the New Bedford, Mass., Standard-Times in early 1971. It featured U.S.D.A. Choice beef "Packs," "Rib & Chuck" at 69¢ per pound, "Loin & Rib" at 75¢ per pound, and "Loin & Rounds" at 79¢ per pound. Witness and his wife went to respondents' place of business where they waited for a while and then were shown into respondents' freezer. The salesman showed them a piece of beef "hanging by itself, nothing else around." The beef "looked terrible." It looked like "all suet and very little meat." Witness and his wife did not want the meat displayed to them, and the salesman stated that respondents had "something better over here." He went to another part of the freezer and brought out a side of beef that was much better. Witness and his wife found this meat attractive and ultimately purchased approximately 305 pounds for \$362.95 at \$1.19 per pound before cutting and trimming (Tr. 382-397; CX 481, 489).

Witness saw a full page advertisement in the Providence Sunday Journal TV Weekly on April 5, 1970, featuring three "Bundles," 150 Pounds of "Rib & Chuck" at 43¢ per pound, 130 pounds of "Loin & Rib" at 50¢ per pound, and 125 pounds of "Loin & Rounds" at 50¢ per pound, all at \$16.25 per month. These "Bundles" and prices caught witness' eye. She thought the meat was "a good buy" and was interested particularly in the "Bundle" at 43¢ a pound. She went to respondents' premises with a neighbor. Respondents' salesman took them into respondents' freezer where four pieces of beef were hanging up. The salesman talked fast and went by the first piece fast. Witness thought it looked "very dry." Witness and her neighbor were "disappointed at what we saw for the price of 43¢ a lb." It "looked old and crummy." Witness and her neighbor did not want the 43¢ meat, but did buy 160 pounds of other meat from respondents for \$190.40 at \$1.19 per pound (Tr. 424-446; CX 32, 191).

Witness saw an advertisement of respondents in one of the Providence papers some time in June 1970. She was attracted by the low prices quoted for the "Bundles" of meat featured, particularly "Bundle No. 3," 125 pounds of "Loins & Rounds" \* \* \* at 52¢ per pound, \$16.25 per month." She made an appointment by telephoning respondents and thereafter journeyed to respondents' premises. There she was ushered into a cooler and

shown a hanging portion of a beef carcass and advised that it was the meat advertised. It "was a hunk of fat." The salesman said she "didn't want that piece of meat." She was then shown more expensive beef and purchased a 170 pound piece for \$136 at 80¢ per pound (Tr. 448-466; CX 40, 185).

Witness saw an advertisement of respondents in the Sunday Providence Journal around June 15, 1970. She was interested in the low price of 43¢ per pound, \$16.25 per month, quoted for "Bundle No. 1," and went to respondents' premises with her husband. On arrival, the salesman was at first reluctant to show them the advertised meat. When they persisted, he showed it to them, referring to it as "cow meat." Witness thought the meat looked "awful," that it looked "just like something very tired, very dead and just something not for human consumption." Witness rejected the advertised meat exhibited to them. Respondents' employees then showed witness and her husband other beef which looked much better at a higher price. Witness and her husband purchased 105 pounds for \$93.45 at 89¢ per pound (Tr. 503-516; CX 39, 241).

Witness saw one of respondents' advertisements in the newspaper. She was attracted by "Bundle No. 3" advertised to consist of 125 pounds of "Loin & Rib" at 52¢ per pound, \$16.25 per month. She was also attracted by the cuts of meat featured, "the T-bones, the round steaks, porterhouses, small amount of ground steaks." The prices advertised were lower than in the retail markets. Witness and her husband went to respondents' premises and asked to see the advertised meat. The salesman took them to the back and said, "I got some good stuff for you." They asked to see the sale meat and the salesman said they didn't want to see that because it was "cow" and they wanted beef. Finally, the salesman did show the advertised meat. Witness testified it looked "like a big piece of fat." The salesman again stated it was "cow" and wasn't beef. Better cuts of meat were then exhibited at higher prices, the salesman saying, "if we bought more it would be cheaper." Witness and her husband purchased 399 pounds at \$1.09 per pound for a total price of about \$434 (Tr. 516-537; CX 40, 243).

Witness saw one of respondents' advertisements in the Providence Sunday Journal TV Weekly. She was attracted by the three "Bundles" offered and was particularly interested in the second featuring 130 pounds of "Loin & Rib" at 50¢ a pound,



"\$16.25 per month." She and her husband "didn't want to miss out on the sale" so they went to respondents' premises the next day and "were brought in the back and were shown the meat hanging." Witness testified that the meat was "brownish in color and it was dried-up looking and it was covered with fat." The salesman had "one of the men from the back come out and cut sections of it off to show us what was underneath, and something like 12 inches of fat \* \* \*." Respondents' salesman asked witness and her husband "if we would actually feed our children this, and we said no." The witness and her husband were then shown more expensive meat which had a much better appearance but the price was higher. Witness and her husband purchased 372 pounds of other meat at 99¢ a pound for a total amount of \$368.72. Witness and her husband had not intended to buy that much meat when they originally journeyed to respondents' premises (Tr. 606-622; CX 28, 192).

Witness saw an advertisement of respondents in early 1970. She was interested in the low prices featured for the various "Bundles." She and her husband went to respondents' premises. The meat advertised was shown to them and witness found it "black." It looked "like it had been hanging for at least two months." Witness testified she "wouldn't eat it and wouldn't even feed it to [her] dog." Respondents' salesman brought out other beef for \$1.09 a pound. Witness and her husband purchased 936 pounds at \$1.09 a pound for a total price of over \$1,000 (Tr. 672-690; CX 22).

Witness saw an advertisement of respondents in the Providence Journal in the early summer of 1970. She was attracted by the offer of 50 pounds of beef for "Steak Lovers" at \$29.50, consisting of "Sirloins, T-bones, Porterhouse, Plank Steak, Ground Beef, Filet Mignon, Rump Steak." She and her husband went to see the advertised meat. When they arrived at respondents' premises, an employee showed them the meat advertised for \$29.50 and witness found "it was really bad, it was like a piece of yellow fat." As respondents' salesman was showing them the meat advertised in the Providence Journal, he remarked, "You don't really want to see this; this is the poorest grade we have. I will show you something better." Although witness journeyed to respondents' premises to purchase 50 pounds of advertised meat at \$29.50, she "ended up buying 500 pounds" of beef at \$1.19 per pound for a total purchase price of \$565.

Witness did not have a freezer so respondents stored the meat for her. The meat was gone within three months and witness did not believe her family could have "eaten 500 pounds in three months." They did not keep a record of the meat as it was withdrawn from respondents' freezer so she felt she had no recourse (Tr. 708-716; CX 40, 176).

Witness saw an advertisement of respondents in one of the Providence area newspapers in July 1970. He was attracted by the offer of beef at 69¢ per pound. Several days after he saw the advertisement, he and his wife went to respondents' premises. Upon entering the store, one of respondents' salesmen asked what they were "looking for." Witness advised that he and his wife were interested in the advertised meat. Respondents' employee indicated to them that they would not "want" the advertised meat. The meat then shown was too expensive for witness and his wife and they insisted on seeing "69 cent meat." The meat then shown to them "didn't look too good," it was "covered with fat" and they "couldn't see any meat." Although the witness had gone to respondents' premises specifically to purchase meat for 69¢ per pound, he and his wife ultimately bought \$277 worth of beef at 99¢ per pound. Respondents' employees reduced the price to 99¢ per pound from approximately "\$1.19 a pound or \$1.25 a pound" (Tr. 487-502).

Witness believed she saw an advertisement of respondents appearing in the Providence Sunday Journal on July 19, 1970. She was not sure of the exact date because "it used to be in the paper every week." She was interested because of the low prices featured, "69, 79 a pound." She thought the meat was "kind of cheap." Her son drove her to respondents' premises from their home in Cumberland, Rhode Island. When she arrived, she told respondents' employees that she had come "in response to the advertisement" and wanted to see the advertised meat. She was shown the meat and the "minute" she saw it she said she "didn't want it." It "really didn't look healthy." Witness testified she remarked to her son on seeing the advertised meat that she "wouldn't even give it to the dog," and respondents' employee "just laughed and that's when he went into the freezer to get the other piece." He brought out a better looking piece of meat which he quoted to witness at \$1.29 per pound. Witness thought this meat looked good and she bargained with respondents' salesman who finally reduced the price to \$1.09 per pound.

Witness purchased 200 pounds of meat for \$218 at \$1.09 per pound (Tr. 654-671; CX 44, 226).

Witness saw an advertisement of respondents in August of 1970 in the Providence Sunday Journal. Witness thought if she went to respondents' premises and bought this meat she "would save money." She was interested particularly in the advertised "Bundle #3" offering "Loin & Rounds" at 75¢ a pound. She concluded from the advertisement that the meat advertised was "a good quality of beef" and went to respondents' premises with her husband driving a distance of about six miles. When she arrived she asked to see "Bundle #3" and was shown a hanging piece of meat. The salesman told her "that was the meat" advertised, and she said, "you know, you have to be kidding; this isn't even meat, you know; it's fat." In response, the salesman said it was "heifer" but that he had steer beef which would be better. Witness looked at the better meat which was quoted at \$1.20 a pound. Witness bargained with the salesman and ultimately purchased 667 pounds of meat for about \$563 paying approximately 85¢ a pound (Tr. 623-642; CX 48, 497).

9. Although some customers on cross-examination testified that respondents did not actually refuse to sell the meat shown to them as that which had been advertised, the fact is, as the foregoing reveals, its unwholesome appearance was such that on seeing it the witnesses were discouraged from buying it. Customers' rejection of the advertised meat was assisted on occasion by open disparagement of it by respondents' employees. See Gauthier, Tr. 359, 363-364; Rich, Tr. 398, 400-401; Werbinski, Tr. 448, 452-454; Clark, Tr. 503, 506; Sanford, Tr. 516, 519-521; Enos, Tr. 539, 541; Alves, Tr. 553, 557; Berek, Tr. 607, 609-610, 617; Brown, Tr. 623, 627; Dierks, Tr. 643, 645-646; Keneally, Tr. 654, 658; Gale, Tr. 708, 711.

10. Many of respondents' advertisements stated "U.S.D.A. Commercial" under each of the "Bundles" featured or elsewhere in the advertisement. See, for example, CX 26, 28, 32. Beginning about June 15, 1970, respondents ceased using "U.S.D.A. Commercial" in their advertisements and began using "U.S.D.A. Choice." When the latter was used, the meat shown to prospective customers answering respondents' advertisements was yield grade 5, *i.e.*, from an overfat, wasty carcass (Tr. 132-133, 142; CX 447; Tr. 309-312). Respondents' method of operation remained the same throughout. The meat shown to the purchasing

public answering respondents' advertisements was sufficiently repellant in appearance to discourage the purchase of it aside from whether the advertisement said "U.S.D.A. Commercial," "U.S.D.A. Choice," or neither. Prospective purchasers were "switched" to higher priced meat; in fact, every one of the 19 witnesses who testified herein at the behest of counsel supporting the complaint ultimately purchased more expensive meat than that advertised by respondents despite the fact that every one had come to respondents' premises seeking the low priced beef advertised.

11. Respondents' advertising was false, misleading and deceptive in that it held out to the public the offer of attractive quality meat at bargain prices not in truth available.

12. Respondents' advertising was not bona fide but was utilized for the purpose of luring members of the public into visiting respondents' premises so that they could be sold other meat than that advertised at prices higher than those advertised, and in quantities larger than advertised. Between March and August 1970, respondents made almost 98 percent of sales at prices far higher than the prices advertised (Daily Sales Tally Sheets, CX 435a-z120, 453a-q, 455a-z2; see also Lawrence Fontes, Tr. 75; see also CX 456a-x, 457a-n).

13. Respondents' advertising and selling practices constituted an unfair and deceptive scheme by which members of the public, on visiting respondents' premises to purchase the advertised meat, were shown a side, quarter or other portion of a beef carcass which was repellant and unwholesome in appearance, were told that such carcass was the advertised meat, such meat was openly or subtly disparaged, and, when prospective customers indicated discouragement with the exhibited meat, attempts were made to sell them meat much higher in price and in much larger quantities than featured in respondents' advertising. These attempts were usually successful.

#### Quality and Cuts

1. Respondents' advertising generally followed the form of the examples reproduced herein. Three "Bundles" or "Packs" were featured. The cuts listed and the layout and content of the advertisements suggested attractive meat of excellent quality. In the first newspaper advertisement herein, "Bundle No. 1" was

advertised as 150 pounds of "Rib & Chuck" at 43¢ per pound consisting of:

Club Steaks	Minute Steaks
Swiss Steaks	Bar-B-Que Ribs
Delmonico Steaks	Chuck Roast
Prime Rib Roasts	Pot Roast
Bar-B-Que Steaks	Ground Beef

"Bundle No. 2" was advertised as 130 pounds of "Loin & Rib" at 50¢ per pound consisting of:

Club Steaks	Rump Steaks
Rib Steaks	Sirloin Steaks
Rib Roast	Filet Mignon
Porterhouse Steaks	Sirloin Tip Roast
T-Bone Steaks	Also a Small Amount
Short Cut	of Ground Beef

"Bundle No. 3" was advertised as 125 pounds of "Loin & Rounds" at 52¢ per pound consisting of:

T-Bone Steaks	Sirloin Tip Roast
Round Steaks	Minute Steaks
Sirloin Steaks	Rump Roast
Porterhouse Steaks	Eye Roast
Small Amount of	Round Roast
Ground Steak	Filet Mignon

See also CX 32-34, 36, 39-41, 43-48, 50-51, 54-57, 60-61, 63-65, 67, 75, 487, 489-490, 491. In addition to the contents of the "Bundles" or "Packs," almost all respondents' advertisements featured pictures of delicious looking steaks or cuts of meat, or stocky beef cattle. Advertising was sprinkled with phrases such as "mouth watering USDA Choice beef," "Feed the Family Like Kings," "juicy tender succulent beef," "All Top Quality Products," "Choice Beef," or statements such as "If you are spending more than six dollars per week and not eating filet mignon, you're spending too much" (CX 1, 19, 44, 46-47, 48-50, 349-350). An advertisement in the Providence Journal specifically stated "Our Pledge to You," "We sell only U.S.D.A. Prime & Choice Beef," "All our meat is fresh Western beef, not frozen," "Satisfaction Guaranteed."

2. Advertising is to be judged by the overall impression created. There is no question that members of the purchasing public, on seeing respondents' advertising or hearing it broadcast, would conclude that the beef featured in the "Bundles" or "Packs"

offered by respondents was of excellent quality, highly desirable for family use, and consisted primarily of choice or select cuts, especially steaks of all kinds. The use of the term "U.S.D.A. Commercial" in a number of respondents' advertisements neither countered this overall impression, nor disclosed the unwholesome quality of the meat shown by respondents to members of the public answering respondents' advertisements.

3. Respondents' advertising misrepresented the quality of the beef featured in the "Bundles" or "Packs," and misrepresented the proportion of steaks and other select cuts in such "Bundles" or "Packs." With respect to the latter aspect, Lawrence Fontes testified as to "Bundle No. 1" that the purchaser would "take home some steaks, but the overwhelming balance would be in ground beef," that the purchaser of "Bundle No. 2" would "take home perhaps 50 percent as edible product," that "Bundle No. 3" would result in some steaks, some roasts, and a "little bit of everything" (Tr. 88-89). The waste and ground beef resulting after cutting, dressing, and trimming all three "Bundles" or "Packs" featured in respondents' advertising amounts to between 45 percent and 50 percent of the hanging weights (Kablesch, an expert meat cutter from the U. S. Department of Agriculture subpoenaed by complaint counsel, Tr. 298-299, 311-313; CX 447). The pounds of meat listed under each of the three "Bundles" advertised, therefore, did not consist primarily of choice or select cuts, especially steaks, as implied by respondents' advertising.

#### Misrepresentation of Savings

1. Respondents' advertising in general emphasized "savings." Respondents typically used terms or phrases implying and representing savings such as "Beat Inflation," "Wholesale prices," "Save," "Money Saving Beef Sale," "Prehistoric Prices," "Beef Sale Dollar Days," "Drive Few Miles and Save Lots of Dollars," "Save the Seekonk Way," "Eat USDA Choice Filet Mignon \* \* \* Even Five Times a Week For Less Money Than You are Spending Now" (CX 3-4, 20, 22, 33, 44, 46-47, 51, 57, 349-350). The WICE commercial suggested that any family spending over six dollars a week for meat was spending "too much" and the WSAR commercial promised savings of 30 percent and "Tender Juicy Fresh Steaks For the Price of Hamburg" (CX 2). The findings enumerated earlier herein demonstrate that prospective customers visiting respondents' place of business did so after seeing or

hearing respondents' advertisements, and were attracted by what appeared to be unusually low prices for high quality meat and choice cuts, primarily steaks. These prospective customers journeyed to respondents' place of business seeking such low priced, high quality meat and choice cuts; in short, seeking a way to obtain the family meat supply at savings over what they were paying at retail stores.

2. The savings and low prices advertised by respondents and the low per month payments for "Bundles" or "Packs" featured, only related to unattractive, unwholesome looking meat openly or subtly disparaged by respondents' employees, which prospective customers were discouraged from buying. As demonstrated in prior findings, most purchasers who answered respondents' advertisements did not buy the advertised meat but bought other meat and paid much higher prices per pound than the prices featured for the three "Bundles." Savings on the purchase of the family meat supply, held out to the public in respondents' advertising, were not in truth and in fact available or realized.

#### Misrepresentation of Weight Loss

1. The advertisements placed by respondents in newspapers in the Providence metropolitan area during 1970 and 1971, as stated earlier, were all much alike. The impression conveyed by these advertisements was that the purchaser would obtain the approximate number of pounds of the select cuts of meat offered under each of the "Bundles" for the price per pound listed or for the total price listed. For example, the impression conveyed by the first advertisement reproduced herein is that the purchaser would obtain 150 pounds of "Rib & Chuck" consisting of the select cuts listed for 43¢ per pound or \$65 total price, that the purchaser would obtain 130 pounds of "Loin & Rib" consisting of the select cuts listed for 50¢ per pounds or \$65 total price, or that he would obtain 125 pounds of "Loin & Rounds" also consisting of the select cuts listed for 50¢ per pound or \$65 total price. The admonition "All Weights Approximate" reinforced this impression.

2. The first advertisement reproduced contains small print at the bottom reading "All Beef Sold Hanging Weight And Subject to Cutting Loss." Similar statements may be found in the other advertisements of respondents. Some of respondents' advertisements, for example, that of March 8, 1970 in the Providence

Sunday TV Weekly (CX 28), added to the foregoing the statement: "Your order is custom cut to your family's specifications so that you realize a 90 percent to 65 percent take home weight."

3. In the second advertisement herein, carried in the Providence Journal on Wednesday, September 16, 1970, which consisted of a full page, the only statement made is: "All weights approximate." Nothing is said in this advertisement concerning weight loss or reduction in the pounds advertised due to cutting, dressing, or trimming, and it is clearly deceptive and misleading in this respect.

4. Starting about July 16, 1970, respondents ran a series of "spot" radio broadcasts over WICE, Providence, Rhode Island, the transcript of which has been reported. These broadcasts were continued until July 31, 1970, and stated that at respondents' premises the public could obtain 125 pounds of U.S.D.A. Choice Beef cut to T-Bones, Round Steak, Sirloin, Filet Mignon, Eye Roast and Round Roast, all for only \$24.69 a month (CX 3A). This broadcast made no mention of any weight loss or reduction in the foregoing 125 pounds of beef advertised due to cutting, dressing and trimming, and was deceptive and misleading in this respect.

5. Turning to the advertisements which contain some reference to hanging weight or cutting loss, the fact is that in all instances the emphasis of the advertisements was on the select cuts each of the three "Bundles" consisted of, the total pounds in each "Bundle," and the price at which each of the "Bundles" was sold. Even if members of the public carefully noted the statements toward the bottom of respondents' advertisements, that all beef was sold hanging weight and subject to cutting loss, or that the customer's order was cut to his specifications to realize a 90 percent to 65 percent take home weight, the significance of these statements could not be determined. In the overall context of respondents' advertisements, "All Beef Sold Hanging Weight—Subject to Cutting Loss" and "Your Order is Custom Cut—You Realize 90-65 percent Take Home Weight" are vague and indefinite statements not amounting to disclosure of weight loss, average or otherwise, due to cutting, dressing, and trimming. From the unequivocal statement listing total pounds under each "Bundle," prospective purchasers could well conclude that they would obtain that number of pounds of the cuts listed if they purchased one or another of the three "Bundles"



advertised. Suggestion of a 90 percent take home weight, moreover, in itself is misleading. Lawrence Fontes testified that none of the "Bundles" produced a 90 percent take home weight after cutting, dressing, and trimming (Tr. 88-91; see also Kablesch, Tr. 298-299, CX 447, pp. 3-5, 15-17).

6. The advertising of respondents had the tendency and capacity to mislead members of the purchasing public into believing that the pounds of select cuts of meat listed under each "Bundle" in the advertisements would be the approximate number of pounds of such cuts which purchasers would take home with them.

#### Discounting of Purchasers' Notes

1. The record establishes that in a substantial number of instances respondents transferred obligations of customers to finance companies. As earlier findings describe, members of the purchasing public, after seeing respondents' advertised meat and being discouraged from buying it because of its appearance or because of respondents' disparagements, or both, often purchased relatively large quantities of meat from respondents at higher prices, resulting in obligations amounting to several hundred dollars or even more. In such instances, customers commonly did not have sufficient money to pay for the meat, and respondents would make the sale on credit. Thereafter, respondents would transfer the outstanding balance of such customers to one of the finance companies doing business in the metropolitan area of Providence.

2. Respondents' advertising represented to the purchasing public that respondents herein would extend credit for the purchase of meat and meat products. Frequent statements were made in such advertising urging members of the purchasing public to telephone and open accounts "in advance" and offering "free" gifts if they did so. Typical were the following: "Free—For Opening Your Account in Advance—10 lbs. Chicken" (CX 22), "Free—10 lbs. Swordfish If You Call Today and Open Your Account in Advance" (CX 26), "Take Advantage of Our Easy Credit Terms for Qualified Buyers" (CX 28), "Twenty-four sixty-nine a month for four months treated as a cash sale" (CX 3A), "Free Barbecue Grille If You Call This Week and Open Your Account In Advance" (CX 34), "Just Call Collect Today \* \* \* To Open Your Account" (CX 44), "Charge it! No

Payment Until Feb. 1971" (CX 63), "Budget Terms Available 4 Months Same as Cash" (CX 65).

3. The testimony of witnesses who purchased meat from respondents establishes that in a substantial number of cases they did not realize that respondents would transfer their obligations to a finance company. Indeed, some of the witnesses displayed a marked hostility toward such companies and did not wish to deal with them. The record establishes that most of the witnesses who testified in this proceeding journeyed to respondents' premises to buy one of the "Bundles" advertised and were prepared to pay the advertised price. If they did not have enough money and bought on credit, the witnesses thought that respondents would carry their outstanding balances. A number of them thought that the offer in respondents' advertisements of free items if the prospective customer would call and open an account in advance meant that respondents extended credit and carried customers' accounts. When the witnesses later received booklets and payment schedules from one or another of the finance companies in the Providence area, they were surprised and, in some instances, angry. For example, one witness, who purchased 199 pounds of meat for \$1.29 a pound after traveling to respondents' place of business with the intention of buying one of the advertised "Bundles" at 43¢ or 50¢ per pound (CX 36), testified that he did not know that a finance company would take over his obligation. This witness testified that he understood from respondents' advertising that respondents would carry any unpaid balance, that he first became aware that his balance had been transferred to a finance company when he received "the little book in the mail" about two or three weeks later, and when this occurred he was "mad" because he "didn't want any dealings with Aetna. \* \* \* didn't want any dealing with any finance because [he] thought Seekonk was going to carry the account themselves" (Tr. 370). Another witness testified, "Not until everything was all transacted did I know that we were going to deal with Aetna. Not until it came down through the mail, I would say" (Tr. 392). Still another also first realized that her unpaid balance had been transferred to a finance company when she received the booklet in the mail several weeks later. She was "very surprised" (Tr. 474-475, 479; see also Tr. 405-406, 415, 456, 587, 597-98, 600, 647-49, 653, 662, 698-700).

4. Whether or not customers of respondents knew at the time

of purchase that the unpaid portion of their obligation would be transferred to a finance company or other third party, the fact is that respondents' advertising was false, misleading and deceptive in representing, directly and by implication, to the purchasing public that the corporate respondent would extend credit and would carry purchasers' unpaid obligations.

5. Such transfer of customers' obligations could result in the cutting off of valid claims of such customers against respondents. The consummation of sales by respondents through unfair, false, misleading and deceptive acts and practices, and the transfer thereafter of obligations of members of the public obtained by such sales to third parties with the possibility of cutting off valid claims of such customers against respondents, constitutes an unfair practice.

6. On April 15, 1970, the Governor of Massachusetts approved an amendment to the General Laws of Massachusetts providing that the "holder of a retail installment sales agreement, or other person acting in his behalf, shall be subject to all defenses, real and personal, which the installment buyer may have against the installment seller thereof." This enactment became fully effective 90 days thereafter on July 14, 1970 (CX 498-99). The State of Rhode Island does not appear to have enacted a comparable statute. The fact that Massachusetts has enacted a statute which appears to preclude Holder-In-Due Course status to acquirers of retail installment sales agreements in no way precludes the Federal Trade Commission from acting in this area.

#### "Truth in Lending"

1. The record of this proceeding establishes that respondents in the offering for sale and sale of meat and meat products regularly arranged for "consumer credit" as 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, and that respondents regularly advertised, as described earlier herein, to promote their business and assist in credit sales.

2. Respondents' advertising contained statements such as "Only \$4.72 Per Week For 26 Weeks" (CX 22), "Only \$8.80 Per Week For 52 Weeks" (CX 24, 26, 28, 32, 33, 34, 36, 39 and 487).

3. In such advertising respondents have represented the amount of an installment payment and the number of install-

ments and the period of repayment, but have failed to disclose, as required by the foregoing Act and regulation, (1) the cash price, (2) the amount of the downpayment required or that no downpayment is required, (3) the amount of the finance charge expressed as an annual percentage rate, and (4) the deferred payment price.

4. Having failed to make the required disclosures, respondents' advertising practices violated the Truth in Lending Act and pursuant to Section 108 thereof respondents thereby violated the Federal Trade Commission Act.

#### RESPONDENTS' DEFENSES

##### Abandonment

Respondents urge that the complaint should be dismissed and no order entered because, to the extent any of the practices alleged in the complaint were engaged in, they have been abandoned. Abandonment, however, was accomplished in this case while respondents were under investigation by the Commission's staff (Tr. 812-813, 827-828). It is fundamental that abandonment, in itself, and especially under such circumstances, provides no bar to the issuance of a cease and desist order. The practices which have been the subject of the findings set out herein were seriously oppressive to the public and long continued. Respondents continue to be actively and vigorously engaged in the sale of freezer meats and have no apparent intention of discontinuing this business. Promotional activities continue to be utilized as, indeed, they must be in a business of this nature, and the individual respondent remains in charge as he has been since November 10, 1969. The undersigned having considered the evidence, and having listened to and observed the witnesses, has concluded that the public interest requires the issuance of a cease and desist order.

##### The Individual Respondent

The proprietor and chief executive officer of the corporate respondent, Seekonk Freezer Meats, Inc., Lawrence Fontes, through counsel, urges that the order, if any is to be issued in this case, should not be applicable to him individually. Mr. Fontes testified in this matter at length concerning the details of respondent corporation's operation and business methods. Es-

entially, he disclaimed responsibility for practices to which the witnesses summoned by complaint counsel testified, and attributed responsibility to an aggressive sales manager, later fired, and no longer in the employ of Seekonk Freezer Meats, Inc. However, the fact remains that Mr. Fontes throughout, since November 10, 1969, has been in complete charge of Seekonk Freezer Meats, Inc. The record establishes that Mr. Fontes not only was the owner of this firm, which was closely held by him and his wife, but that he was chief executive officer in fact as well as in title. Further, he had been associated with it for some time prior to acquiring it in 1969 (Tr. 811-813). Mr. Fontes operated the business on a day-to-day basis and made all, or most, major decisions relating to it, including the placing of advertising, and the supervision, hiring and firing of all employees. The record establishes that he formulated, directed and controlled the acts and practices of Seekonk Freezer Meats, Inc. Under these circumstances, it would not be in the public interest to dismiss this proceeding as to Lawrence Fontes. See Answer, request for admissions and responses thereto, CX 485, pp. 1-3, and testimony of Lawrence Fontes, particularly Tr. 61-82, 97-99, 813-827.

#### Other Defenses

The undersigned has given thorough consideration to all the proposed findings, arguments, and authorities submitted by respondents and, to the extent inconsistent with this decision, they have been rejected as unsupported by the record, incorrect, or immaterial. The testimony of respondents' witnesses, and that of the individual respondent, has been carefully considered. The testimony of satisfied customers, of employees of respondents, and of an official of a finance company which purchased customers' obligations from respondents does not counteract the reliable, probative and credible testimony of the many witnesses who established the unfair, false, misleading and deceptive acts and practices of respondents found herein.

#### APPLICABLE PRINCIPLES

The principles applicable herein to one or another of respondents' practices are basic, and scarcely need stating. False, misleading, and deceptive sales tactics in the form of "bait" advertising have long been held to constitute unfair practices violative

Initial Decision

82 F.T.C.

of Section 5 of the Federal Trade Commission Act. "Guides Against Bait Advertising" issued in 1959, 4 CCH Trade Reg. Rep. ¶ 39,011; *Pati-Port, Inc. v. Federal Trade Commission*, 313 F.2d 103 (4th Cir. 1963); *Consumers Products of America, Inc. v. Federal Trade Commission*, 400 F.2d 930 (3rd Cir. 1968), cert. denied, 393 U.S. 1088 (1969); *Tashof v. Federal Trade Commission*, 437 F.2d 707 (D.C. Cir. 1970). In determining whether advertising is false, misleading, or deceptive, it is the overall impression conveyed which counts. *Aronberg v. Federal Trade Commission*, 132 F.2d 165 (7th Cir. 1942); *Spiegel, Inc. v. Federal Trade Commission*, 411 F.2d 481 (7th Cir. 1969). Although intent to deceive could be inferred from this record, such intent to deceive is not an element, it is sufficient that the practices have the capacity to deceive. *Pep Boys—Manny, Moe & Jack, Inc. v. Federal Trade Commission*, 122 F.2d 158 (3rd Cir. 1941); *Federal Trade Commission v. Sterling Drug, Inc.*, 317 F.2d 669 (2nd Cir. 1963). If the initial contact is secured by deception, it is no defense that the customer became aware of the misleading advertising which brought him to respondents' premises at the time he actually made a purchase. *Exposition Press, Inc. v. Federal Trade Commission*, 295 F.2d 869 (2nd Cir. 1961), cert. denied, 370 U.S. 917 (1962). Discontinuance or abandonment of a practice does not prevent the issuance of a cease and desist order. *Clinton Watch Company v. Federal Trade Commission*, 291 F.2d 838 (7th Cir. 1961), cert. denied, 368 U.S. 952; *Carter Products, Inc. v. Federal Trade Commission*, 323 F.2d 523 (5th Cir. 1963). This principle is especially applicable where abandonment or discontinuance occurred when under investigation, *Coro, Inc.*, 63 F.T.C. 1164, 1201 (1963), modified and aff'd, *Coro, Inc. v. Federal Trade Commission*, 338 F.2d 149 (1st Cir. 1964), cert. denied, 380 U.S. 954, and where there is no guarantee that the practices may not be resumed. *Goodman v. Federal Trade Commission*, 244 F.2d 584 (9th Cir. 1957).

## CONCLUSIONS

1. The Federal Trade Commission has, and has had, jurisdiction over respondents, and the acts and practices charged in the complaint, and involved herein, took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.
2. Respondents, as demonstrated in the findings of fact set out

earlier, engaged in false, misleading and deceptive advertising, and utilized unfair and deceptive acts and practices in the offering for sale, sale and distribution of meat and meat products.

3. Such false, misleading and deceptive advertising, and such unfair and deceptive acts and practices had the tendency and capacity to mislead, and in fact misled, members of the purchasing public into the purchase of substantial quantities of respondents' meat and meat products and were to the prejudice and injury of the public and of respondents' competitors, and constituted violations of Sections 5 and 12 of the Federal Trade Commission Act.

4. In the course and conduct of their business respondents have failed to comply with Regulation Z duly promulgated by the Board of Governors of the Federal Reserve System and, pursuant to Section 103(q) of the Truth in Lending Act, such failure constitutes a violation of that Act and, pursuant to Section 108 of that Act, also constitutes a violation of the Federal Trade Commission Act.

5. As a consequence of the foregoing, and of the findings of fact set out earlier herein, the following order should be entered.

#### ORDER

*It is ordered,* That respondent Seekonk Freezer Meats, Inc., a corporation, its officers, successors, and assigns, and Lawrence Fontes, individually and as an officer of said corporation, and his successors and assigns, and respondents' agents, salesmen, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of meat or other food products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, 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.

(c) That any meat offered for sale is high quality meat, which in fact is either ungraded or below the grades of "Prime," "Choice" and "Good," or which is yield grade 5 of the quality grade.

(d) That the meat a purchaser will receive or take home, when untrimmed beef sides, hindquarters, forequarters, or other untrimmed pieces, "Bundles," or "Packs" are sold, will consist, after cutting, dressing and trimming, entirely or primarily of steaks, or other high quality cuts, unless such is the fact.

2. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which:

(a) Fails to disclose clearly, without ambiguity, and with prominence:

(1) That untrimmed beef sides, hindquarters, forequarters, or other untrimmed pieces, "Bundles," or "Packs," offered for sale, will suffer weight loss due to cutting, dressing and trimming.

(2) That the price charged for such untrimmed meat is based on the hanging weight before cutting, dressing and trimming occurs.

(3) The correct average percentage of weight loss of such untrimmed side, quarter, piece, "Bundle," or "Pack" due to cutting, dressing and trimming.

(b) Fails to include clearly and with prominence:

(1) When United States Department of Agriculture graded meat is advertised which is below the grade of "USDA 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 the United States Department of Agriculture is advertised, the statement "This meat has not been graded by the United States Department of Agriculture."

(3) When the meat in (1) or (2) of this subparagraph is a portion of the total meat offered, a statement indicating the portion which is ungraded, or below the grades of "Prime," "Choice" and "Good," and the percentage of such meat, by weight, of the total meat offered.

3. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which mis-



represents in any manner the price, quantity or quality of any meat or other food products, or the savings available to purchasers thereof.

4. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which represents, directly or by implication, that the prices stated in such advertisements are not the regular and ordinary prices at which respondents offer for sale, and sell meat or other food products, but are instead "sale" or "special" prices, and therefore are lower than respondents' regular and ordinary prices when, in fact, such advertised prices are the prices regularly and ordinarily charged by respondents for the products advertised and do not constitute a reduction or dollar saving from respondents' regular and ordinary prices.

5. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which represents, directly or by implication:

(a) That purchasers may arrange for credit granted by respondents for purchases of meat or other food products when respondents do not in fact extend credit in the ordinary course and conduct of their business.

(b) That purchasers may arrange to make deferred payments for their purchases directly to respondents when, in the ordinary course and conduct of their business, respondents do not accept deferred payments but transfer purchasers' obligations to a finance company or other third party to whom such deferred payments must be made.

6. Disseminating, or causing the dissemination of, any advertisement, or utilizing any sales presentation, which fails to disclose clearly and with prominence that purchasers' obligations will be transferred to a finance company, or other third party, when, in the ordinary course and conduct of their business, such is respondents' practice.

7. Discouraging the purchase of, or disparaging in any manner, any meat or other food products which are advertised or offered for sale.

8. Displaying any side, hindquarter, forequarter, or other portion of a beef carcass of inferior quality and unwholesome appearance, or of fatty, wasty yield grade, to prospec-

tive customers who have answered an advertisement or sales presentation of respondents, as the meat featured in such advertisement or presentation, so as to discourage such prospective customers from seeking to purchase the meat which was the subject of the advertisement or presentation.

9. Assigning, selling, or otherwise transferring notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other documents evidencing the indebtedness.

10. Failing to include the following statement clearly and with prominence on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

#### NOTICE

Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding.

11. Failing to maintain for a period of two (2) years adequate records, and to permit the inspection and copying thereof by Commission representatives:

(a) Which disclose the facts upon which are based price representations and statements as to the quality and the U.S.D.A. grade of meat offered for sale, savings claims, representations as to the percentage of steaks, or other high quality cuts in advertised meat, and similar representations of the type covered by this order, and from which the validity of such statements and representations can be established; and

(b) Records from which respondents' compliance with the requirements of this order can be ascertained.

*It is further ordered,* That respondents deliver a copy of this Order to Cease and Desist to all persons now engaged, or who become engaged, in the sale of meat or other food products as respondents' agents, salesmen, representatives or employees, and to secure from each of said persons a signed statement acknowledging receipt of a copy thereof.

*It is further ordered,* That respondents Seekonk Freezer Meats, Inc., a corporation, its officers, successors, and assigns,

and Lawrence Fontes, individually and as an officer of said corporation, and his successors and assigns, and respondents' agents, salesmen, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with any advertisement to aid, assist or promote, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z (12 C.F.R. Section 226) of the Truth in Lending Act (Pub. L 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Stating in any advertisement the amount of the down payment required or that no downpayment 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 there is also stated, in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z, all of the following items—(i) the cash price; (ii) the amount of the downpayment required or that no downpayment is required, as applicable; (iii) the number, amount, and due dates or period of repayments scheduled to repay the indebtedness if the credit is extended; (iv) the annual percentage rate; and (v) the deferred payment price.

2. Making any disclosure not in accordance with the requirements of Section 226.10 of Regulation Z.

*It is further ordered,* That respondents 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 this order.

*It is further ordered,* That respondents shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this Order to Cease and Desist.

#### FINAL ORDER

No appeal from the initial decision of the administrative law judge having been filed, and the Commission on March 6, 1973 having stayed the date on which the initial decision would have

Order

82 F.T.C.

become effective pursuant to Section 3.51 of the Commission's Rules of Practice; and

The Commission now having determined that the case should not be placed on its own docket for review and that the initial decision should be adopted and issued as the decision of the Commission:

*It is ordered*, That the initial decision of the administrative law judge shall, on the 15th day of March 1973, become the decision of the Commission.

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IN THE MATTER OF  
HEUBLEIN, INC.

*Docket 8904. Interlocutory order, March 15, 1973.*

Order directing would-be intervenor, Allied Grape Growers, and the respondent and complaint counsel to file supplemental briefs on what and how interests of Allied would be affected; and why Allied's interests in final order would not be adequately represented by complaint counsel and *amicus* briefs from Allied.

ORDER GRANTING APPLICATION FOR INTERLOCUTORY APPEAL

This matter is before the Commission upon the application of would be intervenor Allied Grape Growers for an interlocutory appeal from the administrative law judge's denial of application for leave to intervene filed January 31, 1973, and upon respondent's opposition thereto filed February 7, 1973.

Upon consideration of the materials before it, the Commission believes that the issues raised by applicant are of sufficient significance to warrant review by the Commission of the administrative law judge's determination denying intervention. However, the Commission believes that the record now before it may be inadequate to permit proper evaluation; therefore

*It is ordered*, That applicant, respondent, and, in its discretion complaint counsel, shall file supplemental briefs directed to the following questions:

1. What are the precise interests of Allied which would be threatened by the proposed or other possible orders in this case, and in what fashion might potential divestiture decrees have the effect of abrogating *specific* contractual or