

Complaint

IN THE MATTER OF

J. D. GRAMM, INC., ET AL.

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

*Docket C-2363. Complaint, March 14, 1973—Decision, March 14, 1973.*

Consent order requiring a Hialeah, Florida, personal income tax preparation service, among other things to cease representing that each customer's tax return carries an unconditional or unlimited guarantee of accuracy; misrepresenting the training and ability of respondent's employees; representing that respondent offers an auditing service; and representing that respondent's representatives are engaged in the income tax business on a full time, year round basis.

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 J.D. Gramm, Inc., a corporation, and David Goldberg and Virginia M. Goldberg, individually and as officers of said corporation, hereinafter referred to as respondents, have 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 J.D. Gramm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 461 Hialeah Drive, Hialeah, Florida.

Respondents David Goldberg and Virginia M. Goldberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of personal income tax preparation services to the general public.

Respondents sell their aforesaid tax preparation services directly and through various affiliates and franchisees, hereinafter referred to for convenience as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other income tax preparation services, to be sent by United States mail from respondents' place of business in the State of Florida to their local offices and franchises and purchasers of respondents' tax preparation services located in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents and their representatives have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 5. In the course and conduct of respondents' business and for the purpose of inducing the purchase of said income tax preparation returns or services, respondents have made or caused to be made numerous statements and representations in newspaper and television advertisements.

Typical and illustrative of said statements made in respondents' newspaper and television advertisements, but not all inclusive thereof, are the following:

We do all the figuring. Fill in all your forms with guaranteed accuracy at the lowest possible tax.

He makes sure there are no mistakes—in fact, he guarantees it. Accuracy and satisfaction guaranteed as on all Gramm returns.

\$2.50 will put the income tax expert on your side.

Your return will be prepared by a highly experienced member of our audit staff.

Visit one of the many J. D. Gramm offices near you. It's their business all year long.

Mr. Gramm is around all year. 49 Great Offices to serve you throughout Florida.

Gramm's full time year round business is income tax.

PAR. 6. By and through the use of the above quoted statements and representations, and others of similar import and meaning,

but not expressly set out herein, respondents and their representatives have represented, and are now representing, directly or by implication, that:

1. Each customer's tax return prepared by respondents or their representatives carries a guarantee of accuracy without conditions or limitations.

2. Respondents' and their representatives' tax preparing personnel are specially trained and are unusually competent in the preparation of all tax returns, or that they have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Respondents offer an auditing service and have on their staff tax preparing personnel who verify tax information submitted by their customers for tax preparation purposes.

4. All of respondents' representatives are engaged in the income tax business full time on a year round basis.

PAR. 7. In truth and in fact:

1. Each customer's tax return prepared by respondents or their representatives does not carry a guarantee of accuracy without conditions or limitations.

2. Respondents' and their representatives' tax preparing personnel are not specially trained and are not unusually competent in the preparation of all tax returns and they do not have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Respondents do not offer an auditing service nor do they have on their staff tax preparing personnel who verify tax information submitted by their customers for tax preparation purposes.

4. All of respondents' representatives are not engaged in the income tax business full time on a year round basis. Many of respondents' representatives are engaged in the income tax business full time only from January 1 to April 15 of each year.

Therefore, the statements and representations set forth in Paragraphs Five and Six hereof were, and are, false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents and their representatives

have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 9. The use by respondents and their representatives of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' and their representatives' income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents and their representatives as herein alleged, were and are all to the prejudice and injury of the public and of respondents' and their representatives' competitors and constituted and now constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent J.D. Gramm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 461 Hialeah Drive, Hialeah, Florida.

Respondents David Goldberg and Virginia M. Goldberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

#### ORDER

*It is ordered,* That respondents J.D. Gramm, Inc., a corporation, its successors and assigns and its officers, and David Goldberg and Virginia M. Goldberg, individually and as officers, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device or through their franchisees or licensees, in connection with the preparation of income tax returns, or other services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any customer's tax return prepared by respondents or respondents' representatives is guaranteed, unless the true nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; or making any representation that such returns are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

2. Representing, directly or by implication, that respon-

dents' and their representatives' tax preparing personnel are specially trained and are unusually competent in the preparation of all tax returns, or that they have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Representing, directly or by implication, that respondents offer auditing services or that respondents verify tax information submitted by their customers for tax preparation purposes.

4. Representing, directly or by implication, that all respondents' representatives are engaged in the income tax business full time on a year round basis.

*It is further ordered, That:*

a. Respondents herein deliver a copy of this decision and order to each of their present and future employees, agents, representatives, franchisees or licensees and any other persons, partnerships or corporations authorized by respondents to engage in the commercial preparation of income tax returns.

b. Respondents inform each such person so described in paragraph a above that respondents are obligated by the terms of this order to notify the Commission of persons who continue on their own the deceptive practices prohibited by this order.

c. Respondents, in their continuing business dealings with each said person described in paragraph a., take note of any failure to observe the requirements of this order and advise the Federal Trade Commission of such failure.

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

*It is further ordered, That* the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

*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

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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 \$3.80 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

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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

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."



