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## Complaint

tion of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

## IN THE MATTER OF

## J. C. PENNEY COMPANY, INC.

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

*Docket C-2350. Complaint, Feb. 2, 1973—Decision, Feb. 2, 1973.*

Consent order requiring the nation's second largest retailing organization located in New York City, among other things to cease representing that certain of their merchandise, including mattress pads and covers, sheets, pillow cases and protectors, are flame retardant or have been treated with a flame retardant finish.

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

PARAGRAPH 1. Respondent J. C. Penney Company, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business at 1301 Avenue of the Americas, New York, New York.

Respondent is the second largest retailing organization in the nation and operates approximately 1,700 retail stores throughout 49 states and Puerto Rico. It also offers merchandise for sale through mail order catalogs and catalog desks. The circulation

of respondent's mail order catalog is several million copies per issue, is published at least two times a year, and is mailed to customers throughout the United States.

PAR. 2. Respondent in the course and conduct of its business has been, and is now, engaged in the sale, advertising and offering for sale in commerce of merchandise it ships or causes to be shipped, when sold, from the States of Georgia and Wisconsin and other states to purchasers located throughout the country and maintains and has maintained a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in the retail sale of general merchandise is and has been substantial. Among such merchandise so sold and shipped are mattress pads and other products.

PAR. 3. Respondent is now, and at all times mentioned herein, has been in substantial competition in commerce with other corporations, firms and individuals engaged in the sale and distribution of mattress pads.

PAR. 4. In the course and conduct of its business in commerce, and for the purpose of inducing the purchase of said mattress pads, respondent has made representations in advertisements, in its mail order catalog circulated throughout the United States and in packaging and labeling with respect to the flame retardant characteristics of said product.

Typical and illustrative of the statements and representations in said advertising and packaging, are the following:

FLAME RETARDANT FITTED MATTRESS PAD AND COVER  
THE COTTON FABRIC AND THE FOAM BACK WILL NOT SUPPORT FLAMES

Resists flare!

Resists flame!

Both the cotton top and foam backing are treated for total fire retardancy.

Give yourself and your family the added protection of this flame retardant mattress pad.

THE FLAME RETARDANCY LASTS FOR THE LIFE OF THE PAD  
A Penn Prest Flame-Retardant Mattress Pad. Cotton top and foam back are both fire retardant and will not support flame. Stays flame retardant for the life of the product. Diamond stitching binds polyurathane foam back to smooth white cotton top.

THE FLAME RETARDANCY LASTS FOR A MINIMUM OF 25 WASHINGS

LIGHTED MATCHES BURN OUT

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All J. C. Penney advertisements of this mattress pad contain a drawing of a lighted cigarette shown on the mattress pad. Immediately beneath the drawing the claim is made "Resists flame!"

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and meaning, published in five successive J. C. Penney mail order catalogs and in other advertising material, representations have been made directly or by implication:

a) That the entire mattress pad had been treated with a flame retardant chemical.

b) That the entire pad would retard and resist flames.

c) That the flame retardancy lasts for the life of the pad under any conditions of laundering.

d) That the flame retardancy lasts for a minimum of 25 washings.

e) That a lighted cigarette is a flame.

f) That a flame retardant cotton top, quilt-stitched to a flame retardant polyurathane foam backing, will retard and resist flames.

g) That the treated pad provides complete protection against the hazards caused by flames.

PAR. 6. In truth and in fact:

a) The entire mattress pad had not been treated with a flame retardant chemical.

b) The entire pad will not retard and resist flames.

c) The flame retardancy of the pad will not last for the life of the pad under any conditions of laundering.

d) The flame retardancy does not last for a minimum of 25 washings.

e) A lighted cigarette is not a flame.

f) A flame retardant cotton top, quilt-stitched to a flame retardant polyurathane foam will not retard and resist flames.

g) The treated pads do not provide complete protection against the hazards caused by flames.

PAR. 7. Respondent furthermore has failed to disclose in its packaging, labeling and advertising of said product, material and relevant facts related to the proper laundering of said product necessary to preserve the flame retardant finish. Respondent has failed to provide clear and conspicuous warnings to prospective purchasers and purchasers of said product that the use of

chlorine bleach, soap, and hot water temperatures will negate the effect of the flame retardant chemicals in the cotton top and polyurathane foam backing of the pad.

The failure to disclose said material facts leads the consumer to believe that the representations being made are true and complete. Such failure to disclose material facts is unfair, and false, misleading and deceptive, and constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices and its failure to disclose material facts, as set forth in Paragraphs Four through Seven above, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations were and are true and complete, and into the purchase of substantial quantities of said products.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and

having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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. C. Penney Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1301 Avenue of the Americas, New York, New York.

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

#### ORDER

*It is ordered,* That respondent J. C. Penney Company, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale and distribution of mattress pads, mattress covers, sheets, pillow cases and pillow protectors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that said products are flame retardant, or have been treated with a flame retardant finish, and from utilizing any words or depictions of similar import or meaning in connection therewith, unless all uncovered or exposed parts (except sewing threads) will retard and resist flame, flare and smouldering, or have been treated with a finish which will retard and resist flame, flare and smouldering.

*It is further ordered,* That in all instances where respondent represents said products to be flame retardant or treated with a flame retardant finish, that warnings be provided in or on the packaging in immediate conjunction with said representations and in type or lettering of equal size and conspicuousness, and on a label affixed to the products securely and with sufficient permanency to remain in a conspicuous, clear and plainly legible

condition, of any danger from flammability which may result if these products be dry cleaned or washed by other than the recommended means or in excess of a stated number of times.

*It is further ordered,* That respondent make every reasonable effort to immediately notify in writing all of its customers who have purchased or to whom have been delivered the mattress pad which gave rise to this complaint to alert them to the fact that the top, bottom and skirt portions of such pad had been treated with a flame retardant chemical, but that the binding tape portion, which joins the top of the pad to the skirt portion, may have not in some cases have been so treated; therefore, purchasers should not expect complete protection against all types of flames.

*It is further ordered,* That respondent notify the Commission at least 30 days prior to any proposed changes 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 changes in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondent deliver a copy of this order to cease and desist to all personnel of respondent responsible for the preparation, creation, production or publication of advertising, packaging or labeling of all products covered by this order.

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

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IN THE MATTER OF

PEPSICO, INC.

*Docket 8903. Interlocutory Order, Feb. 7, 1973.*

Rejection of respondent's offer of settlement and returning case to adjudication for further proceeding under Part 3 of the Commission's Procedures and Rules of Practice.

ORDER

By order of December 1, 1972 [81 F.T.C. 1047] the Commission withdrew this matter from adjudication pursuant to Section

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2.34(d) of the Commission's Rules of Practice in order that consent negotiations might be conducted with a view to entry of a consent order. The Commission has considered respondent's offer of settlement, has determined to reject the offer and to return the matter to formal adjudicative status. Accordingly,

*It is ordered,* That the matter be, and it hereby is, returned to adjudication for further proceeding under Part 3 of the Commission's Procedures and Rules of Practice.

Commissioners Dixon and MacIntyre do not concur and would have accepted the offer of settlement.

## IN THE MATTER OF

JOE MARKS, TRADING AS HOME IMPROVEMENT  
CENTERCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED  
VIOLATION OF THE FEDERAL TRADE COMMISSION  
AND THE TRUTH IN LENDING ACTS

*Docket C-2351. Complaint, Feb. 7, 1973—Decision, Feb. 7, 1973.*

Consent order requiring an Akron, Ohio, seller and distributor of residential aluminum siding products, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

## COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joe Marks, an individual, trading and doing business as Home Improvement Center, hereinafter referred to as respondent, has violated the provisions of said Acts and implementing regulation, 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 Joe Marks is an individual trading and doing business as Home Improvement Center, with his

office and principal place of business located at 3290 South Main Street, Akron, Ohio.

PAR. 2. Respondent is now, and for sometime last past has been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum sliding products and other home improvement products to the general public and in the installation thereof.

PAR. 3. In the ordinary course and conduct of his business as aforesaid, respondent regularly arranges for the extension of consumer credit or offers to extend or arrange for the extension of such credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of business as aforesaid, and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused, and is causing, customers to execute a binding order, hereinafter referred to as the "Order Contract," and one or more confession of judgment (cognovit) notes for the purchase and installation of residential aluminum siding products and other home improvements to the residence of the customer. Respondent does not provide these customers with any other consumer credit cost disclosures.

By and through the use of the order contract and cognovit note, respondent:

(1) Fails, in some instances, to disclose the "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c) (3) of Regulation Z.

(2) Fails, in some instances, to disclose the "amount financed" to describe the amount of credit extended, as prescribed by Section 226.8(c) (7) of Regulation Z.

(3) Fails, in some instances, to disclose the "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as prescribed by Section 226.8(c) (8) (i) of Regulation Z.

(4) Fails, in some instances, to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as prescribed by Section 226.8(c) (8) (ii) of Regulation Z.



(5) Fails, in some instances, to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z.

(6) Fails, in some instances, to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.

(7) Fails to rescribe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as prescribed by Section 226.8(b)(5) of Regulation Z.

PAR. 5. By the aforesaid failure to make disclosures, respondent has failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failure to comply with Regulation Z constitutes violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

#### DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should

issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 Joe Marks is an individual trading and doing business as Home Improvement Center, with his office and place of business located at 3290 South Main Street, Akron, Ohio. Respondent is now, and for sometime last past has been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding products and other home improvement products to the general public and in the installation thereof.

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

#### ORDER

*It is ordered*, That respondent Joe Marks, an individual trading and doing business as Home Improvement Center, or any other name or names, his successors and assigns, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension or offer to extend or arrange for the extension of consumer credit, as "consumer credit" is 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) Failing to disclose the "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.

(2) Failing to disclose the "amount financed" to describe the amount of credit extended, as prescribed by Section 226.8(c)(7) of Regulation Z.

(3) Failing to disclose the "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as prescribed by Section 226.8(c)(8)(i) of Regulation Z.

(4) Failing to disclose the sum of the cash price, all

charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

(5) Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z.

(6) Failing to disclose the number, amount, and due dates or periods of payments scheduled to repay the indebtedness, as prescribed by Section 226.8(b)(3) of Regulation Z.

(7) Failing to describe the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as prescribed by Section 226.8(b)(5) of Regulation Z.

(8) Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with Section 226.4 and Section 226.5 of Regulation Z, in the manner, form, and amount required by Section 226.6, Section 226.7, Section 226.8, Section 226.9, and Section 226.10 of Regulation Z.

*It is further ordered,* That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent's business organization such as incorporation, partnership, or sale, resultant in the emergence of a new business organization, or any other change in the business organization which may affect compliance obligations arising out of the order.

*It is further ordered,* That respondent shall, within sixty (60) days after service upon him of this order, file with the Com-

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mission a report in writing setting forth, in detail, the manner and form in which he has complied with the order to cease and desist contained herein.

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IN THE MATTER OF  
ALTERMAN FOODS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION ACT AND THE CLAYTON ACT, SEC. 7

*Docket 8844. Complaint, May 26, 1971—Decision, Feb. 12, 1973.*

Order requiring an Atlanta, Georgia, wholesaler and retailer of groceries and household products, among other things to cease inducing and receiving discriminatory promotional allowances and services from its suppliers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Alterman Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office located at 933 Lee Street, S.W., Atlanta, Georgia.

PAR. 2. Respondent is now and for many years has been engaged in the business of selling groceries and household products to the public at retail, and wholesale to retail grocers and institutional customers. Respondent, through its wholly-owned subsidiary corporations, operates a chain of retail grocery stores under the name Big Apple Super Markets, selling a great variety of food, grocery and non-edible household products. There are presently seventy retail grocery stores composing respondent's chain, which stores are located in the States of Georgia and Alabama. Respondent, through its wholesale division, sells to approximately three hundred seventy-five independent grocers who are members of its voluntary cooperative organization using the name ABC

Food Stores. Respondent's institutional division sells to such concerns as restaurants, hospitals and clubs.

In the course of its business, respondent purchases food, grocery and non-edible household products of many types from a large number of manufacturers, suppliers and handlers of such products. Respondent's sales of its products are substantial, exceeding \$133,000,000 annually.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases for resale a great variety of products from a large number of suppliers located throughout the United States. Respondent causes these products, when purchased by it, to be transported from the places of manufacture or purchase to its stores or warehouses located in the States of Georgia and Alabama for resale to the consuming public.

Respondent resells the products it purchases to retail grocers located in Alabama and Georgia and causes these products to be transported from its warehouse in Atlanta, Georgia, to stores located in Georgia and Alabama.

In addition, respondent disseminates advertising in commerce and receives payments in commerce from suppliers for advertising and promotional services and facilities.

PAR. 4. In the course and conduct of its business in commerce, respondent is now and has been in competition with other corporations, persons, firms and partnerships in the purchase, sale and distribution of food, grocery and non-edible household products.

PAR. 5. In the course and conduct of its business in commerce, and particularly since 1956, respondent has knowingly induced and received, or received, from some of its suppliers the payment of something of value to or for respondent's benefit as compensation or in consideration for services or facilities furnished by or through respondent in connection with respondent's offering for sale, or sale, of products sold to respondent by many of its suppliers. Respondent knew or should have known that such payments were not made available by such suppliers on proportionally equal terms to all other customers of such suppliers, including retail customers who do not purchase directly from such suppliers, who compete with respondent in the sale and distribution of such supplier's products.

PAR. 6. For example, each year during April or May, respondent

holds a food show at which products of its suppliers are displayed. For the past several years, shows were held on May 22, 1966; April 23, 1967; May 19, 1968; and May 24, 1969.

The food shows conducted by respondent are attended by Big Apple Super Market employees, ABC Food Store members and their employees and customers of the institutional division.

Respondent solicits most, if not all, of its suppliers to pay it for renting a booth at the food show. The amount which respondent charged for a booth at the 1966 and 1967 shows was \$350. In 1968 and 1969, the cost to a supplier for a booth at the food show was \$375.

Participating suppliers are encouraged to advertise in respondent's food show catalogs. At the food show, suppliers are also encouraged to solicit orders from retail grocers who purchase the suppliers' products from respondent.

A substantial number of respondent's suppliers participated in the food shows. Respondent received from participating suppliers in excess of \$100,000 each year for its 1966, 1967, 1968 and 1969 food shows.

In addition to the special payments received for its annual food shows, respondent has also knowingly induced and received, or received, other discriminatory promotional payments and allowances in the regular course of its business during the years in question.

PAR. 7. In the course and conduct of its business in commerce, and particularly since 1956, respondent has knowingly induced and received, or received, from some of its suppliers the furnishing of services or facilities connected with respondent's offering for sale, or resale, of such products so purchased when respondent knew or should have known that such services or facilities were not made available by such suppliers on proportionally equal terms to all other customers, including retailer customers who do not purchase directly from such suppliers, who compete with respondent in the resale and distribution of such suppliers' products.

PAR. 8. For example, during respondent's annual food shows, agents, employees or representatives of suppliers performed valuable services such as staffing the booths rented by suppliers from respondent and demonstrating the suppliers' products therein. In addition to the furnishing of such valuable manpower, other services performed by some of the suppliers which

aided respondent in the resale of the suppliers' products included the donation of door prizes, free samples and free orders given away at the show.

PAR. 9. Typical of the suppliers who participated in, and paid for a booth at, respondent's food shows at least once during the years 1966 through 1969 were the following:

Sweet Sue Kitchens, Inc., Athens, Alabama.	Interstate Bakeries Corporation, Birmingham, Alabama.
Martha White, Inc., Nashville, Tennessee.	Bernardin, Inc., Evansville, Indiana.
S. T. Jerrell Company, Birmingham, Alabama.	Airkem, Inc., Carlstadt, New Jersey.

PAR. 10. Many of respondent's suppliers who participated in respondent's food shows for the years 1966, 1967, 1968 and 1969 did not offer and otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products payments, allowances, services, or other things of value, for advertising, display, or other promotional services or facilities on terms proportionally equal to those granted respondent.

When respondent induced and received, or received, said payments, allowances or services from its suppliers, respondent knew or should have known that it was inducing and receiving, or receiving payments, allowances, services or facilities from its suppliers which the suppliers were not offering and otherwise making available on proportionally equal terms to all their other customers, including retailer customers who do not purchase directly from such suppliers, who were competing with respondent in the sale and distribution of such suppliers' products.

PAR. 11. The acts and practices of respondent, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45).

*Mr. Lee S. Dewey and Mr. John H. Bedford* supporting the complaint.

*Arnall, Golden & Gregory*, Atlanta, Georgia, by *Mr. Cleburne E. Gregory, Jr.*, and *Mr. Allen I. Hirsch* for respondent.

Initial Decision

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INITIAL DECISION BY THEODOR P. VON BRAND, HEARING EXAMINER  
APRIL 17, 1972

## PRELIMINARY STATEMENT

On May 26, 1971, the Federal Trade Commission issued its complaint against Alterman Foods, Inc. (Alterman), charging it with having violated Section 5 of the Federal Trade Commission Act. In essence the complaint alleges that Alterman violated the law by knowingly inducing and receiving, or receiving, from some of its suppliers discriminatory advertising or promotional payments not made available on proportionally equal terms to all other customers of such suppliers competing with respondent in the sale and distribution of such products. In addition, the complaint alleges essentially that Alterman violated the law by inducing and receiving, or receiving, from some of its suppliers the discriminatory furnishing of services or facilities in connection with respondent's offering for sale or resale of such products when it knew or should have known that such services or facilities were not made available on proportionally equal terms to its competitors. In short, the complaint alleges as a practical matter that respondent violated the Federal Trade Commission Act by inducing certain of its suppliers to violate Sections 2(d) and 2(e) of the Clayton Act, as amended by the Robinson-Patman Act.

Primarily, the charges of illegality and the evidence developed in the record pertain to the participation by certain of Alterman's suppliers in respondent's food shows in the period 1966-1969 involving payments of booth rentals and services such as staffing of the exhibit booths during the show.

A prehearing conference was held on August 19 and 20, 1971. Hearings for the presentation of testimony and other evidence by both sides were held in Atlanta, Georgia, commencing on January 4, 1972, and concluding on January 20, 1972, when the record was closed.

This matter is now before the hearing examiner for final consideration on the complaint, answer, evidence, and the proposed findings of fact, conclusions, and briefs filed by counsel for the respondent and counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions and briefs submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected; and the hearing examiner, having



