CHAPTER 10

Food Standards Established by the Federal Trade Commission

The Federal Trade Commission Act (1), Sec. 5. (a) (1) states that unfair methods of competition in commerce, and unfair and deceptive acts or practices in commerce are declared unlawful (15 U.S.C. Secs. 41–58). Among other functions, the FTC has formulated trade practice rules relating to some classes of foods and beverages. These regulations are published in 16 CFR, as follows:

| Parts 168, 176, 186, Candy and confectionery | Part 134 Oleomargarine manufacturing |
| Part 194 Cocoa and chocolate                 | Part 114 Preserve Manufacturing Industry |
| Part 22 Frozen food                         | Part 103 Rabbit Industry |
| Part 89 Ice Cream industry, District of Columbia and vicinity | Part 148 Ripe Olive |
| Part 209 Grocery                            | Part 144 Sardine |
| Part 65 Kosher Food Products and Kosher Products Industry | Part 133 Tomato paste manufacturing |
| Part 132 Macaroni and noodle products       | Part 146 Tuna |
| Part 182 Yeast                              | Part 139 Wine |

Although the above items are all related to foods, the FTC trade practice rules include food-product descriptions in only the following:

| Part 114 Preserve Manufacturing Industry | Part 133 Tomato Paste Manufacturing Industry |
| Part 148 Ripe Olive Industry            | Part 146 Tuna Industry |
| Part 144 Sardine Industry               | |

Example of Trade Practice Rules

The trade practice rules for the sardine industry are given here as an example.

TRADE PRACTICE RULES FOR THE SARDINE INDUSTRY

as promulgated March 5, 1940

Statement by the Commission:

Trade practice rules for the Sardine Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.
The rules relate to the sale and distribution of sardines, processed or canned, and of sardine oil, meal, and other sardine products, by processors, canners or packers, and by jobbers, distributors, dealers, importers, or other marketers. As promulgated, the provisions are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

Based on the most recent statistics available, the industry's annual pack of sardines in the United States is around 3,000,000 cases, and the annual domestic production of sardine oil and meal runs around 18,000,000 gallons of oil and close to 100,000 tons of meal. The combined sales value per annum to the producers of these products is reported to be approximately $18,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a general trade practice conference was held in San Francisco under the auspices of the Commission. Subsequently, a draft of proposed rules for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C. Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

THE RULES

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the legal requirements of the pure food laws, or other provision of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair practices in the interest of the public, and to assist in general law enforcement to this end. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

GROUP I

Unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission, as construed in the decisions of the Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in or directly affecting interstate commerce.
Rule 1 — Definitions:

For the purpose of these rules and in their application the following definitions shall apply:

(a) Improper Packing: Canned sardines shall be deemed to be improperly packed (1) if they contain any deleterious, decomposed or otherwise unfit food; or (2) if they are not prepared and packed under strict sanitary conditions conformable to the rules and regulations of appropriate Federal and State authorities; or (3) if the cans are not well filled with whole fish of good quality, properly cleaned and with heads removed; or (4) if the canned product contains any adulterant or the canning or packing thereof is defective in any other respect; or (5) if the can used is so made, formed, or filled as to be misleading.

Where sauce or oil is used in packing sardines, the quantity should be sufficient to fill the interstices in the can fully packed with the fish. Any tomato or mustard sauce or other sauce or oil used in packing sardines shall be made from sound and wholesome ingredients and shall contain no starches or other thickening, nor any adulterating agents, nor any other material or ingredient which may be deleterious, decomposed, putrid, or harmful.

(b) Natural Style: Canned sardines described or designated as “Natural Style” shall be deemed to be sardines which may or may not be salted or brined but which are packed without the addition of any sauce, oil, condiment, or flavoring agent.

(c) Seconds: The term “Seconds” shall be construed as including any canned sardines of which the can is over-filled abnormally, even though such sardines are otherwise properly packed. The term shall also be construed as including canned sardines in which the cans are dented, spotted, rusty, or otherwise defective; provided, however, that if the sardines are spoiled or in any way adulterated or unfit for human or animal consumption they shall not be sold or distributed at all for such consumption, irrespective of whether or not they are designated by the canner, distributor, dealer, or other seller as being “Seconds.”

Preserve Manufacturing Industry

For the Preserve Manufacturing Industry the Federal Trade Commission describes in considerable detail (16 CFR § 114.1 (a) through (g) fruit preserve, fruit jelly, apple butter, corn syrup and honey preserve products. As an example 16 CFR 114.1 (a) states:

PART 114—PRESERVE MANUFACTURING INDUSTRY

Preserve, fruit preserve, jam, fruit jam, are understood to mean the clean, sound fruit product possessing definite characteristic flavor of the

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1This part does not, in any respect, supplant or relieve anyone of the necessity of complying with the legal requirements of the pure food laws or other provisions of law. They are established under the Federal Trade Commission Act for the purpose of more effectively stamping out unfair competitive practices in the interest of the public, and to assist in general law enforcement to this end.
preserved fruit or fruits named on the label, made by cooking or concentrating to a suitable consistency properly prepared, clean, sound, entire edible portion of fresh fruit, cold-packed fruit, canned fruit, or a mixture of two or all of these, with sugar or with sugar and water, with or without spice or vinegar, or with such harmless organic acids as may be necessary to compensate for natural acid deficiency of the particular fruit used, but excluding acids or acid salts generally recognized as chemical preservatives, and in the preparation of which fruit product there is used not less than forty-five (45) pounds of actual fruit to each fifty-five (55) pounds of sugar. In the case of fruits deficient in pectin, or whose composition or texture prevent the preparation of preserve or jam as defined herein of the desired consistency, nothing herein shall prevent the addition of small quantities of pectin or pectinous material: Provided, however, that if such pectin or pectinous material is added, the ratio of not less than forty-five (45) pounds of fruit to each fifty-five (55) pounds of sugar be maintained, and the finished product containing such added pectin shall contain not less than sixty-eight (68) percent water-soluble solids derived from the fruit and sugar used in its manufacture, as determined by refractometer at twenty degrees (20°) centigrade without correction for the insoluble solids present.

Kosher Food Products and Kosher Products Industry

In accord with the Federal Trade Commission Act of 1914 (1), the FTC promulgated Trade Practice Rules with respect to Kosher Food Products and Kosher Products Industry. These rules are published in the Federal Register, Vol. 27, pp. 9250-9254, September 19, 1962. Starting with the issue as of January 1, 1963, they will appear also in full in Title 16 CFR Part 65. The rules became operative thirty days from the date of their promulgation.

The pertinent third paragraph of the statement by the Commission is as follows:

Proceedings for the establishment of these rules were instituted upon application of the Specialty Foods Trade Institute, Incorporated. A general trade practice conference was held under Commission auspices in New York, N.Y., on June 28, 1962, at which proposals for rules were submitted for consideration of the Commission. The views and suggestions of industry members and other interested parties expressed at the conference and otherwise submitted were duly considered, and thereafter upon full consideration of the entire matter, final action was taken by the Commission whereby it approved rules for the industry in the form hereinafter set forth.

Although standards are not defined, they are mentioned in Rule 16 of these Trade Practice Rules which follows:
REFERENCES

RULE 16 § 65.16—MISREPRESENTING PRODUCTS AS CONFORMING TO STANDARDS

In connection with the sale or offering for sale of industry products it is an unfair trade practice to represent, through advertising or otherwise, that such products conform to any standards recognized in or applicable to the industry when such is not the fact.

REFERENCE