



**Horace Smith Consulting**

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**"Comments Regarding Slotting Allowances and Other Grocery Marketing Practices"**

June 9, 2000

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479275-1  
#6

Joseph A. Pichler, Chairman and CEO  
The Kroger Company  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

Re: **LOS ANGELES, CALIFORNIA - FOOD4LESS ADVERTISEMENT APPEARING  
IN THE LOS ANGELES TIMES SUNDAY, JUNE 4, 2000**

Dear Mr. Pichler:

Thank you for your FOOD4LESS store located in Los Angeles, California (Store #362). On June 5, 2000, I visited your Los Angeles, California store located at Sunset Boulevard and Western Avenue. I came to purchase **Seedless Red Grapes** which was advertised in the Los Angeles Times, Sunday, June 4, 2000 edition (Page A27). The price advertised was \$0.58 per pound (Exhibit 1). When I arrived in the produce department of the aforementioned FOOD4LESS store the **Seedless Red Grapes** were listed at \$1.28 per pound about 120 percent above the advertised price.

I spoke with a gentleman (Juan) who was stocking produce and indicated to him the discrepancy between the advertised price of \$0.58 per pound and the actual store price of \$1.28 per pound. Juan was very kind to investigate the pricing discrepancy with his associate (John). His associate instructed him to sign the ad appearing in the Los Angeles Times. I was instructed to present the ad to the cashier at check-out and I would be given the **Seedless Red Grapes** at the advertised price of \$0.58 per pound. I requested the pricing be changed to reflect the advertised price. However, no immediate change was made to the store pricing for Seedless Red Grapes. When I returned on June 6, 2000, the pricing had been changed to reflect the advertised price of \$0.58 per pound for Seedless Red Grapes.

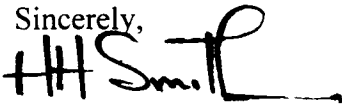
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I have enclosed two receipts validating these visits to your store. My visit of June 5, 2000, is represented by a cashier receipt dated June 5, 2000 (exhibit II). Please note the merchandise code "PRODUCE" was entered manually by the cashier subverting the programmed pricing of \$1.28 per pound. These items appear on the cash receipt as "PRODUCE". My visit of June 6, 2000, is represented by a cashier receipt dated June 6, 2000 (exhibit III). Please note the merchandise code "Seedless Red Grapes" are entered normally by the cashier and appear on the cash receipt as "RD GRAPE S/L".

Sincerely,



Horace H. Smith

Cc: Senator Dianne Feinstein  
United States Senator  
Washington DC

Senator Barbara Boxer  
United States Senator  
Washington DC

~~XXXXXXXXXX~~  
Office of the Secretary  
Federal Trade Commission

**LIST OF PARTICIPANTS  
IN THE FTC WORKSHOP  
ON SLOTTING ALLOWANCES**

**Bloch, Ronald.** Counsel at McDermott Will & Emery, and formerly head of the food group at the Federal Trade Commission.

**Campbell, Jay.** Chief operating officer, Associated Grocers of Baton Rouge, an independent grocery wholesaler.

**Carver, Karen.** Chief operating officer, Elan Natural Waters, a Georgia-based producer of bottled water.

**de la Cruz, Peter.** Partner in the Washington firm of Keller and Heckman, and author of articles on distribution and buyer power.

**Doppes, Gus.** Chief operating officer, California Scents, a manufacturer of home and automotive air fresheners.

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**Denbaly, Mark.** Chief, Food Markets section, Economic Research Service. Department of Agriculture.

**Eagan, John.** Vice President, Food & Sundries, at Costco.

**Gidley, J. Mark.** Partner, Washington office of White & Case, and formerly Deputy Assistant Attorney General for Regulatory Affairs at the Antitrust Division.

**Gundlach, Greg.** Department of Marketing, College of Business Administration, University of Notre Dame, and author of empirical works on slotting allowances.

**Hannah, Scott C.** Chief Executive Officer, Pacific Valley Foods, a producer of frozen potato and vegetable products.

**Houk, Robert.** Vice-President for Strategic Planning at CoAMS, a Chicago-based firm that manages and consults on co-op, rebate, and other trade support programs.

**MacAvoy, Christopher.** Partner in the Washington law firm of Howrey Simon Arnold & White, with a practice focusing on mergers and antitrust counseling.

**McMahon, Jack.** President and CEO Gallant Greeting Corp., a publisher of greeting cards and seasonal cards.

**Mills, Pamela.** A producer of tortillas, appearing here as a representative of the Tortilla Industry Association.

**Nickila, David.** President of Portland French Bakery, a maker of specialty breads.

**Pyle, Nicholas.** Washington representative of the Independent Bakers Association, a trade group of regional bakeries.

**Rao, Akshay.** Associate Professor of Marketing and Director of the Doctoral Program. Carlson School of Management, University of Minnesota.

**Reynolds, Robert.** Principal of the consulting firm of Reynolds Associates, and former Director of Planning at Safeway.

**Savrin, Daniel.** Partner at the Boston firm of Bingham Dana, and author of a recent article on the European Kesko/Tuko merger.

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**Schmidt, Jeffrey.** Partner in the Washington office of Pillsbury Madison & Sutro. His practice focuses on antitrust issues, and he is counsel to the Grocery Manufacturers of America.

**Scher, Irving.** Partner in Weil, Gotshal & Manges, and former Chair of the ABA Section of Antitrust Law.

**Shaffer, Greg.** Simon School of Business, University of Rochester, and author of articles on slotting allowances.

**Silberman, Alan.** Partner in Chicago office of Sonnenschein Nath & Rosenthal, and former chair of the ABA Section of Antitrust Law.

**Skitol, Robert.** Partner in the Washington office of Drinker Biddle & Reath, and head of the firm's Antitrust Practice Group.

**Steinberg, Irwin.** Chief operating officer of the Tortilla Industry Association, one of the trade groups that has petitioned for guidelines on slotting allowances.

**Steiner, Robert.** Washington-based consultant and former president of the toy firm Kenner Products Co.

**Stenzel, Thomas.** President, United Fresh Fruit and Vegetable Association, a trade group representing suppliers of produce.

**Steuer, Richard.** Partner in the New York office of Kay Scholer Fierman Hays & Handler, and a specialist in antitrust litigation.

**Sullivan, Mary.** Economist at the Antitrust Division of the Justice Department, and previously on the faculty of the Graduate School of Business at the University of Chicago.

**Sussman, Donald.** Executive Vice President, Supply Chain Management, at Ahold USA.

**Tada, Pierre.** CEO, Limoneira Company, a grower, packer, and shipper of citrus fruit in Southern California.

**Thomas, Victor.** Head of the Supplier Diversity and Ethnic Merchandising section of Stop & Shop Supermarket Company.

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**Ukrop, Robert.** President and CEO, Ukrop's Super Markets, a Richmond-area chain of retail stores.

**Warren-Boulton, Richard.** Economist and principal in the Washington office of the consulting firm of MiCRA.

**Weber, Winston.** Principal in the consulting firm of Winston Weber & Associates, and an author specializing in category management issues.

**Weitz, Barton.** Chair, Marketing Department, College of Business Administration, University of Florida.

**Whinston, Michael.** Professor of economics, Northwestern University, and author of articles on vertical restraints and exclusionary practices.

**FOOD 4 LESS**  
 INDEPENDENT RESEARCH PROVES  
 OUR PRICES ARE LOWEST OVERALL

2 5 LB # 316 / 58 86 F  
 JT YAMS 6010  
 1 81 LB # 58 / LG  
 JT 100 BUNCH 571 1 05 F  
 MARUCHAN 25 F  
 MARUCHAN 25 F  
 MARUCHAN 25 F  
 MARUCHAN 25 F  
 \*\*\*\*\* TAX .00 TOT 2.91  
 CASH 5.00  
 CHANGE 2.09

6/04/2000 0 33 PM 0362 03 0859 157

THANK YOU FOR SHOPPING FOOD 4 LESS  
 PARELA C

*Exhibit III*

**FOOD 4 LESS**  
 INDEPENDENT RESEARCH PROVES  
 OUR PRICES ARE LOWEST OVERALL

58 BANANAS 1 98 F  
 01 GIORNO 8 78 F  
 01 GIORNO 8 78 F  
 \*\*\*\*\* TAX .00 TOT 19.51

3 56 LB # 58 / LB 2 06 F  
 JT PRODUCE  
 3 65 LB # 58 / LB 2 12 F  
 JT PRODUCE  
 1 82 LB # 58 / LB 1 06 F  
 JT PRODUCE  
 4 01 LB # 41b / 98 98 F  
 JT PINTO BEANS  
 2 98 LB # 21b / 98 1 46 F  
 JT PINEAPPLE  
 16 23 LB # 15 / LB 2 43 F  
 JT WATERMELON  
 \*\*\*\*\* TAX .00 TOT 29.65  
 CASH 40.00  
 CHANGE 10.35

6/05/2000 5 12 PM 0362 13 0205 725

*Exhibit II*

THANK YOU FOR SHOPPING FOOD 4 LESS

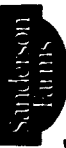
**100 LOCATIONS TO SERVE YOU. FOR THE STORE NEAREST YOU, CALL 1-888-92-4LESS**

# FOOD 4 LESS

"THE TRUE LOW PRICE LEADER"

Enter to Win **FREE** Groceries at [www.food4less1.com](http://www.food4less1.com)

**FRESH**



**Tender & Juicy Fresh Frying Chicken Boneless Skinless Breast Fillets**

Family Pack • Limit 4 • "Great On The Grill"

**177** Lb.

**Pepsi, Mug Root Beer or Mountain Dew**  
 12 oz. cans  
**498**

**Private Selection Premium Ice Cream**  
 Selected Varieties  
 64 oz. ct.  
**2\$5**  
 For

**Seedless Red Grapes**  
 Sweet & Juicy  
**58¢** Lb.

**Folgers Coffee**  
 Selected Varieties  
 11.5-13.5 oz.  
**198**

**Mazola Corn Oil**  
 Selected Varieties  
 48 oz.  
**198**

**Russet Potatoes**  
 US No. 1  
**198**

*Exhibit I*