

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Jerky Joe's, LLC,
and Joe C. Banks,

Respondents

}
} FMIA Docket No. 09- 0198
} PPIA Docket No. 09- 0198
}

}
} Consent Decision and Order
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This is a proceeding under Title I of the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA"), the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451 et seq.) ("PPIA"), and the applicable rules of practice (7 C.F.R. §§ 1.130 et seq.), to deny Federal inspection services from Jerky Joe's, LLC, and Mr. Joe C. Banks, hereinafter referred to collectively as respondents. This proceeding was commenced by a complaint filed herein by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties have agreed that this proceeding should be terminated by entry of the consent decision set forth below pursuant to the consent decision provisions of the rules of practice (7 C.F.R. § 1.138).

Respondents admit the allegations in paragraphs I and II of the complaint and specifically admit that the Secretary has jurisdiction in this matter. Respondents neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and waive any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. section 504 et seq.). Respondents consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Jerky Joe's, LLC, hereinafter respondent corporation, is incorporated under the laws of the State of Alabama and located at 1395 Highway 69 South, Hanceville, Alabama 35077.

2. On March 14, 2009, respondent corporation submitted an "Application for Federal Meat, Poultry or Import Inspection" requesting Federal Inspection services at its place of business in Hanceville, Alabama.

3. Joe C. Banks, hereinafter respondent Banks, resides at 1309 Lakeside Drive, Cullman, Alabama 35055, and is an owner and member of respondent corporation or is an individual otherwise responsibly connected thereto.

4. On or about June 19, 2003, in the District Court of Walker County, Alabama, Criminal Division, respondent Banks was convicted of three misdemeanor counts for the sale or transport of uninspected meat, under Code of Alabama Section 2-17-13. On or about February 23, 2004, these convictions were upheld on appeal to the Circuit Court of Walker County, Alabama.

Conclusion

The respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this consent decision in disposition of this proceeding, the following order will be issued.

Order

Federal meat and poultry inspection services under Title I of the FMIA and the PPIA are denied to respondent Banks, respondent corporation, and respondent corporation's owners,

officers, directors, partners, affiliates, successors and assigns, directly or through any business or other device, for a period of three (3) years beginning on the effective date of this order;

Provided, however, said denial of inspection services shall be held in abeyance, and conditional Federal meat and poultry inspection services shall be provided to respondents for so long as the conditions set forth herein below, in addition to all other statutory and regulatory requirements for applicable inspection services, are met:

1. Respondent Banks, respondent corporation, and respondent corporation's officers, partners, employees, agents, affiliates, and any other individual responsibly connected thereto, shall not:

(a) violate any section of the FMIA, PPIA, or regulations promulgated there under, or state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated or misbranded meat or poultry product;

(b) commit any felony or other criminal act involving the sale and distribution of unwholesome, adulterated or misbranded products;

(c) willfully make or cause to be made any false entry into any accounts records, or memoranda kept by respondents in compliance with Federal or state statutes or regulations; fail to make true and correct entries in such accounts, records or memoranda; or fail to keep such accounts that fully disclose all transactions in respondents' business; or

(d) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA of PPIA.

2. Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal, state, or territorial court, of any felony, or more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively

packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by state and federal law, respondents shall immediately terminate their connection with such individual when that individual's conviction becomes known to respondents.

3. Respondents shall implement and maintain Sanitation Standard Operating Procedures (SSOP) and a Hazard Analysis and Critical Control Point (HAACP) system in accordance with regulatory requirements specified in Title 9, Code of Federal Regulations, Part 416 and 417, respectively.

4. Respondents shall maintain full, complete and accurate written records of all business activities applicable to the FMIA and the PPIA, including but not limited to SSOP and HAACP records, and shall make these records available for review and copying upon request of any authorized representative of the Secretary of Agriculture of the United States (Secretary).

5. Within ninety (90) calendar days from the issuance of this Order, respondent Banks shall participate in and successfully complete a training program or educational course encompassing ethical business practices that has received prior concurrence from the Director, Evaluation and Enforcement Division of Office of Evaluation, Enforcement and Review, FSIS (hereinafter, the Director). Respondent corporation shall maintain for the duration of the Order records documenting respondent Banks completion of such training and shall make these records available upon request to any authorized representative of the Secretary.

6. Within sixty (60) calendar days from the issuance of this Order, respondents shall develop and submit for review and concurrence of the Director, a business code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices ("Business Code") applicable to all business entities and individuals within or employed by respondent corporation. The Business Code, at minimum, shall include:

- (a) a statement of company policy addressing business ethics and the public trust;
- (b) a statement of respondents' commitment to comply with all applicable Federal and state food safety and other laws in the conduct of their business;
- (c) guidelines for respondents' employees to follow with respect to food safety and ethics issues; and
- (d) assurances to preclude any acts of intimidation, assault, or interference of USDA program employees.

The Business Code shall be permanently displayed in a prominent location in respondents' establishment, and shall be discussed with all current and new employees.

7. Within sixty (60) calendar days from the effective date of this Order, respondents shall implement and maintain an effective compliance program to ensure that all inspected meat and/or poultry products do not become adulterated, contaminated or misbranded. This compliance program shall include, at a minimum, provisions to ensure that:

(a) all meat and/or poultry products are processed in accordance with product specifications and formulations in 9 C.F.R. § 318.6;

(b) all meat and/or poultry products produced at respondent corporation do not have any undeclared substance of any kind, are correctly labeled, and bear full and accurate labeling in accordance with the requirements of 9 C.F.R. § 301.2; and

(c) record keeping of product formulations for meat and/or poultry products produced at respondent corporation are accordance with the requirements of 9 C.F.R. §§ 318.6 and 381.118.

Respondents shall submit their proposed compliance program to the Director for review and concurrence. Respondents shall designate an employee and an alternate to be responsible for oversight of all aspects of the compliance program at all times during production. Such employee

or alternate shall have full authority to hold up production, stop production, remove product from production, or take positive control of any products manufactured or stored at the facility which are or are believed to be adulterated or misbranded. The designated employee or alternate must be present at all times when operations requiring Federal inspection are conducted. The parties shall make every effort to ensure that respondents' compliance program is reviewed and implemented in an expeditious manner.

8. Respondents shall fully and completely cooperate with any FSIS investigation inquiry, review, or examination of respondents' compliance with the FMIA, PPIA or this Order.

9. Respondents shall provide an annual report to the Director regarding respondents' compliance with all terms and conditions of this Order, and FSIS statutory and regulatory requirements, including 9 C.F.R. Parts 416 and 417.

10. The provisions set forth in Paragraphs 1 through 9 of this Order shall be applicable for a period of three (3) years commencing with the issuance of this Order.

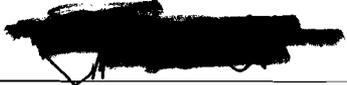
11. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Administrator, or his or her designee, that one or more conditions set forth in paragraphs 1 through 9 of this Order have been violated. It is acknowledged that respondents retain the right to request an expedited hearing pursuant to the rules of practice, 9 C.F.R. Part 500, concerning any violation alleged as the basis for a withdrawal of inspection services. This does not affect complainant's right to suspend official operations in accordance with Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any such violation to the Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, and the regulations promulgated there under.

12. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

13. This Order shall be considered issued on the date on which it is signed by the Administrative Law Judge and shall become effective on the date on which a conditional grant of Federal inspection is issued to respondents.


Joe C. Banks, Owner/Member
For himself and for Jerky Joe's, LLC


Scott C. Safian, Director
Evaluation and Enforcement Division
Office of Program Evaluation,
Enforcement and Review


Cary M. Bennett, Owner/Member
For Jerky Joe's, LLC


Thomas Neil Bolick
Attorney for Complainant
United States Department of Agriculture
Office of the General Counsel

Issued this 8th day of October-2009

in Washington, D.C.


ADMINISTRATIVE LAW JUDGE