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Mr. Winge was terminated by Holiday Magic President Fred Pape on 7/9/68 (CX 645A).

180. Holiday Magic, Inc. constantly publishes information in its Wands and Family News telling its distributors the retail prices to charge for its products. Neither the words "suggested" nor "recommended" appear in conjunction therewith.

(a) CX 155G - Family News - 1/30/70:

February 1-28, 1970, your Holiday Girls will be authorized to sell Strawberry Frappe Cleanser for just \$1.99 a jar * * * a savings of 96 cents to their customers!!! More sales in February - more profits for everybody!

(b) CX 158A - Family News - 3/27/70:

BY POPULAR DEMAND: HM XXI Deodorant will remain on the price list - Code #580, retail price \$1.50 each.

(c) At CX 122D - Family News - 10/16/67:

REPLY #2--In answer to the many requests (6), the prices for Christmas gift goodies are:

Neferletti Gift Set #1	21.50
Neferletti Gift Set #2	13.00
Neferletti Gift Set #3	10.00
H-M XXI Gift Set	11.25
H-M XXV Gift Set	11.25

(d) See also CX 164C; CX 165D; CX 166F; CX 167C; CX 168B; CX 170B; CX 158A; CX 158E.

181. Product brochures put out by Holiday Magic, Inc. contained pictures of the products and the retail prices affixed thereto. No mention of "suggested" price or "recommended" price appears in conjunction therewith (CX 631A-P; CX 633P-W (July 1968); CX 634A-D).

182. Holiday Magic, Inc. also distributes *retail* customer order forms to its distributors containing the resale prices appearing directly on the retail customer's order (CX 635 (May 1967)).

183. Distributor price lists containing the retail price of the Holiday Magic products are also distributed by Holiday Magic, Inc. to its distributors (CX 636A; CX 636B (Nov. - Dec. 1968); CX 637; CX 410; CX 413).

184. Discounting Holiday Magic products by distributor is a violation of the Holiday Magic marketing plan, and Holiday Magic, Inc. required its distributors to adhere to the retail prices.

(a) (Ruggles-Tr. 554).

(b) Respondent Gillespie-Tr. 9311 (referring to Holiday Magic, Inc.), who was with the company until June 1968 (Tr. 9293) testified:

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JUDGE BUTTLE: They [Holiday Magic] simply told them [distributors] what to charge, is that it?

THE WITNESS: They had a price list.

JUDGE BUTTLE: That they had to charge?

THE WITNESS: Basically, but it was never policed.

JUDGE BUTTLE: Unless they did not follow the price list?

THE WITNESS: Right.

185. Holiday Magic, Inc. entered into agreements with distributors and prohibited its distributors from placing their Holiday Magic merchandise in "discount" stores (Gillespie-Tr. 9454; CX 104"-0").

186. Witness testimony relative to price adherence:

(a) *Charles Madden*, appointed Senior General of the Kansas City council by Holiday Magic, Inc. (Tr. 5320) and Senior General of the month for Holiday Magic, Inc. (Tr. 5332), testified that he never deviated from Holiday Magic policy with respect to retail prices as expressed in the sales manuals and sales brochures (Tr. 5321-22). He abided by CX 79A-Z103 "100%" (Tr. 5323). He used CX 631 (brochure) in his business (Tr. 5323). The price of the Holiday Magic products was part of the training he gave to his new Holiday Girls (Tr. 5330).

(b) *Warren Haskins*. Mr. Haskins, the Senior General for Kansas City council from the last part of 1967 to early 1968 (Tr. 5338), and who engaged in business activities in Kansas and Missouri (Tr. 5335), testified that Ben Gay told him at the time that Haskins was Senior General and Gay was vice president of Holiday Magic, Inc. (Tr. 5336, 5338), that he could not cut prices in a fund raising program to Boy Scouts since the Boy Scouts couldn't sell at less than list price and that he would lose his distributorship if he did (Tr. 5337), and on a second occasion in Sept. 1967, Mr. Gay told him that he couldn't run specials and sales on products placed in a retail store in Kansas City, Mo. (Tr. 5338).

On another occasion, Mr. Haskins, as Senior General, reported to Mr. Gay of a distributor discounting; Gay wrote back asking for information and stated that it was against Holiday Magic rules to discount. Mr. Haskins supplied the information (Tr. 5338-39).

Mr. Haskins has maintained his inventory of Holiday Magic products, and didn't discount same for fear of losing his distributorship.

He used CX 631 in his business, and instructed his Holiday Girls to sell out of it; the selling prices were in there.

(c) *Bruce J. Longballa*. Mr. Longballa, a Master Distributor (Tr. 1064) doing business in Nevada (Tr. 1064), put product in a store because he wanted to discount it, but removed it because he was told by his Sponsoring General that a Senior General in town would see it and as a consequence he would lose his distributorship (Tr. 1068-1069).

(d) *John Wells*. Mr. Wells, a General Distributor (Tr. 988) doing business in Nevada (Tr. 995, 993) who is still active (Tr. 988, 1057) testified that he told his Holiday Girls that they "had to sell at the prices in the books" (Tr. 1011) because of the Holiday Magic rules (Tr. 1011). Until approximately Sept. 1, 1971, Mr. Wells had had only the rules as appearing in CX 1469, and this was the manual he followed (Tr. 1013-1017). Mr. Wells added that Mr. Percy taught him as part of his training to sell at the Holiday Magic prices (Tr. 1009), and he was not permitted to advertise products as loss leaders (Tr. 1023). The rule in CX 1469 is the same as appears in Part XXI (a) hereof.

Mr. Percy was a Holiday Magic vice president in early 1969 (Tr. 7155), and in the first group of Instructor Generals in Feb. 1967 (CX 19C).

(e) *Thriftone Jones*. Mr. Jones was a Master Distributor (Tr. 5388) doing business in Wash. D.C. (Tr. 5389) who testified he sold at the prices of Holiday Magic as required by his Sponsor and Holiday Magic (Tr. 5389). His Sponsor told him he would lose his distributorship if he didn't (Tr. 5390). Mr. Jones became a Master in Nov. 1968 (Tr. 5388).

(f) *Gelanine Hutchinson*. Mr. Hutchinson, a General Distributor and Senior General from Fort Pierce, Fla. who did business in Kansas (Tr. 2161-62), distributed price lists to his Holiday Girls in Kansas as set forth by Holiday Magic, Inc. and contacted his girls to sell at the specified prices because of Holiday Magic rules (Tr. 2164-65).

(g) *Charles C. Spellers*. Witness Spellers, who was a Master Distributor (Tr. 5403) until the latter part of 1968 (Tr. 5403), and who engaged in his business activities in Wash. D.C. (Tr. 5403), testified that it was Holiday Magic's requirement to sell at the list prices as indicated in CX 636A-B (Tr. 5403-5404, 5412).

Mr. Spellers also testified that Holiday Magic Instructor General McKelvey taught him that if he didn't follow the prices established by the company (Tr. 5405) the company would take action against him (Tr. 5407). McKelvey told him that at IG school in Arlington, Va. and again in Wash. D.C. (Tr. 5406).

Price lists appeared in cartons of Holiday Magic products (Tr. 5411, 5412).

(h) *Lester Small*. Mr. Small, who was a Master Distributor (Tr. 5377) operating in Wash. D.C. (Tr. 5382, 5384) until the last half of 1968 (Tr. 5382), testified that he retailed at the retail prices indicated in the Holiday Magic catalogs at CX 633 P-W (Tr. 5379-5380).

Holiday Magic IG McKelvey (Tr. 5381) told him to stick to the list prices or else he probably would lose his distributorship (Tr. 5381).

(i) *Judy Hurd*. Mrs. Hurd, who was a Master Distributor (Tr. 5358) operating from her home in Kansas City, Kan. (Tr. 5357, 5358, 5361),

testified that she retailed at the Holiday Magic prices from the retail prices given in the price lists (Tr. 5358). She also testified that Gerry Arrowood, a Holiday Magic Trainer General, gave a course in Kansas City in which she had to *memorize* the prices of all the products (Tr. 5359).

(NOTE: Gerry Arrowood thereafter testified for respondents and never denied this.) She also heard Ben Gay speak at a hotel in Kansas City in Apr. or May 1967 (Tr. 5363, 5365) and say Holiday Magic products would never go on sale, and that they should "follow the program or else" (Tr. 5364). At the time Mr. Gay was assistant to Holiday Magic president Fred Pape (Tr. 9823).

She also testified that Senior General Temps of the Kansas City area, who was Senior General after Madden (Tr. 5365), instructed her not to discount the product and to sell at the retail prices (Tr. 5367).

(j) *Edith Janz*. Mrs. Janz, a General Distributor in Holiday Magic, Inc. (Tr. 5343), who was active through mid-1967 (Tr. 5343) and who engaged in her business activities in Wichita, Kan. (Tr. 5343), testified that she sold at retail at the list prices as appearing in the manuals, master order forms and price list as CX 635 (Tr. 5344). She was instructed to do so by her Master's and General's manual (Tr. 5343-5346, 5347).

At training classes in Kansas City and Dallas she was told to sell at the Holiday Magic prices (Tr. 5346).

XXI. Purchase Restrictions

187. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires all Organizer and Holiday Girl distributors in its rules and regulations to purchase Holiday Magic merchandise only from their sponsors.

(a) CX 79Z93, Rule 3 -

Distributor agrees to purchase merchandise only from the Company or his Sponsor in accordance with the Holiday Magic marketing plan and to sell merchandise only at those prices established by the Company. See also CX 104H, Rule 3; CX 77L, Rule 4.

(b) A "sponsor" is a Distributor who recruits or enlists a new Distributor (CX 79Z100).

(c) CX 7H - Wand - Solution Box - Feb. 1966:

Question: I am an Organizer in the Mid-West. My Master is in California. Can I fill my orders from a Master who is close to my area?

Answer: Unfortunately, you cannot. Masters can only fill orders to their own organization. If you find that you cannot obtain merchandise from your own Master you may apply for a transfer to a Master that is close to you. This is but one of the many reasons that we constantly suggest to Distributors that they recruit within an area they can realistically service, not only for cosmetic purchases but also for business guidance, training, etc.

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(NOTE: Refers to Masters recruiting Organizers, not Generals recruiting Masters!)

(d) CX 79Z29 (from opportunity meeting script):

Now as you will recall in the film, this is you, and your first 30 days you sponsored five people into the business. Now, because you sponsored them, they must buy their product from you. They cannot buy it anywhere else.

As you saw in the film, these particular people that you sponsored could have been * * * health food stores, barber shops, beauty salons, Holiday Girls or other organizers * * *

See also CX 76Z20

(e) Manuals CX 78Z49 and CX 79Z46 state:

Once a distributor reaches a total volume of \$5000 in any one calendar month, he has earned the right to buy permanently at 55% off retail. He is then classified as a Master Distributor, and will buy directly from the Company. Master Distributors supply only their directs and conversely, their directs or recruits must order through their sponsoring distributors.

Manual CX 106C states:

Only Master and General Distributor's orders should be submitted to Holiday Magic. All other distributors purchase through their sponsor.

188. Packaging Changes

(a) Holiday Magic, Inc. has over the years engaged in numerous packaging changes of its products, such as changes in bottle shapes, labels, and colors of caps of the bottles or jars of its cosmetic products.

CX 121D (9/67) (black caps to colored caps)

CX 23B (6/67) (golden caps for all)

CX 26A (9/67) (new shape for bottles and jars)

Tr. 6023-24 (Kajioka)

(b) The constant packaging changes made it impossible for the distributors to purchase (or sell) their products to other distributors as well as at retail.

Tr. 3723 (Pence);

Tr. 5368 (Hurd);

Tr. 3234-3235, 3248 (Sharpe);

Tr. 1022 (Wells).

(c) Holiday Magic, Inc. would refuse to take the old packaging back when a change occurred (Wells-Tr. 1023; CX 79Z93, Rule 5).

189. Holiday Magic, Inc. enters into contracts and agreements with its distributors and requires all distributors in its rules and regulations to agree not to buy back merchandise from his direct distributors.

CX 79Z93, Rule 4:

Distributor agrees not to buy back any merchandise from his direct distributors.

See also CX 78Z96, Rule 4; CX 82Z48, Rule 4; CX 83Z48, Rule 4; CX 104H, Rule 4; CX 105H, Rule 4; CX 77L, Rule 4.

Incident to agreement arrangements, Holiday Magic, Inc. requires its sponsoring distributors to file copies of the applications and agreements of distributors they recruit into the business with Holiday Magic, Inc. in order to protect their sponsorship rights.

See CX 472 - HM bulletin - 9/23/66.

190. Holiday Magic, Inc. in entering into agreements and contracts with its distributors also requires all distributors in its rules and regulations to agree not to transfer to another organization without a prior release from all distributors above them in the marketing chain. Such transfers are discouraged by Holiday Magic, Inc.

(a) CX 78Z89-90 and CX 79Z85-86 read:

TRANSFERS OF DISTRIBUTORS

Occasionally you will be approached by a Distributor who wishes to effect a transfer from one sponsor to another. You know that Holiday Magic has promised, by policy, to protect each organization. In 90% of the cases such transfers should be discouraged and/or refused. It is usually due to a supposed personality conflict and social differences which have little place in business.

However, in a small percentage of these cases, it might be agreeable and for the good of all parties if such a transfer is accomplished. In such a case, the following must occur before a voluntary transfer can be accomplished:

All the parties listed below must clearly indicate their consent to the transfer in writing to the Company:

1. The Sponsor - stating whether or not he agrees to release the organization of the transferee or keep them himself, according to the Rules and Regulations.
2. All members of the organization between the Sponsor and the first Master, since they too have a financial interest.
3. The Master Distributor above the Distributor requesting transfer.
4. The Organization's General as well as the General who is receiving the 1% override.

Should any one of the above persons fail to give their release, the Company will not approve the transfer. The Distributor who desires the transfer has only one other alternative. He may resign as a distributor upon giving notice to the company, and, after a period of six months inactivity, may then rejoin the company under any other Sponsor he desires. Any subterfuge—working as a “silent partner,” working “on salary,” etc.—will not be tolerated by the Corporation during this inactive six month period.

(b) CX 78Z99, Rule 24 states:

Distributor agrees not to transfer to another organization without a prior release or written consent from all Distributors above him in the marketing chain, including the Company as well as any other person with a financial interest in his organization.

See also CX 79Z96, Rule 24 (word “organization” substituted for “chain”); CX 105H, Rule 23.

See CX 1382A-E regarding the transfer request from witness Vermilye to Holiday Magic, to seek to get out of the organization of Rick Spranzo. Holiday Magic notes that:

When transferring from one organization to another, you do not automatically take your organization with you * * *

See CX 1382C-E for transfer forms.

XXII. Customer Restrictions

191. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires in its rules and regulations that distributors may resell their Holiday Magic products at wholesale only to Organizers and Holiday Girl distributors whom they have sponsored into the Holiday Magic program.

(a) The distributor agrees to purchase Holiday Magic merchandise from respondent company, or from his sponsor only (Answer, p. 10).

(b) See Part XXI.

(c) Letter from Holiday Magic General Counsel to Mr. Glascock, dated 10/17/67 (CX 686A):

We have just been advised by a distributor in Bartlesville, Oklahoma, that you had made a telephone call to Doris Sanford and Francis Stephenson of the Bartlesville distributors' organization advising them that you had spent a week in Chicago with Fred Pape and that Mr. Pape had told you that you could supply product to anyone you pleased and that he, Mr. Pape, would stand behind you.

As you know, this is contrary to the marketing plan and totally unacceptable to this corporation. Mr. Pape denies having any such conversation with you and we take this opportunity to advise you of the allegations that have thus been made against you. Please respond to these charges within ten days, supporting any denial you may care to make with corroborating evidence and advancing any explanation that you may have of the aforesaid report. Failing to hear from you within ten days in this matter, we will have no alternative but to turn the matter over to the Board of Directors for further action.

Due to the fact that Doris Sanford and Francis Stephenson have received a false impression as a result of your phone call, we request that you immediately contact Miss Sanford and Mr. Stephenson to advise them that they are under a misapprehension and that you do not have corporate authorization to furnish product to just anyone, and assuring them that you intend to operate within the framework of the marketing plan and in no other fashion.

Mr. Glascock was subsequently terminated (CX 686A, F).

(d) Letter from former Miami Senior General Vincent Fechtel (Tr. 2422) to complaint counsel (CX 1470A, B):

Through our telephone conversations, I understand you are filing suit against Holiday Magic because they restrict those distributors who buy their goods to certain limited methods and certain types of retail establishments.

When distributors buy merchandise from Holiday Magic they do so with the agreement to restrict their selling methods and customers.

192. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires that distributors may not recruit or sponsor other Holiday Magic distributors who have already been sponsored into the business.

(a) See CX 79Z94, Rule 16:

Distributor agrees not to recruit or sponsor other Holiday Magic Distributors. Further, a Distributor is considered sponsored by that individual who first signs him as a Distributor and executes an Application and Agreement Form. The Individual has the freedom of choice as to which Distributor shall sponsor him.

(b) See also CX 77L, Rule 6; CX 78Z97, Rule 16; CX 105H, Rule 14.

193. Holiday Magic, Inc. instituted a policy requiring all distributors to refrain from selling at the retail level to consumers or retail customers who are being serviced by other Holiday Magic distributors.

(a) Policy of Holiday Magic, Inc. under threat of termination (Tr. 8083, 8612, 8644, 4666).

(b) Taught at Instructor General school (Tr. 8338-39, 8691).

(c) Taught at Trainer General school (Tr. 8571, 8577-78, 8722).

(d) Taught in Cosmetic Training Classes at Councils (Tr. 8691, 8037, 8518, 8570, 8577, 8671).

(e) Respondent Holiday Magic, Inc. sent a bulletin out to all Masters and General Distributors 3/27/70 requesting that no distributors contact any DECA Chapter in regard to a fund raising project for sales to that organization, since another distributor had the "exclusive" (CX 665; CX 1680; CX 170F).

XXIII. Retail Outlet Restriction

194. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires all distributors in its rules and regulations to refrain from selling or placing Holiday Magic merchandise in retail outlets such as drug stores, department or variety chain stores, grocery stores or discount stores.

(a) Distributors are specifically threatened with termination for placing Holiday Magic merchandise in these restricted retail outlets.

CX 1802E-F Holiday Magic Bulletin #4 (Tr. 1233, 1262).

TO ALL MASTERS AND GENERAL DISTRIBUTORS CLARIFICATION OF INFORMATION AND COMPANY POLICY
POLICY GUARANTEE:

This product will not be displayed or sold in drug stores, discount stores, grocery stores, chain stores, or department stores.

Anyone placing Holiday Magic Cosmetics in any of the aforementioned, will be subject to termination.

THIS POLICY WILL NOT CHANGE!

[Signed]

William P. Patrick
Chairman of the Board

(b) CX 6F -Wand - Solution Box - Jan. 1966.

Question: I own a retail store and have never displayed or sold cosmetics. I am now in the Holiday Magic program. Am I permitted to display and sell Holiday Magic cosmetics in my own store?

Answer: No. The Rules and Regulations specifically state where Holiday Magic Cosmetics may be displayed and sold and no deviation from these locations can be authorized.

(c) Rules and Regulations - CX 79Z94, Rule 13, reads:

Distributor agrees to restrict the retail sales and display of cosmetics to those authorized retail markets: Home Service Routes (Door to Door), Beauty Salons, Wig Shops, Beauty Schools, Barber Shops, Health Food Stores, Holiday Magic Retail Salons, and TEMPORARY Booths (such as: bazaars, fairs or conventions). No other commercial retail market will be authorized in the interest of protecting the Home Service Route.

See also CX 82Z49, Rule 13; CX 79Z97, Rule 13; CX 81Z49, Rule 13; CX 105H, Rule 11; CX 107I, Rule 11; CX 108K, Rule 13; CX 105H, Rule 11.

(d) Statements in sales manuals.

CX 1055 (Jan. 1969) reads:

UNAUTHORIZED OUTLETS. Drug stores, grocery stores, chain stores (Department or variety), discount stores, or any store not related to cosmetic or Home Magic product sales such as real estate, camera, stationery, etc. are unauthorized outlets.

See also CX 104"0".

(e) As of Jan. 1969, Holiday Magic had in its records "574 authorized retail outlets in the United States now stocking Holiday Magic Products." (CX 517).

(f) Witness testimony confirms enforcement policy:

1. Vincent Fecht, former Miami Senior General (Tr. 2422), testified that according to Holiday Magic's rules he could not have Holiday Magic products in a retail store (Tr. 2384), and when he placed said products in a store in Leesburg, Fla., in Nov. or Dec. 1967 (Tr. 2382), he removed these products after receiving a letter from Holiday Magic asking him if he had products there (Tr. 2383) See also CX 1470A, B.

2. Witness Sowinski, former Holiday Magic Instructor General, taught his students in IG class that drug stores were not in the scope of retailing as specified in the manuals (Tr. 2022).

3. Witness Norma Wegner, a Master Distributor in 1969 (Tr. 4074) testified that she was told by the manuals, by her General, and by her Holiday Magic Trainer General that she could not place product on sale in chain stores or places like that (Tr. 4055-4087).

4. Witness Sharpe testified that Bill Dempsey told him not to sell product in drug stores, grocery stores and other outlets (Tr. 3242), when he first joined as well as on subsequent occasions. Dempsey said it was against company rules (Tr. 3242).

Dempsey, who testified for respondents, was Holiday Magic Eastern Regional Vice President in 1966 (Tr. 6043), and failed to deny the said charge, although he testified after Mr. Sharpe did.

5. Witness John Wells was told he couldn't have product placed in chain stores by Holiday Magic (Tr. 1047).

6. Witness Longballa testified that he put product in his store but was told by his General that he would be in jeopardy of losing his distributorship if he didn't remove it (Tr. 1066) and was similarly warned by his General distributor that he might lose his distributorship by the mere display of products in his store because a Senior General was in town (Tr. 1068).

XXIV. Advertising Restriction

195. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires in its rules and regulations that prior company approval must be obtained for advertising or promotion of Holiday Magic products.

(a) Manuals: CX 1800Z1 (Nov. or Dec. 1965, Tr. 835):

3. All consumer advertising copy must be approved by the corporation.

4. All advertising for recruitment must be submitted and approved in each area to the Senior General in that area. All Senior Generals are appointed by the corporation. Poor advertising can be destructive.

(b) CX 2G- Wand - 9/65.

(c) Rules and regulations -CX 78Z99, Rule 22:

Distributor agrees to obtain prior Company approval for any advertising or promotion of the product or his Distributorship.

See also CX 79Z95, Rule 22; CX 83Z50, Rule 22; CX 104J, Rule 22; CX 195H, Rule 21; Answer pp. 14-15.

196. The device of requiring Holiday Magic distributors to supply in advance prospective advertising to Holiday Magic, Inc. is a device which enables Holiday Magic, Inc. to control and supervise by prior restraint the price fixing and retail outlet restriction requirements of Holiday

Magic, Inc. although, of course, it may also serve as a medium to protect against deceptive advertising if so utilized.

See Part XVII 6.

XXV. Private Arrangements

197. Holiday Magic, Inc. enters into agreements and contracts with its distributors, and requires all distributors in its rules and regulations that in the event a partnership-distributorship dissolves, the departing partner is required to revert back to his original sponsor. (CX 78Z99-100, Rule 27; CX 79Z96, Rule 27; CX104K-L, Rule 27; CX 105H, Rule 26; Answer, p. 15.)

198. Holiday Magic, Inc. enters into agreements and contracts with its General Distributors and requires all General Distributors in its rules and regulations that in the event a General Distributorship dissolves, the principal or partner who is departing, should he continue with Holiday Magic, must requalify as a new Master Distributor under his original sponsor, create a Replacement Master, and pay the release fee to qualify for the General position again (CX 78Z99-100, Rule 27; CX 79Z96, Rule 27; CX 104K-L, Rule 27; CX 105H, Rule 26; Answer, p. 15).

199. Holiday Magic, Inc. enters into agreements and contracts with its Master Distributors and General Distributors and requires all Master Distributors and General Distributors in its rules and regulations that the addition of partners to an existing General or Master distributorship or the sale of a General or Master Distributorship must meet the same retail list price value purchase requirement as do work-in Masters (Gay-Tr. 10025-26; Answer p. 15; CX 2078; Porst-Tr. 3116).

200. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires all distributors in its rules and regulations that they may only have a financial interest in one Holiday Magic distributorship at a time, and may not simultaneously be a part of two separate distributorships (CX 78Z100, Rule 29; CX 79Z97, Rule 29; CX 104L, Rule 29; CX 105H, Rule 28; Answer, pp. 15-16; CX 677 (enforcement of Rule as of 6/22/70)).

201. Holiday Magic, Inc. enters into agreements and contracts with its Distributors and requires all Distributors in its rules and regulations that they must not enter into any agreement with a distributor in another Holiday Magic organization to make a division of profits, assets or new recruits in violation of the marketing plan.

(a) CX 78Z100, Rule 32; CX 79Z97, Rule 32; CX 104L, Rule 32; CX 105H, Rule 31; Answer, p. 16.

(b) Tr. 5901 - Holiday Magic Vice President Semling - Violation of Holiday Magic marketing plan for distributors to pool inventories (except through CRS).

(c) CX 672 (Bulletin from Holiday Magic to Master and General Distributor, dated 6/9/67):

We have not, are not, and will not approve of individual marketing plans within "The Marketing Plan."

202. Holiday Magic, Inc. enters into agreements and contracts with its Distributors and requires all Distributors in its rules and regulations that they must not make any consignment of the merchandise to any person (CX 79Z93, Rule 6; CX 78Z96, Rule 6; CX 104H, Rule 6; CX 81Z48, Rule 6; CX 82Z48, Rule 6; CX 83Z48, Rule 6; CX 104H, Rule 6 (Oct. 1967)).

XXVI. Contacts And Controls By Holiday Magic, Inc. Over Organizers And Holiday Girls

203. See Chapters V, VII, XI, XII, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV to this effect.

204. CX 40 - Wand - 11/65 - Solution box where an additional rule prohibits organizers from combining and also reflects required adherence to controls:

Question: Can a Master combine the monthly volume of two or three of his Organizers and give this total to one of them to help him qualify for the Master Distributor position?

Answer: Absolutely, positively, definitely, emphatically--NO!

205. CX 76Z26, CX 79Z26 reflects dues assessment regulation:

The Corporation feels that no Distributor below the rank of Master should ever be assessed dues for his attendance or the attendance of his prospects at any Opportunity Meeting.

206. All Holiday Girls are in business for themselves, and are never allowed to go on salary or be hired (Gillespie-Tr. 9307).

But a Holiday Girl may be given a guaranteed weekly draw, in which case certain requirements must be met such as attending all sales meetings, and having a minimum number of sales.

At CX 91V (Instructor Manual):

You may give your Holiday Girls a guaranteed weekly draw if you wish. As a matter of fact, it is recommended. However, if a girl is to qualify for a draw of \$90.00 per week (gear your guarantee towards the wage scale in your area. It varies around the country) she must fulfill certain requirements.

1. She must attend every sales meeting. This means *all* your daily meetings as well as the Monday morning *enthusiasm meeting*.

2. She must put on 4 demonstrations per day, five days per week and establish proof to you that she has done this. (If you have a part-time girl on guarantee, she must give two demonstrations per day.)

3. She must give one Block Seminar per week, whether she is full or part-time. Five ladies must be in attendance at this Seminar.

4. She must have at least 60% of her route covered within 60 days.

5. She must have automatic sales on at least 75% of her customers.

6. After her route is established, she must service her customers each month.

If you are to use this guarantee system, which is very effective, two things should be kept in mind. No. 1, the draw does not start until the second week. (The Holiday Girl is basically in training the first week although she will be selling, but you should know after a week's probation if she will work out.)

(NOTE: Earnings of \$90 per week presupposes that the Holiday Girls monthly volume will total approximately \$900 per month. (\$900 volume at 30 percent discount plus 10 percent refund equals \$360 per month.)

207. Holiday Magic, Inc. has a consumer customer refund policy whereby merchandise can be returned to the Holiday Girl or other retailing distributor for refund for any reason (Gillespie-Tr. 9324; Pangerl-Tr. 9523; RX 134D).

208. Failure to forward an application and agreement of a Holiday Girl or Organizer is a violation of the Holiday Magic marketing plan (CX 688B; CX 79Z94, Rule 17).

XXVII. Instructor General Program

209. Effective Feb. 1, 1967, Holiday Magic, Inc. initiated its Instructor General program, the purpose of which was to train General Distributors so that they will have "proper knowledge" and tools no one else will have who hasn't taken the course (CX 18A - Wand - Jan. 1967; Sowinski-Tr. 2017).

210. Effective midnight Apr. 30, 1970, Holiday Magic, Inc. imposed a requirement that to become a Master Distributor, a person must have a paid reservation in Instructor General school (and Trainer General school) (CX 159F - Family News - Apr. 10, 1970.)

211. Although a specific requirement for Generals as of Feb. 1, 1967 and for Masters (and therefore Generals also) as of Apr. 10, 1970, Holiday Magic, Inc. recommends the course "to ALL distributors regardless of position" and states that "it is extremely vital to those just coming into the business." (Quoted from IG manual, CX 90N.)

(a) IG Sowinski testified that IG school is for Organizers also (Sowinski-Tr. 2017).

(b) And Holiday Girls (Sowinski-Tr. 2021).

212. Before Feb. 1, 1967, Holiday Magic, Inc. conceded in its Wand that "Heretofore, qualification for a Generalship has been primarily on a financial basis." (CX 18A - Wand - Jan. 1967).

213. Prior to Feb. 1, 1967, the Holiday Magic corporate team covered the "councils" of every state making special training classes available (CX 18A - Wand - Jan. 1967).

214. The Holiday Magic Instructor Generals became available to provide the necessary and valuable training formerly conducted by the corporate team (CX 18A - Wand - Jan. 1967).

215. The "Instructor Generals are outstanding distributors who have been singled out because of their individual successful field achievements, and further trained by Holiday Magic, Inc. to insure that they are fully qualified to instruct other distributors in the total Holiday Magic marketing concept, principles and philosophy." (Quoted from CX 90N - IG manual.)

216. "Every detail necessary for the proper and effective conduct of Holiday Magic business is included in the [Instructor General course]." (Quoted from CX 19C - Wand - Aug. 1967; CX 20M - Wand - Mar. 1967.)

217. Instructor General school teaches procedures of an opportunity meeting, business training, the general operation of a distributorship (Sowinski-Tr. 2017) and the background and history of the company (Belton-Tr. 4964-65) and supervisory information and sales and motivational techniques (CX 508).

218. The Instructor General training would in turn enable distributors taking the course to be better able to train their own people (Sowinski-Tr. 2017).

219. The Instructor Generals are all appointed to their positions by Holiday Magic, Inc. (Alexander-Tr. 5523, 5524; Napoletano-Tr. 3493).

220. Among the group of Instructor Generals appointed in Feb. 1967, were Bill Dempsey, Mark Evans, Ben Gay, Jim Hearn, Ed Persey and Jim Sowinski (CX 19C - Wand - Aug. 1967).

221. CX 1840A-Z114 is the Instructor General manual which Mr. Sowinski received from Holiday Magic, Inc. (Sowinski-Tr. 2040). It states "You, as an Instructor [General] are the representative of a multimillion dollar corporation, therefore, you physically reflect the corporation's image as well as does your own business conduct." (CX 1840P). "[I]nstructor Generals reflect the total knowledge and philosophy of the founder of Holiday Magic." (CX 1840H.)

222. Holiday Magic, Inc. imposes rules and regulations upon the Instructor Generals. They are:

1. Instructor General agrees to abide by all rules and regulations established by the Company and to all subsequent changes.
2. Instructor General is responsible for all specific rules and procedures not enumerated here, but which are contained in other Company publications, *i.e.* bulletins and sales manuals.

3. This manual may not be reproduced for any reason, and is the sole property of Holiday Magic, Inc.
4. Upon receipt of additional pages from the Corporation, Instructor General agrees to insert them into the appropriate section of this manual.
5. Upon receipt of superseding pages from the Corporation, Instructor General agrees to return immediately the obsolete pages to the Corporation.
6. Each Instructor General will conduct one regular six-day class per month during their designated week.
7. Instructor General will teach the class in accordance with the lesson plan in this manual without exception.
8. Each class will be limited to 15 students.
9. The fee for each student is \$200, paid to Instructor General by student by cash, money order, certified check or cashier's check.
10. Reservations for class are valid only upon receipt of \$200 fee.
11. All regular classes in Instructor General's designated week must be held in Instructor General's home town.
12. Additional classes may be held only upon the personal approval of Fred Pape. There must be 15 students booked in before this will be allowed.
13. Instructor General's total expenses (travel, meals, lodging, training facility) are to be paid by students for out-of-town classes.
14. Instructor General will not use their position as a recruiting tool.
15. Instructor General will be paid \$300 per week plus expenses on a per diem basis when working with or for the Corporation.
16. Effective February 1, 1967, one of the qualifications for the appointment to the position of General Distributor will be the completion of the Instructor General course or a paid reservation for a class to be attended by student within 60 days of reservation booking.
17. Instructor General will issue two (2) receipts to each student for the \$200 fee, so that the student can forward one copy of the receipt to the Corporation in order to qualify for the position of General.
18. Only those who successfully complete an Instructor General course will be permitted to conduct an Opportunity Meeting, and this Opportunity Meeting must follow verbatim the script provided in the Instructor General course. (CX 1840Z111-Z113.)

223. In addition, no tape recordings are permitted by Holiday Magic, Inc. in the courses taught by its Instructor Generals.

CX 1840Q - Under no circumstances will tape recorders be allowed during these [Instructor General] training sessions. Repeat - NO TAPE RECORDERS.

224. Another Instructor General duty is to see to it that all distributors followed the rules of Holiday Magic, Inc. (Napoletano-Tr. 3497). This Mr. Gay, when he was president or senior vice president informed Mr. Napoletano when he was Instructor General (Napoletano-Tr. 3497).

225. Instructor Generals would receive reports of distributor complaints because of their position as Instructor Generals (Napoletano-Tr. 3513, 3517).

226. Instructor Generals are also utilized by Holiday Magic to distribute corporate literature (CX 30C).

227. Holiday Magic, Inc. lists the following items which an Instructor General must make certain are available in his training classes: WPP records; phonograph; Instructor General manual; 15 general workbooks; Distributor's manual; Masters' and Generals' manual; blackboard; chalk; eraser; yellow note pads; extra pencils; ashtrays; water; coffee arrangements if desired (CX 1840P-Q).

228. Instructor General manuals appear in the record at CX 1840A-Z114; CX 90A-Z8 (Tr. 1710, 2040).

229. Instructor Generals were given uniforms consisting of an "HM" crest, which were owned by Holiday Magic. It was a Holiday Magic rule that the uniform be worn by Instructor Generals when attending council functions (Napoletano-Tr. 3507-3511).

230. To the distributors, Instructor Generals were representatives of Holiday Magic, Inc. (Tr. 8378, 8532).

231. The fee for the Instructor General program was paid for by the person taking the course (Tr. 6340; 4965; CX 1856-C; Tr. 8160, 8211, 7375-76, 7681, 5134, 3052).

232. Holiday Magic, Inc. has the following policy issued to distributors with respect to the Instructor General school fees:

POLICY CLARIFICATION

The only way you can make a reservation in an Instructor General or Trainer General class is to give the IG or TG a certified check to reserve your seat. This check is NOT REFUNDABLE. You have purchased a piece of real estate—you may sell it to someone else, use it yourself, or leave it vacant. But the seat is your property (CX 151K - Family News - Sept. 5, 1969).

Cost for the newly revised course will be \$260, after February 15, 1970. However, all Instructor Generals are authorized to accept students who present a receipt for \$225, paid before February 15 (CX 508 - Bulletin - Dec. 24, 1969).

233. According to Holiday Magic, Inc. "Once individuals are graduated from Instructor General and Trainer General Schools they are then truly qualified and able to function as independent business people." (CX 90N - Instructor General Manual).

XXVIII. Trainer General Program

234. The Trainer General school is made available by Holiday Magic, Inc. to "distributors who desire a greater depth of understanding of the customer benefits and practical retail sales techniques." (CX 90N.)

235. The Holiday Magic Trainer Generals are trained by Holiday Magic, Inc. at its main offices (Alexander-Tr. 5526).

236. The Trainer General class is available to all distributors at all levels, *i.e.*, Generals, Masters, Organizers or Holiday Girls, for a fee of \$25 (Baehlein-Tr. 5085-5086).

237. "Holiday Girls, Organizers, Masters, Generals and even prospects have flocked by the thousands to attend the [Trainer General] School." (CX 609 - Holiday Magic Bulletin - Mar. 14, 1969.)

238. The fee for the TG school was paid by the person taking the course (Baehlein-Tr. 5087; Tr. 2837, 8212, 8160, 4114, 5141; CX 2062; CX 1926-A; Tr. 5352, 7787, 8002).

239. The Trainer General training program was set up by Holiday Magic, Inc. (Baehlein-Tr. 5086; CX 90N).

240. The Holiday Magic Trainer Generals taught their students about make-up techniques, how to build a retail organization, how to sell cosmetics, and how to work with the people in their organizations (Arrowood-Tr. 6161; Alexander-Tr. 5526; Baehlein-Tr. 5081; CX 133A).

241. Effective midnight Apr. 30, 1970, Holiday Magic, Inc. imposed a requirement that to become a Master Distributor, a person must have a paid reservation in Trainer General school (and Instructor General school). (CX 159F.)

242. It is the duty of the Trainer General to see to it that training is held at councils throughout the United States (Napoletano-Tr. 3557).

243. Only "Instructors" who have been trained by Holiday Magic Trainer Generals are authorized to instruct Holiday Girls effective Jan. 1967 (CX 19E - Wand - Jan. 1967; CX 17E).

244. Examples of Trainer General manuals appear in the record at CX 91A-Z90; CX 92A-Z55.

245. According to Holiday Magic, Inc. "Once individuals are graduated from Instructor General and Trainer General schools they are then truly qualified and able to function as independent business people." (CX 90N - IG Manual.)

XXIX. Other Corporate Training for Distributors

246. Holiday Magic, Inc. sells records to its Master and General Distributors for purposes of self-motivation (CX 136E; CX 136B; CX 130D; CX 129F; CX 28H; CX 32A). Cost of the series of records is \$75 (CX 28H).

247. In May 1970, Mr. Patrick and Mr. Gay led a corporate team into various cities to provide "intensive motivational and sales training." The program was open to Masters and Generals, for the cost of \$20 — by certified check (CX 56C - Wand - May 1970).

248. Leadership Dynamics Institute

(a) At a cost of \$1,000 distributors are invited to attend this self-improvement type session (CX 60C; CX 62C; CX 63C; CX 59D, E; CX 151L).

(b) Although not a requirement for distributors, it is recommended by Holiday Magic, Inc., and is required for the positions of Instructor General, Trainer General, and Senior General (CX 163H; CX 164C; CX 153A; CX 154B; CX 60C; CX 62C; CX 63C; CX 57C; CX 50G; CX 54I; CX 155F; CX 157B; CX 171D; CX 47B; Alexander- Tr. 5632-5635; Tr. 6343).

(c) Holiday Magic distributors have taken the LDI course and have considered it as a Holiday Magic business expense (Tr. 6918, 6924, 6343; CX 2057; Tr. 8211, 8680).

(d) Respondent William Penn Patrick is chairman of the board of directors of Leadership Dynamics Institute, and Holiday Magic secretary and comptroller, Harold Lipska, a secretary and director (CX 57C); formed by Mr. Patrick (Alexander-Tr. 5635).

249. Mind Dynamics

(a) Another course formed by respondent Patrick and made available to distributors for a fee is Mind Dynamics (Alexander-Tr. 5637-5639; CX 57H; CX 60B; CX 69B; CX 163D; CX 165C).

This course, of which Mr. Patrick is chairman of the board of directors (CX 57H) is a "means of achieving personal success through the conscious use of the subconscious mind." (CX 57H.)

(b) Holiday Magic Distributors have taken the Mind Dynamics course and have considered it as a Holiday Magic business expense (Tr. 6919; CX 2007; CX 2062; Tr. 8680).

250. Another program of instruction for pay available to Holiday Magic Distributors to help them in their business activities is Sales Dynamics (CX 68A).

XXX. Distribution Centers

251. Ninety-five percent of Distributors who are in business today (as of Jan. 1973) belong to the CRS distribution centers (Pangerl-Tr. 9629). Not all Masters and Generals belong to CRS (Tr. 5828).

252. Approximately 2700 Master and General Distributors today belong to the CRS Distribution Centers (Tr. 5881), and pay the same dues of approximately \$50 to \$60 per month (Tr. 5825; Tr. 10368) with an additional assessment of 5 percent of the retail value of products taken from CRS inventories by Distributors (Tr. 5829, 5877).

253. There are approximately 36 such centers nationwide (Tr. 5825).

254. CRS requires that its Master and General members maintain an inventory account at \$4,000 worth of merchandise (Tr. 5884) and CRS orders product from Holiday Magic, Inc. in the Distributor's name and account (Tr. 5884) at 55 percent off list for Masters and at 65 percent discount for Generals (Tr. 5885) CRS members can also buy directly from Holiday Magic (Tr. 5898).

255. CRS performs the same services for Master Distributors and for General Distributors (Tr. 5881, 5882). These services are product warehousing, additional training, supervision of retail activities, collection of sales tax, and immediate delivery of product (Tr. 6827).

256. The CRS's operate in the following manner: Holiday Girls of a member's organization come to the CRS center to pick up merchandise and pay for the product at 30 percent discount as per the refund schedule (Tr. 5882, 5826). A sale is thereby recorded on the member's card file, and he is entitled to the difference in price between the discount at which he (or CRS for him) buys and the price that the Holiday Girl paid for the product (Tr. 5826). The Holiday Girls are given cards by the CRS members to show when they pick up their merchandise (Tr. 5880).

257. Holiday Magic, Inc. has a controlling interest in CRS (Tr. 5827).

258. CDC, which was the forerunner of CRS, served the same functions that CRS now serves (Tr. 5883, 4500-4511); CDC was not owned by Holiday Magic, Inc.

259. As in CRS, CDC members were Masters and Generals (Tr. 4500) who paid the same dues (Tr. 4511).

260. CDC, which stands for Combined Distributors Centers, was first promoted by Holiday Magic for its distributors in July 1969 (CX 46A).

261. The CRS and CDC distribution centers were and are highly recommended by Holiday Magic, Inc.

CX 49E, 50C, 42E, 55F, 58C, 59B, 59F, 64B, 65A, 150D, 151C, 151H, 151P, 152E, 153A, 153C, 62F, 63L, 65E.

XXXI. Councils

262. A council is an association of General and Master distributors formed in a given geographical area to share in the costs of retailing, business training, recruiting, and participating jointly in any Holiday Magic activity of mutual interest (CX 78Z73, CX 79Z70, CX 93B).

263. The combined efforts of the distributors thereby reduce the costs to the individual distributor members who might otherwise be required to expend additional monies were they to be acting alone (CX 78Z74, 78; CX 79Z75; CX 93C, G).

264. The combined efforts of the local Master and General distributors in providing for a single establishment means an improved physical facility in furthering the Holiday Magic image (CX 78Z74, CX 79Z71, CX 93C).

265. Although the specific amount of the dues is fixed at the discretion of the council members, Holiday Magic requires of the councils that Masters and Generals pay the same dues (CX 78Z74, CX 79Z72, CX 93D, CX 95C).

All distributor witnesses who testified with respect to council membership consistently testified that Masters and Generals paid the same dues at the council to which they belonged (Tr. 2279, 2598, 2411, 2071, 5119, 3068). Council dues today, Jan. 1973, on the average are approximately \$60 per month (Pangerl-Tr. 10368).

266. Holiday Magic, Inc. requires that a council must provide for:

1. Approved company business training.
2. Approved retail sales training.
3. Regular opportunity meetings.
4. Training classes for Holiday Girls.
5. Weekly meetings to discuss questions of mutual interest and to conduct sales and motivation seminars.

(CX 78Z76-77, CX 79Z73-74, CX 93E-F.)

267. Masters and General Distributors join the councils in order to have a place to have their Holiday Girls trained (Christie-Tr. 5985; Tr. 6168-69, 5126, 5092, 4968, 4391-92 (stipulation)) have the business explained (Christie-Tr. 5985); and to bring prospects to opportunity meetings (Christie-Tr. 5985; Tr. 4689).

268. Holiday Magic, Inc. has a reciprocal training policy for its councils whereby a reasonable amount of training will be given by a council in another area for members who send their recruits there. This policy of Holiday Magic, Inc. was established to save Master and General distributors the traveling expenses which would otherwise be necessary if their recruits were in an area some distance from the recruiting distributor's base of operation (CX 78Z78, CX 79Z75, CX 93G, CX 78L, CX 1394).

269. [The Councils'] Master and General Retail Route Training class is designed to prepare the Masters and Generals for their responsibilities in the retail field and to teach them how to run a retail organization (CX 91C).

270. Holiday Girl Council Training is designed to provide fundamental education of product, its application, block seminars, retail sales and closing. (CX 91D.)

271. Council training classes are taught by instructors (CX 27A; CX 35E, G, H; CX 49B; CX 131A; CX 171C) who have been trained by Trainer Generals (See XXVIII 8).

272. The councils render the same services to Masters and Generals and treat all members alike (Christie-Tr. 5984-85; CX 94A-T; CX 93A-H; CX 95A-H; CX 96A-H).

273. The council formation is subject to the approval of Holiday Magic, Inc. (CX 78Z74, CX 79Z71, CX 93D) and once a council is formed and receives confirmation from Holiday Magic, Inc., the council and each

member therein automatically assume responsibility for enforcing and complying with the rules, regulations and directions stated in the Masters' and Generals' council manual (CX 95C).

274. The councils are highly recommended by Holiday Magic, Inc. for Master and General distributors to join.

(a) CX 630A (Bulletin to Masters and Generals - 7/7/67: "Remember! —To have a voice in the operation of your area and to insure your own success—you should belong to and take an active part in, your local Council!")

(b) The desirable and advantageous CDC is available only to council members (CX 46A - Wand - 7/69).

(c) CX 483 and CX 1382B (Letter from Holiday Magic, Inc. to distributors requesting a transfer from their Generals dated 2/16/70 and 11/19/69 - board of directors) "feeling is that since you are a Master distributor, you deal directly with the company. You promote your own programs, and you service the interests of those in your organization. If you do not belong to a Council, we suggest you join a Council in your area. This action will keep you in the center of business and promotional activities."

(d) Leads from Holiday Magic advertising activities go to the councils (CX 29H) by way of the Senior General (CX 122C).

(e) Pangerl-Tr. 10370.

275. Holiday Magic field directors help local distributors establish councils in every area, working to create a synergistic effect (CX 42B - Wand - 3/69).

276. Holiday Magic, Inc. exercises such controls over the councils as requiring all council meetings to begin with the pledge of allegiance (CX 162C), prohibiting councils from holding special classes on eye make-up or corrective make-up (CX 493) and requires the councils to abide by Holiday Magic Rules (CX 94C; CX 95F). Other controls with respect to opportunity meetings appear in part XXXII.

277. Holiday Magic, Inc. recognizes "only one council per city or market area" with the exceptions of New York and Los Angeles (CX 630A).

278. The material in the council manuals are "obligations" of a council (CX 622).

279. Council manuals appear in the record at CX 78Z76; CX 79Z73; CX 93, CX 94, CX 95.

280. Holiday Magic, Inc. determines the membership requirements of councils in membership disputes (CX 621) and has required councils to admit certain persons to council functions whom the councils sought to terminate (CX 1126).

281. Holiday Magic, Inc. has also required councils to turn over their financial statements to Holiday Magic, Inc. (CX 1123A - 6/15/70).

282. The council head is termed the "Senior General" (CX 78Z74; CX 79Z71; CX 93D; Tr. 4688, 3347-48, 4683, 2069).

283. Holiday Magic, Inc. appoints the Senior General to his position as council leader (CX 1155; CX 1156; CX 619; Gay-Tr. 10009; CX 79Z72; CX 78Z69; CX 93D) and even has had corporate officials run councils (Tr. 5937).

284. Holiday Magic, Inc. has described the Senior General "as a representative of the Corporation." (CX 29G - Wand - Jan. 1968.)

285. As compensation for his various duties and functions as council leader, the Senior General receives a 1 percent override on new Master orders sponsored by his Member Masters and Generals (CX 94M, CX 95F) as well as a 1 percent override on all business produced by purchases from Holiday Magic by council members (CX 78Z74, CX 79Z77, CX 93I, CX 95F). This override is based on direct sponsorship only and the sponsor must be a member of the council in order for the override to be paid by Holiday Magic, Inc. (CX 512).

286. As of 1/23/69, there were approximately 66 active councils throughout the United States, with a total membership of 1,459 for 44 of them (CX 616).

XXXII. Opportunity Meetings

287. A Holiday Magic "company-approved" opportunity meeting is really an opportunity procedure consisting of at least three parts — the films shown thereat, an "on script" blackboard presentation or "chalk-talk" of the opportunity meeting script, and a discussion of the "prospect's qualification" which is a thorough explanation of the advantages of the distributorship levels by an "on script" presentation of "the Six Enrollments" (CX 136C - Family News - 5/24/68; CX 90K; Gay-Tr. 9878-79).

288. The films shown at the opportunity meetings appear in the record as Physical Exhibits A and B; and a transcript thereof at Tr. 9782-9808; the "opportunity meeting scripts" appear in the record at CX 78Z27-37; CX 79Z27-Z40; CX 96A-N; CX 97A-P; CX 98A-N; CX 99A-O; CX 100A-P; CX 1468A-P; CX 102A-P; CX 103A-K; and the "Six Enrollments" appear in the record at 1840; CX 90P-W; CX 85P; CX 86; CX 1842).

289. Physical Exhibits A and B are shown at opportunity meetings presented by councils, since at least 1967 or 1968. They are films sent to the councils by Holiday Magic, Inc. (Alexander-Tr. 5599-5600; CX 166D (cost of film regularly \$135 - Family News - 8/4/70)).

290. Opportunity meetings are held throughout the country, and are often attended by hundreds and sometimes thousands of persons (CX 1C (250); CX 11E (452); CX 14A (600); CX 15B (1,000); CX 15C (400); CX 21A (2,300); CX 13C (300)).

291. Holiday Magic, Inc. advises its directors that "the attendance at the Opportunity Meeting should be as large as you can make it" (CX 90E - Instructor General manual; CX 1840U).

292. The opportunity meeting is the only place where all the facts are given to prospects (CX 90I).

293. Holiday Magic advises its distributors not to go into details with the prospects over the Holiday Magic marketing plan: "if you could explain it correctly and easily over a 10 cents cup of coffee or a 15 minute telephone call or amidst the confusion and distractions of the normal situation, why do you think thousands of dollars are being spent setting up and conducting these meetings." (CX 78Z39.)

294. Holiday Magic relies heavily on the emotional impact of these carefully staged meetings:

(a) CX 90G: Our objective is to bring our prospect to the point where he feels excited at the end of the meeting—he feels a ray of hope and an inkling that this may be his way out of his financial problems—he can think of only three things—himself, Money and Holiday Magic. See also CX 1840Z62; CX 1840B; Tr. 2060.

(b) See witness descriptions of opportunity meetings at Tr. 405: "Jesus, it looks unreal. How can it be possible? Gee, if a guy could just make half that. It really looks easy." And at Tr. 4058: "I see where I can make \$100,000 a year. See also Tr. 1094-1095, Tr. 2259-2261, 1990, 2132, 2137, 2270, 3050, 1996.

295. Holiday Magic, Inc. in the Instructor General manual provided to its first group of Instructor Generals, explains the purpose of the opportunity meetings as follows:

The opportunity meeting is designed primarily to aid in the recruiting of new Organizers and Master Distributors. It is not really designed to help recruit retailers.

We explain how a great deal of money can be earned by using the Holiday Magic concept. We talk of earning in excess of \$100,000 a year. Anyone should be able to expect, therefore, that your meetings are being held by men capable of earning more than \$100,000 a year and would run smoothly and with much polish.

A hundred thousand dollars a year is a great deal for any prospect to accept. We tell our prospects that we will teach them, show them and supply them with everything they need to be successful in this business. Unless they feel you can actually do this they will not accept the idea.

The Opportunity Meeting may be the only contact they have had with the Company. We will therefore rely heavily on any and all impressions given. The product presented at these opportunity meetings is not truly cosmetics, but actually a fantastic financial opportunity (money) (CX 1840T-V; see also CX 78Z39, CX 79Z29).

296. Holiday Magic tells its distributors that the "Product" at the Opportunity Meetings is not cosmetics, but "money" (CX 1840U; CX 90E).

297. Holiday Magic, Inc. controls the Opportunity Meeting presentations and attains in it the appearance of a corporate presentation.

(a) Holiday Magic, Inc. instructs its people in the Instructor General manual that the Opportunity Meeting room "should be draped with our banners, as to take on an appearance of a Holiday Magic Opportunity Meeting and not a Hotel meeting room" (CX 1840Z2; CX 90F; CX 95D-E) with "a 20'' by 40'' framed photograph of William Penn Patrick" (CX 90F; Tr. 3898).

(b) The "tools" required by Holiday Magic, Inc. to present a Holiday Magic Opportunity Meeting are stated in its Instructor General Manual:

With the proper tools to enroll, the proper setting for the presentation, the proper speakers for your guests and with the right prospects, your Opportunity Meetings and your business will be successful.

The tools needed to present Holiday Magic Opportunity Meetings:

1. "Formula for Happy Living" and the "Story of Holiday Magic" films
2. A 16mm projector
3. Extra lamps and fuses for the projector, splicing tape for the film
4. A portable projection screen (approximately 4' x 5')
5. A large black board, chalk and eraser
6. Product display and sales aid display
7. Distributor kits and mini-kits
8. Recruiting kits
9. One packs
10. Applications
11. Refund investment schedule
12. Banners
13. Guest register

(c) Holiday Magic, Inc. prescribes the details for an opportunity meeting down to the last ash tray, to wit:

Before the meeting he will check the sound projector to be absolutely sure it is in working order. He will locate the light switches so there will be no running at the time the film is to be shown. He will see that there is a riser at the front of the room upon which there will be a projection screen and a speaker's stand. To one side of the projection screen will be the large blackboard; he has to make sure of the availability of chalk and eraser. The product display will be set up to the left of the riser, and the sales aids display will be set up to the right of the riser. Refund investment schedule cards will be placed on each chair and ash trays on every second or third chair. One table will be set up with glasses and water and one will be set up at the door for the registering of guests.

It is imperative that the Opportunity Meeting leader be responsible for the setting up of this room with the tools prescribed.

The room should be a large conference or meeting room, preferably in an outstanding hotel or motel. It will add prestige to the meeting if the room is carpeted and draped.

Acquire a room that is away from any dining room or dance area to insure quiet. The room may be set up in either classroom or theater style. If set up classroom style, the long rectangular tables are preferable. An alternative would be to set up the front of the room classroom style and the back of the room theater style, insuring those who arrive on time

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Initial Decision

a table on which to write. The location of the meeting should be posted in the hotel with signs directing distributors and guests to the room.

A Holiday Magic Opportunity Meeting will start at 7:59 p.m. sharp and the Opportunity Meeting leader and speakers will be there at 7:30 p.m. to set up the room with the prescribed tools.

Attempt to make your meeting place a permanent one. This creates a feeling of security much preferable to the confusion created by moving from one place to another. Meeting dates should be posted 30 days in advance, and you should try to make them on the same days each week.

Make sure everyone is informed of any changes in the meeting place, date or time far enough in advance to prevent embarrassment, either to you, the distributors or their guests.

Your speaker for the evening should be at the prescribed place at 7:30 p.m. to greet guests on their arrival. The guests will be more at ease while he gives his speech if they have met him a few minutes earlier.

Next, we suggest what the Corporation feels should be the tools and setting for the "ideal" Holiday Magic Opportunity Meeting.

The basic tools would remain the same except for a few additions. These would include a 20" x 40" framed photograph of William Patrick set up on the product display table.

Add at least two girls in uniformed dress, one to help the guests sign in and the other to usher. We say at least two - you may have more.

The speaker's area could be illuminated with two spotlights approximately 300 to 500 watts each. These should be placed on either side of the speaker's area at approximately a 45-degree angle, eliminating any glare on the blackboard. The latest issue of "The Wand" could be placed on each chair or on the table in front of each chair if the body of the room were set up schoolroom style. A dimmer switch should be used as follows: Instead of switching off the lights completely, just before the film the light should be dimmed slightly but not all the way into blackness. At the end of the film, the reverse procedure should take place. Bring the lights up slowly but not all the way. At this time your two spots should be turned on the speaker. As he is speaking, the lights are brought up v-e-r-y slowly so those in the audience will not notice the change.

The room should be draped with Holiday Magic banners to give the appearance of a Holiday Magic Opportunity Meeting and not a bare meeting room.

Slate blackboards are the best for use in the Opportunity Meeting presentation. Unfortunately, slate boards are very difficult to obtain. As a second choice, use a Duracite board in green. This is usually a standard item at most hotels so there should not be too much difficulty in obtaining one.

We suggest using a fluorescent, light green chalk. If white chalk is the only thing available, use a dustless brand that is not too heavily enamelled or laminated. (CX 90F; see also CX 95D-E.)

(d) Holiday Magic, Inc. coaches its distributors in techniques of bringing prospects to opportunity meetings down to the finest details. Distributors are told not to discuss any details of the business with their prospects before the meeting (CX 1840Z45; CX 78Z39) and that the word "cosmetics" should be deleted from their recruiting business cards (CX 90I) or in talking to a man (CX 1840Z51).

(e) Distributors are also told by Holiday Magic, Inc. that they "have"

to pick up their prospects and bring them to the opportunity meetings (CX 1840Z; CX 78Z39).

(f) Distributors are advised always to carry blank checks in the event the new distributor-prospect does not have cash or his checkbook with him (CX 1840A68).

298. Distributors are told to use the following methods to invite a "suspect" to an opportunity meeting:

(a) I have discovered a business opportunity that is really great! And there is more money in it than anything I have ever seen and I would like to invite you to come with me and look at a real money tree! (CX 1840Z44.)

(b) I would like to have your personal opinion on a business opportunity! Could you please come with me this evening? (CX 1840Z44.)

(c) Joe, I've discovered something that is really great! There's more money in it than anything I've seen and I'd like to show it to you, too. I think it would fit you like a glove. (CX 78Z38.)

299. The formal Opportunity Meetings are required by Holiday Magic, Inc. to be given "on script" and only by those distributors who are holders of so-called "Black Certificates" given out by Instructor Generals in Instructor General school (CX 90K; CX 95D).

300. Holiday Magic, Inc. threatens distributors with termination for not presenting the formal opportunity meetings on script, which script first appeared approximately Mar. 1967 (CX 79Z27, CX 95D, CX 136C, CX 90K).

301. However, the threatened termination by Holiday Magic, Inc. for an off-script presentation of the Opportunity Meeting relates only to "public" meetings and "company" meetings at "Council or CRS" places (Pangerl-Tr. 9650).

Holiday Magic polices the Opportunity Meetings to insure that it is given "on script" (Tr. 6043; Tr. 6163).

302. Every Opportunity Meeting speaker closes with "At this time I would like you to turn to the person who invited you and ask him to help you select one of the four portions for you in Holiday Magic. Thank you." At this point it is the job of the would-be distributor-recruiter to enroll his prospect and he attempts to do so by presenting "The Six Enrollments" (CX 90K; CX 1842Z29).

303. Holiday Magic, Inc. tells its distributors that following the Opportunity Meeting they are to train their people to "applaud the final speaker" and to "sign up their prospects on the spot." (CX 1800Q - Masters and Generals manuals; CX 90E.) "Prospect should be able to make a decision at the time he attends the meeting. If both husband and wife are necessary to the decision, then both should be present at the meeting."

304. Distributors are advised by Holiday Magic, Inc. to show up at Opportunity Meetings with Holiday Magic application forms and distributors lists (CX 78Z30; CX 90K).

305. The "Six Enrollments" which is utilized on an individual basis with prospect after the formal opportunity meeting (Tr. 5996-97) is an explanation of what can be done using the Holiday Magic marketing plan (Christie-Tr. 5999; CX 90K).

306. Holiday Magic, Inc. states in its Instructor General manuals that "The Six Enrollments factually present the advantages of the four positions [and] totally explains the entire marketing program in a most concise manner." (CX 90K.)

307. The "Wholesale Enrollment" for example, explains how to become a General Distributor (Christie-Tr. 5997).

308. The format of the six enrollments actually appears in current versions of the Holiday Magic Opportunity Meeting scripts. The words are different, but the presentation and impact is the same (See RX 29A-M; CX 103A-K; CX 102A-P).

309. The psychological hard sell of the six enrollments takes over the emotionalism of the Opportunity Meeting at which point the "scripts" are no longer policed. Prospects are urged to sign up during the six enrollments presentations.

(a) See CX 90K.

Holiday Magic Instructor General manuals further describe the six enrollments procedure:

Each [of the Six Enrollment presentation] ends with an obligating question, so that when your prospect qualifies himself by giving an affirmative reply, you can start filling out the application.

When the application is completed make the cash arrangements. This is accomplished by merely pointing to the amount equivalent to the position selected and ask "How would you prefer to handle this, by cash or by check?" (CX 90K.)

(b) See McKinnan-Tr. 4060: I am naive. All I can see is a whole lot of money. I knew if you got to be a General you had it made.

310. Holiday Magic requires that all council opportunity Meetings be open and free to any other Holiday Magic distributor or his prospects, regardless of who is conducting them (CX 79F26). Nor should any distributor below the rank of Master be assessed dues for his attendance at an opportunity meeting (CX 79Z26).

Any Holiday Magic distributor who is a member of some "company recognized council" shall have the right to take his prospects to another council's Opportunity Meetings (CX 79Z75, CX 79Z78, CX 93G).

311. Holiday Magic, Inc. utilizes the opportunity meetings in order to obtain persons to come into the program based upon emotional rather

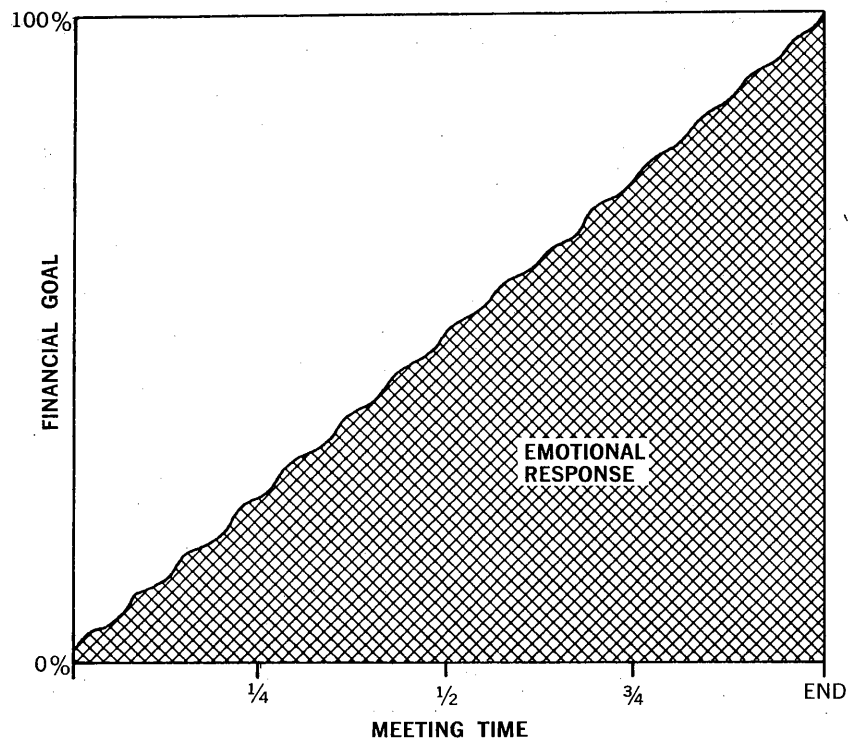
than logical considerations (Sowinski-Tr. 2060; Davis-Tr. 6282), to the point that they "lusted over money" and thought they could become rich overnight (Sowinski-Tr. 2060).

312. Holiday Magic, Inc. in its Instructor General manuals, highlights the emotional aspects of the opportunity meetings:

Our objective is to bring our prospect to the point where he feels excited at the end of the meeting, he feels a ray of hope and an inkling that this may be his way out of his financial problems—he can think of only three things: himself, money and Holiday Magic—he likes the way he feels, so his thoughts must be compatible—HIMSELF AND MONEY THROUGH HOLIDAY MAGIC!

He feels, he feels, he feels - herein lie's the key. FEELING is an emotional reaction. It is obvious that to achieve our objective with our prospect good feelings associated about Holiday Magic - we will be dealing on an emotional basis constantly.

If this emotional tone could be charted, it would look like this:



And at CX 1840Z5:

What are some of the techniques we are using to bring this about? Remember:

(1) We are all "Happy birds". We know where we are going and we like it because it's where we want to go. Everyone wants on a team that obviously knows where it's going and is excited about it. There is a wonderful feeling of comradery shown among the Holiday Magic Family members.

(2) We know what we are doing. It is obvious because we show confidence and planning perfection. We are living proof that the program is successful.

(3) The film is loaded with emotion - stimulating thoughts. " * * * my income and my bills just didn't match up * * * it may be charity * * * children * * * these four walls * * * future didn't look too bright * * * I'd hate to think it passed me by * * * your chance, your choice and your challenge * * * " and literally hundreds more.

(4) Our speakers are outstanding and obviously successful.

(5) *We are excitedly enthusiastic.*

Never forget, emotional selling is what we are doing. Our prospects are going to make their decisions to join us because they "feel" right about it in 99 cases out of 100. The remaining 1% will come in because he has "logically reasoned" that it is the proper thing to do.

313. Holiday Magic Opportunity Meetings are difficult to impossible to comprehend to prospects attending same, and are so intended to be by Holiday Magic, Inc. (CX 97A-P, CX 98A-N, CX 99A-D, CX 100A-P, CX 101A-P, CX 102A-P, CX 103A-K).

See Opportunity Meeting scripts (CX 18420, Tr. 3969).

314. The atmosphere at Opportunity Meetings is one of potential overwhelming financial gains, dramatized by stories of great riches, and a parade of toys as in the movies. The unusual incomes are described as earned by ordinary people, so that the prospect can easily put himself in the shoes of the spender (Tr. 2281, CX 97A-P, CX 98, CX 99, CX 100A-P, CX 101A-P, CX 102A-P, CX 103A-K).

See opportunity meeting scripts.

315. The major emphasis of the Opportunity Meeting is on earning "big money" by becoming a master and then general distributor in Holiday Magic.

See Opportunity Meeting scripts (CX 97A-P, CX 98A-N, CX 99A-D, CX 100A-P, CX 101A-P, CX 102A-P, CX 103A-K).

316. With a changing in the language but not the impact of the Opportunity Meeting script, respondents have resorted to unrealistic "hypothetical" examples of spectacular profits which replaced the non-hypothetical blatantly fraudulent misrepresentations of earlier opportunity meeting scripts.

See Opportunity Meeting scripts (Tr. 7328, Tr. 8889-8890, CX 97A-P, CX 98A-N, CX 99A-D, CX 100A-P, CX 101A-P, CX 102A-P, CX 103A-K).

317. The opportunity Meetings and six enrollments or closing formats have not been altered by Holiday Magic in any significant respects.

See above cited Opportunity Meeting scripts (Tr. 7334, CX 86A-F, CX 1840A-Z114).

XXXIII. Emotional Lure to Selling

318. Holiday Magic, Inc. utilizes emotional keys to selling distributorships and tells its distributor to do likewise. As they appear in the Instructor General manual, they are:

(a) *The Assumptive Attitude* - Assume at all times your prospect is going to enroll (CX 1840Z65-66).

(b) *Using Subordinate Questions* - This is getting your prospect to agree on minor issues so that he is in the habit pattern of saying yes and will not be able to refuse you (CX 1840Z60).

(c) *The Impending Event* - This is a Power-House method of enrolling your prospect though presenting to him a situation which he can take advantage of only today and which will not be available tomorrow (CX1840Z66).

(d) *The Inducement* - Give something to your prospect that is and have the normal program which will induce him to make a decision right now (CX 1840Z66).

(e) *Physical Action* - Assist your prospect in filling out the paper work or demonstrating the product (CX 1840Z66).

(f) *The Narrative Key* - Tell short positive or negative story. Enroll prospect through "Hope of reward" or "fear of Loss" (CX 1840Z67).

(g) *The Persistence Key* - Be stronger than your prospect at all times by continually asking him to buy from you (CX 1840Z67, CX 79U).

319. Holiday Magic Inc. also informs its distributors through their Instructor Generals in connection with seeking to enroll prospect that "Many people have a desire to be misunderstood" (CX 1842E).

320. The Holiday Magic enrollment keys to selling were utilized throughout by corporate officers and Holiday Magic distributors in recruitment efforts. For example, the record is replete with instances of the "*Impending Event*" technique:

(a) Holiday Magic President Al Pangerl testified that RX 137, which discontinued a 1 percent override for new Generals only, as well as an added requirement of \$1,000 per month in override purchases (Tr. 9526) was mailed to distributors in October even though it was effective Nov. 30, 1972, to give distributors an opportunity to become General prior to the deadline (Tr. 9191).

(b) 1. CX 2067A:

EFFECTIVE FEBRUARY 1, 1972, THE REQUIREMENT FOR A GENERAL DISTRIBUTORSHIP OF HOLIDAY MAGIC PRODUCTS WILL INCREASE TO \$4,000.

We're telling you this in advance so that you will have these remaining weeks to take advantage of the present requirement of \$3,000 before the deadline. That means that all

applications postmarked after 12:01 A.M. on February 1, 1972, will be approved only if the new requirement of \$4,000 is paid.

Sincerely,
Roland R. Nocera, President

2. CX 2067B:

THE GENERAL DISTRIBUTOR NEW REQUIREMENT OF \$4,000 WILL BE EXTENDED TO BEGIN MARCH 1, 1972 * * * instead of becoming effective on February 1, 1972, as previously announced.

This 20 day postponement is required to give Distributors more time, since there seems to be confusion in the field regarding the program.

All applications for General Distributorship will be honored when accompanied by payment of \$3,000 to be placed in escrow, if postmarked before 12 midnight on February 29th. It is not necessary to have a replacement Master by that deadline date, the replacement Master may be submitted at a later date.

I give you my word that there will be no further extension of this deadline. Don't waste one minute of this extra month. You'll be very glad you didn't.

Sincerely,
Roland R. Nocera,
President.

(c) 1. CX 2068A:

MASTER REQUIREMENT—\$4500

STARTING ON MARCH 1, 1972, THE REQUIREMENT TO BECOME A MASTER DISTRIBUTOR WILL INCREASE FROM \$3,000 TO \$4,500. THAT MEANS THAT FEBRUARY WILL BE THE LAST MONTH TO BECOME A MASTER DISTRIBUTOR FOR \$3,000. ALL APPLICATIONS RECEIVED FOR MASTER DISTRIBUTORSHIPS POSTMARKED AFTER 12:01 A.M. ON MARCH 1, 1972 WILL BE APPROVED ONLY IF THE NEW \$4,500 REQUIREMENT IS PAID.

CANDIDLY,
ROLAND R. NOCERA,
PRESIDENT.

2. CX 2068B:

FOR YOUR IMMEDIATE ATTENTION!

THE MASTER REQUIREMENT WILL POSITIVELY INCREASE TO \$4,500 ON MARCH 29

I give you my word there will be no further extension of the old \$3,000 price beyond that date. We are determined that every new Master Distributor has all the help possible to become an outstanding success in the Holiday Magic program. To do this, we have made certain adjustments in the required Master training and product and sales aids inventory. These changes mean increasing the Master cash requirement to \$4,500. We strongly feel that, as a result of these changes, every new Master will be more fully prepared than at any time in the past to achieve total success with his distributorship.

The \$4,500 cash requirement will cover the cost of a greater amount of product at retail; a standardized, special assortment of sales aids for Masters, and the finest professional management and sales training anyone can get anywhere.

As you know, the true value of a Holiday Magic Distributorship is growing by leaps and bounds. Thus, I have no way of predicting how long we can hold the line at \$4,500. I advise you to take advantage of the current situation.

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Every day you wait can cost you money instead of making you some.
We're on our way,

Roland R. Nocera
President.

3. CX 2060A:

FOR YOUR IMMEDIATE ATTENTION!

MASTER REQUIREMENT TO INCREASE TO \$6,000 ON JULY 6

Effective July 6, 1972, the cost of a Holiday Magic Master Distributorship will rise from \$4,500 to \$6,000.

This rise reflects the enormous growth in value of every Holiday Magic Distributorship. You all see evidence of this in the large numbers of Distributors who appear in each month's *Wand as Moneymakers*—and in the rapid upsurge in retail business at every CRS facility in the country.

This means that all applications received for Master Distributorships postmarked after 12:01 A.M. on July 6, 1972 will be approved only if the new \$6,000 cost is paid.

The Holiday Magic opportunity continues to reach outward on all sides toward the distant horizon. Reach with it—and you may be richly rewarded. Every day you wait is money you aren't earning.

Yours for the future,

Roland R. Nocera
President.

4. CX 2069B:

FOR THE IMMEDIATE ATTENTION OF ALL DISTRIBUTORS
WE ARE EXTENDING THE MASTER REQUIREMENT!

The deadline for the \$4500 requirement has been extended to July 28, 1972. This means that all applications received for Master Distributorships postmarked after 12:01 A.M. on July 28, 1972 will be approved only if the new \$6,000 requirement is paid.

I advise you to take advantage of the limited time remaining—now.

Cordially,
Roland R. Nocera,
President.

5. CX 2069C:

FOR YOUR IMMEDIATE ATTENTION
MASTER REQUIREMENT EXTENSION

We have decided to extend the current Master Distributor price requirement of \$4,500 to August 23, 1972. Applications received after 12:01 a.m. on this date must be accompanied by the new price requirement of \$6,000.

Take this opportunity while you may.

Cordially,
Roland R. Nocera,
Chairman of the Board.

6. CX 2069D:

FOR YOUR IMMEDIATE ATTENTION!

MASTER REQUIREMENT TO REMAIN AT \$4,500

We will be taking major steps in improving distributor sales training and sales aids—

tools with which a Master can achieve greater success than at any time in the past, but we have decided to let the Master requirement cost remain at just \$4,500.

Holiday Magic believes in its people, and has faith in their ability to continue to work hard towards personal achievement—achievement which in turn contributes to the success of the company—and to the success of the American economy.

The Master requirement will remain, for the time being at \$4,500.

Sincerely,
Alfred W. Pangerl,
Senior Vice President.

(d) 1. CX 207A-C:

A NEW FINANCE PLAN FOR YOUR NEW MASTERS

Effective October 1 through October 31, 1971, we're offering to finance up to \$1500 of the purchase price of a Master Distributor * * * at an interest rate of 6% on the declining balance.

2. CX 2071:

You only have a few more days to take advantage of the Finance Plan for New Masters that ends January 31st * * * THERE WILL BE NO FURTHER EXTENSIONS OF THE DATE.

If you've heard any rumors to the contrary, don't believe them. If you're counting on an extension for any reason, you're going to be disappointed. Even though this program has been very successful for all of us * * * and we did extend it from the original December 31st date * * * there will be no further extension! I'm advising you of this now, so you will take full advantage of the time remaining and you have my word for it * * * there will be no further extension beyond the January 31st deadline.

Sincerely,
Roland R. Nocera
President.

3. CX 2072A-D:

A NEW FINANCE PLAN FOR YOUR NEW MASTERS!

Now effective through April 19, 1972, we're offering to finance up to \$2500 of the purchase price of a Master Distributor order * * * at an interest rate of 6% on the declining balance.

4. CX 2073A-C:

A NEW FINANCE PLAN FOR YOUR MASTERS!

Effective now through June 13, 1972, we're offering to finance up to \$2000 of purchase price of a Master Distributor order * * * at an interest rate of 6% on the declining balance.

5. CX 2074A-C:

A NEW FINANCE PLAN FOR YOUR NEW MASTERS!

Effective December 10th through December 31st, we're offering to finance up to \$1500 of purchase price of a Master Distributor order * * * at an interest rate of 6% on the declining balance.

6. CX 2076A-C:

A PRESENT FOR THE NEW YEAR--A SPECIAL MASTER TOTAL PRICE OF \$3000 PLUS THE NEW FINANCE PLAN FOR NEW MASTERS

Effective through January 31st, we're offering to finance up to \$500 of purchase price of a Master Distributor order * * * at an interest rate of 6% of the declining balance.

(e) See Gay-Tr. 10010-10011 describing the impending event as utilized by Holiday Magic, Inc.

(f) See also CX 1395A.

321. Holiday Magic, Inc. has utilized as an "impending event" the fear of distributors that limitations in their recruiting activities may at some future date occur.

CX 90Z3, opportunity meeting statement dated Jan. 1970, for example, states:

There are only a limited number of Generalships in any given area. Achieving this level depends in part on your own abilities to produce and in part on how many have gotten there before you. As in any other test of achievement, the race goes to the swift.

322. There is considerable doubt that any such limitation has actually been imposed; and this doubt is generated by the following:

(a) RX 84 purports to be an inter-office memorandum distributed to all Senior Generals and Instructor Generals some time after Roland Nocera became Holiday Magic President--which was in Nov. 1970 (Tr. 10016; Tr. 9655). RX 84 states that on Mar. 22, 1967, the Holiday Magic Board of Directors adopted a policy of one General Distributor per 10,000 population in a given market area.

(b) RX 163A-O, which is the minutes of the meeting of Mar. 22, 1967, contains no such statement.

(c) Two Holiday Magic officials, Coultas and Pangerl, testified with respect to the alleged limitation of Generalships, and their testimony indicates an incredible lack of knowledge by these two officials--the president and the director of legal service, about such "limitation."

For example, we learned that a limitation was placed in recruiting Generals in Red Lion, Pa. (Tr. 9701) but we are not told, and corporate officials do not know Red Lion's population, geographic area, size or number of Generals there (Tr. 9729-30, 10331) or the number of Masters or Generals operating out of Red Lion (Tr. 10331).

See Tr. 10331-10339 and Tr. 10356-10374, which is president Pangerl's entire testimony on the subject.

(d) At least through *June 1968*, the time that respondent Jan Gillespie, a member of the board of directors, left Holiday Magic, Inc. (Tr. 9293), she testified that the company had no filing for Masters and Generals by *geographic area* (Tr. 9557-Gillespie).

XXXIV. Business Training

323. The term "Business Training" as used throughout the Holiday Magic program is really nothing more than the "Six Enrollments" being taught and given at the various councils (Fechtal-Tr. 2389-91, Pence-Tr. 3674, Gay-Tr. 9940, CX 1840Z85-86) and is given to educate newly enrolled people and to motivate individuals at lower levels to move up (Sowinski-Tr. 2017, CX 1842Z29). For this reason, business training II and III is referred to by Holiday Magic, Inc. as opportunity meeting II and III (Napoletano-Tr. 3609, Gay-Tr. 9857).

324. The purpose and design of "Business Training" was to "close" prospects and to teach others how to recruit and close prospects (Napoletano-Tr. 3611, Fechtal-Tr. 2391, CX 1840Z85-86).

The Instructor General manual states:

Business training is provided by functioning councils - Masters and Generals who belong to these Councils pay small monthly fees to support them. When your guest is invited to a council training meeting he will have to sign into the guest register and you're going to try to use the training facilities to sponsor your guests into the program. (CX 1840Z85-86).

See also CX 1842Z27-28; CX 1842Z29.

325. The closing techniques for prospective distributors, not for the sale of cosmetics, as described by Holiday Magic, Inc. to the Instructor Generals, contained in the material of CX 1844A-N and CX 1842A-Z30 (Sowinski-Tr. 2035-36, 2053) are all psychological hard-sell techniques, as follows:

(a) *Application Enrollment* - The filling out of the application by asking your prospects questions and writing down the answers. Prospect is asked to "O.K." the form (Z18).

(b) *Enrollment Questions* - Is the use of questions the answers to which will confirm the fact of enrollment. Example - "What is your correct mailing address?" (Z18).

(c) *Alternates of Choice Enrollment* - Example - "Do you want to handle this by cash or by check?" (Z18).

(d) *Call Back Enrollment* - Don't ever ask your guest if he has thought it over because he will normally tell you the answer is "no." Use standard enrollment procedure all over again (CX 1842Z19).

(e) *Summary Question Enrollment* - Oral method of enrolling your guest through using a negative yes enrollment each time he says no. Example - "Is it the integrity of the company that is keeping you from enrolling?" (CX 1842Z19).

(f) *Lost Sale Enrollment* - To be used when your guest has been lost and is starting to leave. Ask prospect to excuse his "ineptness" and ask where he has gone wrong. When guest answers, go back into the presentation. Apologize to your guest for not enrolling him (CX 1842Z19).

(g) *Secondary Question Enrollment* - Use minor question following an alternate of choice enrollment (Z20).

(h) *Sharp Angle Enrollment* - When prospect asks "Can it earn money?" "Do you want to enroll if you can make money?" (Z20).

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(i) *I'll Think It Over Enrollment* - Ask what phase of the program you want to think over - then you have a final objection enrollment (Z 20).

(j) *Final Objection Enrollment* - Make guest explain his objection until he feels "stupid" (Z20-21).

(k) *The Puppy Dog Enrollment* - For skeptical guests on the try it before you buy it approach. Take the demo kit home and let your wife play with it. Prospect will have to enroll if wife wants to keep kit (Z21).

(l) *Ben Franklin Balance Sheet Enrollment* - Used for indecisive prospects. Put down reasons pro and con for joining. Help prospect with pro reasons. Subconscious mind won't be able to switch to the con so fast (Z21).

(m) *Similar Situation Enrollment* - Use a positive or negative story to influence your prospect's decision.

(1) Positive story "Oh, boy! am I happy that I made that decision because now I have the world by the tail enrollment."

(2) Negative - "Make them cry enrollment" or the "back the hearse up to the door and let them smell the flowers enrollment" (Z21-22).

(n) *Obligatory Question Enrollment* - Let prospect answer yes to any question he asks by asking him the same question. Example - "Can I have retail girls?" "Do you want to have retail girls?" (Z22).

(o) *The Budget Enrollment* - Use when losing your prospect due to his lack of available funds. We'll start your training right away so you can become a financial success (Z22).

(p) *Trial Enrollment* - Book him in training class where you can obtain more information (Z22).

(q) *Impending Enrollment* - You should get started with us right now! And reap the cash benefits available by expanding in these new areas before someone else comes along ahead of you and takes home the cash money you could have earned (Z22).

(r) *Buddy Enrollment* - Let's record your name at the main office so you will be able to sponsor your friend into the program (Z23).

(s) *Name Enrollment* - Ask prospect to write down names of five people who would like to make an extra \$25,000 a year. Then explain how much money these five people will make for your prospect if he sponsors them into the business. But in order to sponsor you have to enroll. If he doesn't enroll, threaten him that you will sponsor the people. The moment you enroll one of his contacts you will have leverage to enroll him again (Z23, see also CX 78W-X).

(t) *Circle Enrollment* - Can you do it? Product, Industry, Marketing Plan & Company explained already (Z23).

(u) *Cash Money Enrollment* - Used when you have a prospect who is a non-believer. Pull roll of \$100 bills out of your pocket and say "Now, I am not trying to impress you with the money that I'm making, but would earning this kind of money each week interest you? Wonderful" (Z24).

(v) *Direct Enrollment* - "I believe this program will directly benefit you by increasing your income" (Z24).

(w) *Indirect Enrollment* - "Now in order to start earning big money right away I think you should start in this position." When a prospect turns down a position that you select for him just automatically assure that he is selecting the position directly below the one you have just offered him. "Well, that's all right, we'll start you in this position and you can work your way up" (Z24).

(x) *Choice Enrollment* - Now that I have explained all four positions to you which do you feel will suit your needs best?" (Z24).

(y) *Pen Handling Techniques*

(1) Pen Circling - Always circle pen into your prospect's hand beneath his eye level (between the first finger and thumb) (Z24-25).

(2) Pen Snapping - Make a mark on the application where you want him to write, then snap the pen down upon the top (indicating you want him to use it). "Please put your name and mailing address right here" (Z25).

(3) Pen Reaching - When you have a wide distance to cover in placing your pen in prospect's hand. Place pen in prospect's hand while keeping your eyes at his level (Z25).

(4) Pen Dropping - Should only be used after several unsuccessful attempts have been made to place your pen in your prospect's hand. You must become extremely nervous and accidently on purpose drop your pen, saying "Whoops." When prospect picks up pen, don't thank him, but tell him to put his name on the application (Z25).

(5) Pen Tapping - "Is used to bring about fast signature." "Let's go" (Z25).

(6) Pen Borrowing - Used when prospect has his own pen close at hand. Borrow his pen to make a mark on application, then give it back to prospect, telling him to finish filling out application (Z25).

(7) Pen Priming Techniques - Used to get prospect to start writing after pen successfully placed in his hand.

(i) Quick Prime - Pick up second pen and quickly point to place you want him to sign - "Just like a small bird sitting on your prospect's shoulder and softly whispering into his ear "You forgot to sign your name" (Z26).

(ii) Hot and Cold Pen Switch - Put pen that has started writing into prospect's hand. Clear the negative deception from his conscious mind first.

326. Examples of the utilization of the "pen" techniques are found in the record at Tr. 3611 - Napoletano and Tr. 3715 - Pence. On both occasions, they were demonstrated by either Instructor Generals or corporation team personnel.

Utilization and teaching of the "Cash Money Enrollment" is very prevalent:

(a) Mark Evans, Holiday Magic's national sales manager, said HM stood for "Hot Money" and threw 25 \$100 bills in the air (Pence-Tr. 3711).

(b) Bill Dempsey, V.P. for East Coast of Holiday Magic, Inc., flashed 3 or 4 \$100 bills in the air during his talk (Pence-Tr. 3710).

(c) See also Langston-Tr. 3851.

(d) Jerry Booz at his Instructor General class opened his coat and it was lined with bills of all denomination (Napoletano-Tr. 3612). (Mr. Booz testified for respondents after Mr. Napoletano, but never denied the incident.)

XXXV. How Money May Be Made Under The Holiday Magic Program

327. Money can be made in the Holiday Magic marketing plan without moving product to the consumer (Professor Lapp - Tr. 6739; Sloane-Tr. 2119).

328. There are many ways to make money in the Holiday Magic marketing plan. This can be accomplished by either selling product, recruiting people to sell product, or recruiting people to become Masters who in turn will be upgraded to the General position and the money can be made on the release fees (respondents' Marketing Professor Baumgarten-Tr. 6608-09, 6616). See also CX 79Z45:

In other words, the distributor * * * may function as a retailer and/or a recruiter of other distributors. What the distributor becomes in Holiday Magic depends mainly on his or her interest and ability.

329. It requires only two Masters going General for the individual General to reach his breakeven point (Professor Baumgarten-Tr. 6609, 6626).

330. It is clear from the record in this case that there are many ways that Master and General distributors have worked the Holiday Magic program. They can do so by:(a) Retailing the product directly to the consumer (Tr. 5256, 4481-4482, 5114).

(b) Selling Holiday Magic products directly to Organizers and Holiday Girls at wholesale (Tr. 2452, 2479, 4187, 2525, 2518, 4554).

(c) Recruiting Master Distributors and receiving a 10 percent override if a General (Tr. 4841; CX 2009A-B; Tr. 4989-4990).

(d) As a General, upgrading Master distributors to the General position, and collecting the release fees and subsequent 1 percent overrides (Tr. 5314, 8963, 4612).

331. The record is clear that the most successful Holiday Magic Distributors have made the vast majority of their money in Holiday Magic, Inc. by collecting release fees on upgrading Masters in their organizations to the position of General:

(a) Cf. Al Pangerl, the top producer for 1967, 1968 and 1970 (Tr. 9558) who sold only \$15,000 at retail value at wholesale in 1970 (Tr. 9562) which means approximately a gross income in wholesale business of \$5250 (35 percent differential between selling price of 30 percent undercut to Holiday Girls and 65 percent discount from Holiday Magic) received at least \$15,000 in overrides on his Master Distributors (Tr. 9560-62) and with 50 Generals totally made at least \$125,000 in release fees since 1967 (Tr. 9570).

(b) Bill Dempsey, the third highest Holiday Magic producer for a six month period in 1966 (Tr. 6062), made between \$40,000-\$100,000 every year in Holiday Magic, made at least \$125,000 on release fees (Tr. 6059-60 Generals) and at least \$50,000 on 10 percent overrides (Tr. 6059-60 Masters plus 50 Generals who were Masters).

(c) Distributor Ben Gay, who like Pangerl also became president, testified that of \$100,000 he made his first year in Holiday Magic, \$98,500 was from recruiting activities and \$1500 was from wholesale sales (Tr. 9871).

332. Distributors are aware that the big money to be made in Holiday Magic is through recruiting and sponsoring Masters and Generals. Cf. Tr. 2246, 2119, 2288, 3717-20, 3388, 3784, 5137, 1093, 1194-95, 5314, 7307, 7309, 7338, 7667, 7724-7725.

333. Holiday Magic, Inc. tells its distributors and prospects in the six enrollments that the "big money" is made by recruiting and sponsoring General Distributors, and collecting the release fees. Cf. CX 86B-C:

Now for just a moment lets put you in the position of a General Distributor working at 65%. Each time you bring a new Master you receive 10% of the total retail volume that must change hands. 10% of \$5000 is \$500, you have just earned by bringing in a new Master Distributor, this newly created Master will want to become a General Distributor like yourself, so that he may earn the big money.

* * * [T]he moment this replacement Master has been signed in at the factory, the \$2500 that has been sitting there in escrow is released back to you, the General Distributor, for a total of \$3300 each time you bring in a new General Distributor.

If you did this once each month you would earn a total of \$39,009 a year and still have twelve Masters. Now, this is part time because, believe me, anyone who only brings in one Master a month is working part time! But, if you could bring in one distributor a week you would earn in excess of \$150,000 by this time next year.

334. The backbone of the success of Holiday Magic was based upon the Mark Evans lecture notes, which appears in the record at CX 85A-Z29 (Quoted by witness Rountree of Fred Pape-Tr. 941).

335. The Mark Evans Lectures were given when Evans was a member of the Holiday Magic Corporate Team (Tr. 924).

336. A comparison of the Evans notes with the six enrollments scripts utilized by Holiday Magic reveals that the six enrollments follow the Evans lecture notes. Cf. CX 852A-Z29, CX 86A-F (handed out by Holiday Magic Corporate Team at meeting conducted by Evans - Tr. 2972) and CX 1842R-Z10. Given to all Instructor Generals - Tr. Sowinski).

337. Holiday Magic distributors make money under the Holiday Magic marketing plan off of other people's efforts. Cf. Tr. 1097, Part XIV 5, CX 1800-P, Tr. 2276, 6236, 4543; CX 1983, D. E. G.

338. No "top achievers" in Holiday Magic have made more money in Holiday Magic selling to organizers and Holiday Girls than they have in generating release fees and overrides for themselves (Coultras-Tr. 9755).

339. Under the Holiday Magic marketing program, according to Robert DePew, Holiday Magic's first vice president, "a tremendous amount

of money could have been earned by many without much regard at all for quality of product or retail sales or repeat orders" (CX 2B-Wand-9/65).

340. The record establishes that Holiday Magic, Inc. provides the distributor with the marketing plan, and lets the individual distributor decide for himself how he chooses to make his money in the Holiday Magic program (Tr. 1320, CX 79Z45).

341. Because there are so many ways to make money in Holiday Magic, Inc. one cannot properly compare the Holiday Magic business at the Master or General Distributor level with any other business in which release fees and replacements are not present. Respondents' own expert on motivational selling testified that "there are motivational factors which cause a distributor to go into Holiday Magic which are different from a Salesman going into any other business" (Davis-Tr. 6306).

342. Because of the nature of the marketing plan, the intent of a distributor in coming into Holiday Magic could be to do so without the desire to resell products, but to just recruit Masters (Pangerl-Tr. 9650-9651):

Q. You indicated also on redirect examination, Mr. Pangerl, that you knew of no distributor who didn't intend to resale [sic] products he purchased from Holiday Magic. Do you recall saying that?

A. If you bought product from the company, you bought it to sell to someone.

Q. If a distributor in a Holiday Magic Program was interested only in recruiting Master Distributors and not reselling the product and if a requirement was that before he could recruit Master Distributors he had to buy inventories, would this not be a situation where the intent of the distributor would be to come into Holiday Magic not to sell product but instead to recruit Masters?

A. No, the company frowned on headhunting. That would be called headhunting.

Q. It would be called headhunting, but that would not change the intent of the distributor coming into the program, would it?

A. I guess not.

343. Holiday Magic, Inc. did not frown on "headhunting" but fostered it 100 percent. (All of Holiday Magic's earnings representations in the Record substantiates this.) See CX 82Z47 Holiday Magic Distributor's Manual:

There will be those who join our ranks from greed alone, seeing an opportunity to "get rich quick." It is alright that they join with the intent of getting rich quick, -- for indeed they can * * *

344. One cannot be successful in the Holiday Magic program unless one is competent to sponsor other distributors into the program at the Organizer, Master and General Level.

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(a) CX 1800Q (Masters' and Generals' Manual):

The position of Master Distributor has been designed as a leadership position with many responsibilities and rewards commensurate with those responsibilities. A Master Distributor who conducts himself ambitiously in following the Holiday Magic formula for success will have a business which he can enjoy for the balance of his life with an income of \$15,000 to \$24,000 per year. To achieve this income level is not difficult, but there are several things that must be done:

1. RECRUITING: You must maintain a constant Personnel Recruiting Program and encourage your distributors to do likewise.

a. Have no less than one recruiting meeting per week. Evening recruiting meeting should begin at 8:00 p.m. sharp.

(Note: Opportunity Meetings are not designed for Recruiting Holiday Girls - See CX 79Z29.)

(b) CX 1800P:

Our job this evening has not been to sell you, but to thoroughly explain our program so that you might see how this opportunity can be used by you. It is obvious that the person who invited you here must have respect for your ability. Further, if you understand the opportunity, it is obvious to you that unless you make progress, he can make none.

345. The sponsorship or recruitment act, of itself, is an income generating event in the Holiday Magic marketing plan and Holiday Magic, Inc. points out to its distributor that money is to be made in the act of recruiting (and not in selling of the product).

(a) CX 1840Z48:

Having personally escorted your prospects to an opportunity meeting it behooves you to remember that it is not only your prospect's opportunity, but your opportunity also. This is the point of your being there. You are there to present an opportunity to your prospects which will directly affect your financial well-being. Because of this you are enthused!

(b) CX 1842U, CX 1840Z74:

[P]ut yourself in the position of a General Distributor working at 65%. Each time you create a new Master Distributor you receive 10% of the total retail volume that must change hands. 10% of \$5000 has just earned you \$500 cash!
This newly created Master Distributor that you have just enrolled will want to become a General Distributor like you so that he may earn the kind of money that you are earning here.

(c) See also CX 1842V, CX 1840Z77.

(d) CX 1842V, CX 1840Z75:

But the moment that the replacement Master is received at the factory the \$2500 cash, being held in escrow, is released to you, the sponsoring General Distributor, for a total of \$3300 cash each time you sponsor in a new General Distributor as a General Distributor.

(e) CX 1395A - letter from Holiday Magic to Distributor Davis - (9/16/68):

Just a reminder that at midnight, September 30, 1969, as a General you will earn one hundred and sixty-six dollars more for every Master Distributor you bring into the business and three hundred and sixty-six dollars more by the time he becomes a General Distributor!

In the meantime, your prospects will save \$750 by joining the business before the deadline.

See you at the top--and at the bank!

346. Holiday Magic, Inc. rewards its General distributors to the extent of \$300 or \$500 as a result of someone else's activity in merely sponsoring a new Master distributor. The money has been received, yet there has been no training, no supervision and no control:

When this replacement Master is brought into the business, an additional \$5000 in retail product is purchased from Holiday Magic and you [the General], with your 10% override, would be paid another \$500 * * * in cash. But since the rules require you to pay out \$200 in cash as a finder's fee to whomever brought in this Master, you net only \$300 * * * on replacement Masters (CX 90R).

347. Holiday Magic, Inc. rewards General Distributors with release fees of at least \$2500 the moment a replacement Master is recruited by a Master in the General's Organization.

However, the moment that the replacement Master is effectively recorded by the company, the \$2500 cash, being held in escrow, is released to you * * * Thus, you have earned a total of \$3300 each time you sponsor a new General Distributor. (CX 90S).

348. Holiday Magic, Inc. rewards its distributors who recruit Masters by paying a 10 percent override on the retail list price purchase volume of the new Master's order.

(a) See CX 2054A-L and CX 2053A-M, overrides of Dale Schmidt, who testified that he made the \$25,000 round table five times and that the round table indicates a volume of \$25,000 in one month (Tr. 5229). Schmidt recruited 46 Masters and received between \$500-\$777.77 apiece therefor for a total of \$29,914.04.

(b) CX 1842U, CX 1840Z74, CX 90R.

349. Holiday Magic, Inc. also rewards its distributors for recruiting Masters by so-called "Round-Table" clubs, and gives prizes to members of the round table:

(a) Witness Barry Toepfer testified that he was a member of the \$25,000 "Round Table" in July 1970, because his "sales volume" totaled \$25,000 that month. Mr. Toepfer recruited five Masters that month, each of whom purchased \$5000 at retail value for a total volume of \$25,000. Mr. Toepfer stated the \$25,000 was achieved through recruiting (Tr. 4980-4989).

(b) Witness Dale Schmidt was an Instructor General (Tr. 5198) and a member of the round table five times (Tr. 5229). He testified he made the Round Table as a result of recruitment of Masters (Tr. 5231, 5223). See CX 2053A-M and CX 2054A-L).

350. Another way Holiday Magic, Inc. rewards its distributors who recruit Masters, is in "Mugs" or trophies.

(a) CX 140D - Family News - 8/2/68.

MUG YOUR MASTERS

We're getting more and more orders for the mugs which have been used so successfully by success squad leaders. These mugs are a humble symbol of achievement in recruiting. Smart people are building a large set.

(b) Ruggler-Tr. 665, 687.

(c) CX 1634.

351. Holiday Magic, Inc. would also reward its distributors for recruiting Master Distributors by holding so-called "retail volume" contests, which are nothing more than Master recruiting contests.

(a) Former Instructor General Napoletano testified that contests were based upon retail volume, but a credit of \$5000 volume for each Master recruited was attained (Tr. 3618).

(b) Former Instructor General Sowinski testified that contests depend upon the volume of products that flowed from Holiday Magic, Inc. and gave as an example that if a person brought in 10 Master distributors, this would result in a volume to him of \$50,000 or \$5,000 per Master (Tr. 2044-2045).

(c) Former Holiday Magic president Ben F. Gay III testified that the retail volume contests were thinly disguised Master recruiting contests (Tr. 9833-9840).

(d) CX 537A-(7/15/66) Bulletin from Holiday Magic, Inc. to all Master and General Distributors, announcing the "GET JIM HEARN" CONTEST.

If you think he's [Jim Hearn] resting on his laurels and counting his money, you're wrong! He's opened up a new office in Miami, stormed the Southland, signing up distributors and his business is better than ever.

See also weekly bulletin announcing the standings of the "GET JIM HEARN" Contest at CX 538A,B, CX 539A,B, CX 540, CX 541A,B, CX 542A,B, CX 543A,B, CX 544A,B, CX 545A,B, CX 546, CX 547, CX 548.

(e) Top producer Pangerl at Tr. 10376-77:

Q. Mr. Pangerl, what did you state with respect to Mr. Patrick telling you to concentrate on retailing or not just now?

A. He didn't make any statement.

- Q. He didn't tell you not to engage in retail activities?
 A. He didn't tell me not to engage in wholesale activities either.
 Q. He did reward you for engaging in wholesale activities, didn't he?
 A. He rewarded me for my total overall effort in my business.
 Q. You had four cars, the use of four automobiles?
 A. That is right.
 Q. That was because of your wholesale or retail volume?
 A. It was the total volume of sales that I had.
 Q. And you made the President's \$75,000 Club?
 A. That is right.
 Q. And that was based on wholesale volume whether to you or to masters in your organization?
 A. That was based on total volume of everything.
 Q. How much of that was master purchases, and how much of that was sales to you as a general?
 A. I state earlier, 90%.³
 Q. All right. 90%. What did you get for the \$75,000 Club?
 A. I got a year's lease on a Cadillac. I got a ring and pin.
 Q. What did you get for the \$50,000 Club?
 A. I got a trip to any city anywhere in the world.
 Q. Where did you go?
 A. Which world?
 Q. Where did you go?
 A. I never took the trips. I was too busy.
 Q. Too busy recruiting?
 A. Too busy doing everything there was in my business.
 JUDGE BUTTLE: Mr. Gay was considered one of the top recruiters also, wasn't he?
 THE WITNESS: Yes, sir.
 JUDGE BUTTLE: All right.⁴

352. Holiday Magic, Inc. inundates its distributors with news stories of contests and clubs in which they can win prizes such as trips around the world and Rolls-Royce automobiles by having the highest "volume" of all other distributors (Cf. CX 158D, CX 7A, CX 14C, CX 4, CX 155A, 155D, 156C, 30A, 41A, 165A, 166A, 41D-I, 45C, 160A, 164A, 163A, 39G, 48A, 49A, 51A, 51C, 47C-E, 53A, 54A, 54J, 55D, 57A, 57D, 166E, 60A, 61A, 61C, 63A, 63J, 64B, 64E, 64H, 129D, 129G, 135C, 144A, 147A, 165M, 147M, 148A, 151H, 151"o," 153C, 172A, 13B, 165H, 46A, 167C, 56A, 57D, 59A, 59H, 60F, 61D, 62A, 63C, 64G, 68C, 133B, 136G, 156A, 172B, CX 47A, CX 63C, CX 65C, CX 165H, CX 167A, CX 36E, CX 53A).

XXXVI. The Geometry of the Marketing Plan

353. The Holiday Magic marketing program is designed and intended to increase the number of distributors geometrically, that is, it is de-

³ At Tr. 9560 - 90 percent purchased by his Masters.

⁴ Testimony of Gay at Tr. 10615 that Pangerl won 5 automobiles, watches, rings, diamond lapel pins, and two trips around the world for two. He didn't take the trip because they were of long duration and it took too much time away from recruiting. At Tr. 9562, 9570, Pangerl claimed to have recruited 200 Masters and 50 Generals.

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signed to produce an even broadening base of new distributors at the same functional levels:

(a) CX 1800Z8:

It is important that you make your Opportunity and Training meetings open to everyone and members of their organizations. Since your organization will grow beyond your local area and spread across the country, it is important that full cooperation be extended to everyone in the Holiday Magic organizations.

(b) CX 278:

Between your associates and their associates you can easily reach 2500 people. If you are diligent you can easily affect one half of the people or 1250 over a period of one year. If you are not so diligent you can at least affect 400 to 500 individuals. Do you realize what this could mean for you?

(c) At CX 76L, Holiday Magic explains that everyone has the "same opportunity."

(d) Witness S. Price Holton, former Secretary to the Miami council, testified that the opportunity meeting script was a recruitment in geometrical progression (Tr. 2287).

(e) CX 1842V, CX 1840Z75:

Herein lies the strength of the Holiday Magic marketing plan. Why Holiday Magic has grown so rapidly, because he must always replace himself with a working indian [sic] before he can become a chief. Your number of Masters will never decrease--you will only grow in the number of Generals you have.

(f) CX 1842V, CX 1840Z75.

354. The operation of the Holiday Magic Marketing plan with respect to recruiting persons who become Masters and/or Generals contemplates geometrical increases in the number of distributors at each level.

(a) Holiday Magic's Instructor General Manual describes "Holiday Magic's Formula for Financial Success" based on a quota system of recruitment of organizers, Masters and Generals, to wit:

There is a scientific way to assure your financial success in "Holiday Magic". It is the proper use of the "Quota System."

A. Set the goals or quotas as follows:

(a) Each organizer in your organization is responsible for enrolling one other organizer into Holiday Magic each week.

(b) Each Master Distributor is responsible for enrolling two new organizers per week into the program, through his organization.

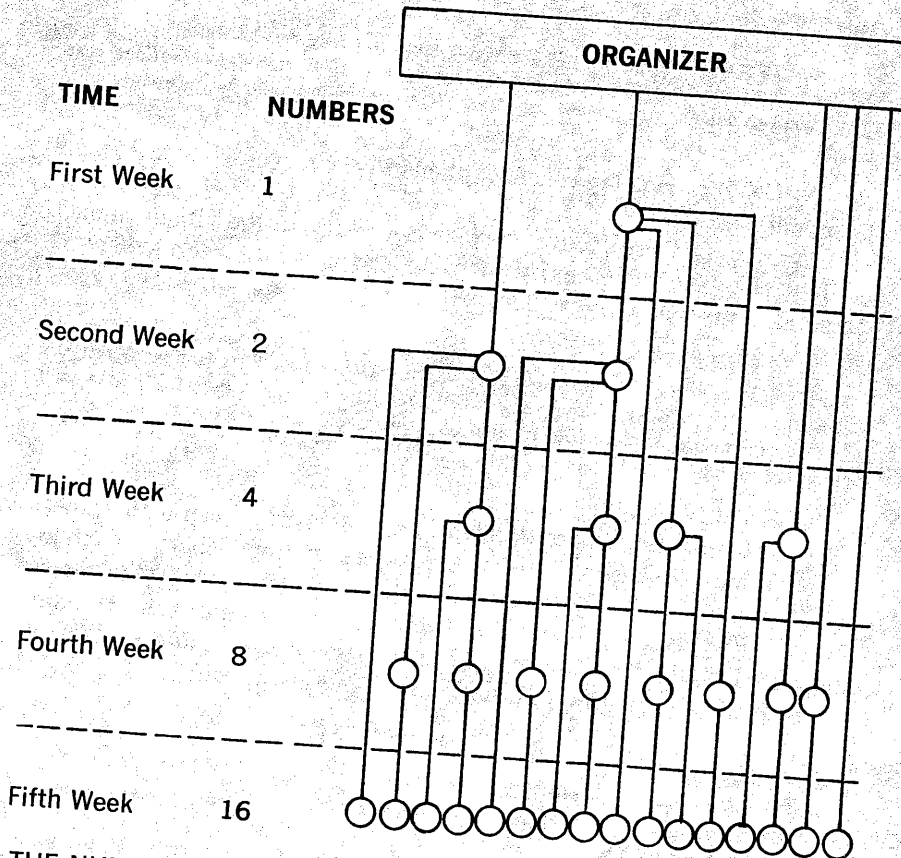
(c) And every General Distributor is responsible for enrolling four new organizers each week into the program through his entire distributorship.

Note that at the General level there is a total of sixteen new organizers each month being brought into his organization. Four or more of these new organizers will become Master Distributors. (If they are being trained properly.) The new Master Distributors will become General Distributors by the following month if they are filling their own quotas. Which means that any General Distributor who will establish the "Quota System"

in his own organization will be sponsoring one new General Distributor into Holiday Magic each week by the end of the second month which will earn him three thousand three hundred dollars per week which is well over one hundred thousand dollars per year! This is Holiday Magic's Formula for Financial Success (CX 1840Z47-48).

(b) In diagram form the quota systems for organizers is as follows:

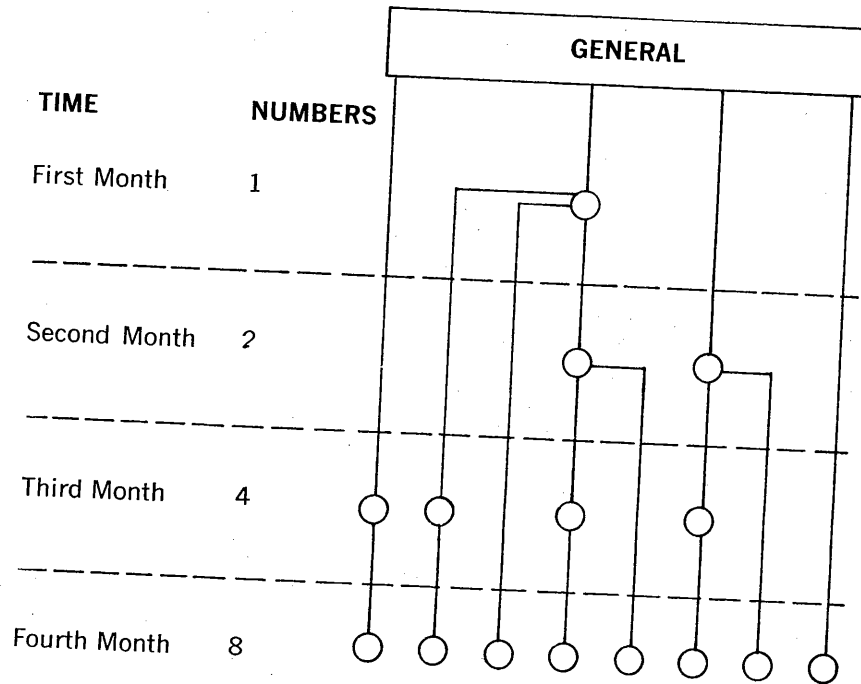
(1) "Each Organizer in your organization is responsible for enrolling one other organizer into Holiday Magic each week." Therefore, if all organizers follow the Quota System:



THE NUMBER OF NEW ORGANIZER DISTRIBUTORS BROUGHT INTO THE HOLIDAY MAGIC PROGRAM WILL INCREASE BY A MULTIPLE OF "TWO" EACH WEEK THEREAFTER.

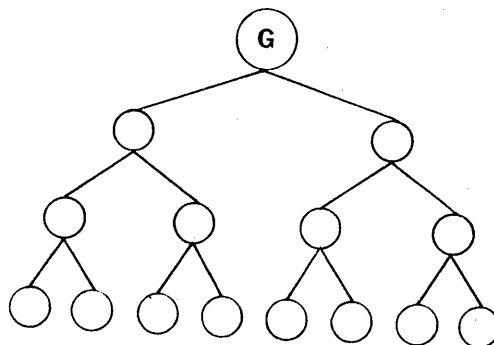
(c) Any General Distributor who will establish the "Quota System" in his own organization will be sponsoring one new General Distributor into Holiday Magic each week by the end of the second month * * * "Therefore, if all Generals follow the Quota System, the multiples will increase at an even greater rate—literally a multiple on top of a multiple, after the fifth month.

(d) The wholesale enrollment describes a recruiting aspect of the Holiday Magic marketing plan whereby a General distributor can make \$39,600 at the end of twelve months by recruiting and sponsoring one General distributor a month (CX 1840Z74-Z77). The diagram looks as follows, assuming that all generals do the same thing:



THE NUMBER OF NEW GENERAL DISTRIBUTORS BROUGHT INTO THE HOLIDAY MAGIC PROGRAM WILL INCREASE BY A MULTIPLE OF "TWO" EACH MONTH THEREAFTER.

Note that even if a General Distributor is limited to recruiting only two other General distributors in his lifetime, the recruitment will still increase geometrically with a constant multiplier of "two."



(e) According to respondents' former National field director, Senior General and Instructor General Christie, it is possible under the HM program for a General to recruit one Master and for that Master in turn to keep replacing himself to the point where the General has 12 General distributors under him after a year (Christie - 5999). This has already been shown to have occurred for a lesser period of six steps for respondents' witness Carlson at 6483-6484, to wit:

Q. All right, do you know if any of the general distributors that we are talking about now were replacement masters of replacement masters?

A. Well, the ones I told you about this morning, I have one rather long line of replacements.

Q. Would you tell the Court what you mean by that one long line, please?

A. Yes, I sponsored a Japanese man, George Nakashigi, and he sponsored a woman, Taina Haapamaki, and he sponsored Taina Haapamaki, and Taina sponsored a woman named Salma Linne, and Linne sponsored a man named Caslanoz, and he sponsored a man named Hernandez, and I don't remember his last name.

Q. Is that the end of that line?

A. That's the end of that line.

Q. Were all of these persons masters in your organization?

A. They were at one time.

Q. All of these persons now are generals?

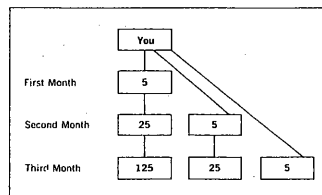
A. All but one, all but the last replacement.

If all General distributors were able to conduct their business in this manner, the diagram pictured above would be accurate in this instance.

355. It is reasonable to assume that a Master wants to become a General for the same reason that the original Sponsoring General became a General (Baumgarten - Tr. 6618).

356. The Holiday Magic marketing plan also describes a situation whereby if an organizer brings in five other organizers each month, then at the end of three months there will have been 190⁵ distributors recruited into the program (see CX 79Z28-Z38). But since Organizers can become work-in Masters solely by recruiting other Organizers (Christie - Tr. 6001) or by recruiting other Organizers who in turn recruit other Organizers (Christie - Tr. 6001) the recruited distributors will not remain at the Organizer level, but will become Masters instead and stay at that same functional level (see CX 79Z31, CX 1840Z72, CX 1842T, Part VII B 7).

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357. Respondents called Professor Baumgarten to testify, and he conceded that under the Holiday Magic marketing plan there is the possibility of a General only being interested in recruiting Masters who in turn are only interested in becoming Generals and bringing in Masters (Baumgarten - Tr. 6638).

358. Professor Baumgarten also concedes the possibility of a geometric progression occurring, in theory, in the Holiday Magic marketing plan (Baumgarten - Tr. 6584).

359. Professor Baumgarten also concedes that the Holiday Magic program can be characterized as primarily horizontal proliferation, which he defines as an increase in the number of distributors at horizontal levels (Baumgarten - Tr. 6611).

360. An example of the geometrical effect of the Holiday Magic marketing plan appears in the Holiday Magic Wand at CX 30C - February 1968:

When you throw a pebble into a pond, the resulting action is far more widespread than the first tiny plink of a pebble into the water. Two Holiday Magic pebbles who might well be classified in the boulder category are Vincent Talluto and Tony Rubio, partners in Kon-Tiki Distributors of Santa Clara, California.

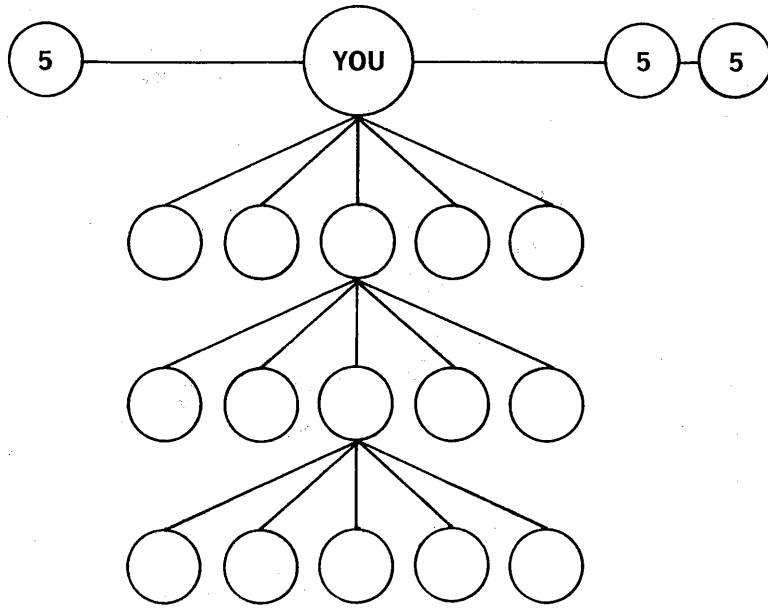
The two Generals estimate the people they have sponsored and those sponsored by their organization must run far into the hundreds. They have distributors in Colorado, Pennsylvania, New York, New Jersey, Santa Barbara, Fresno, Monterey and Santa Clara, California.

The livewire partners sponsored New York's Jim McKelvey, a well-known Holiday Magic Instructor-Senior General, and Mike Brini of New York, another General Distributor. Brini in turn sponsored Al Pangerl of Hartsdale, N.Y., one of the nation's top Distributors.

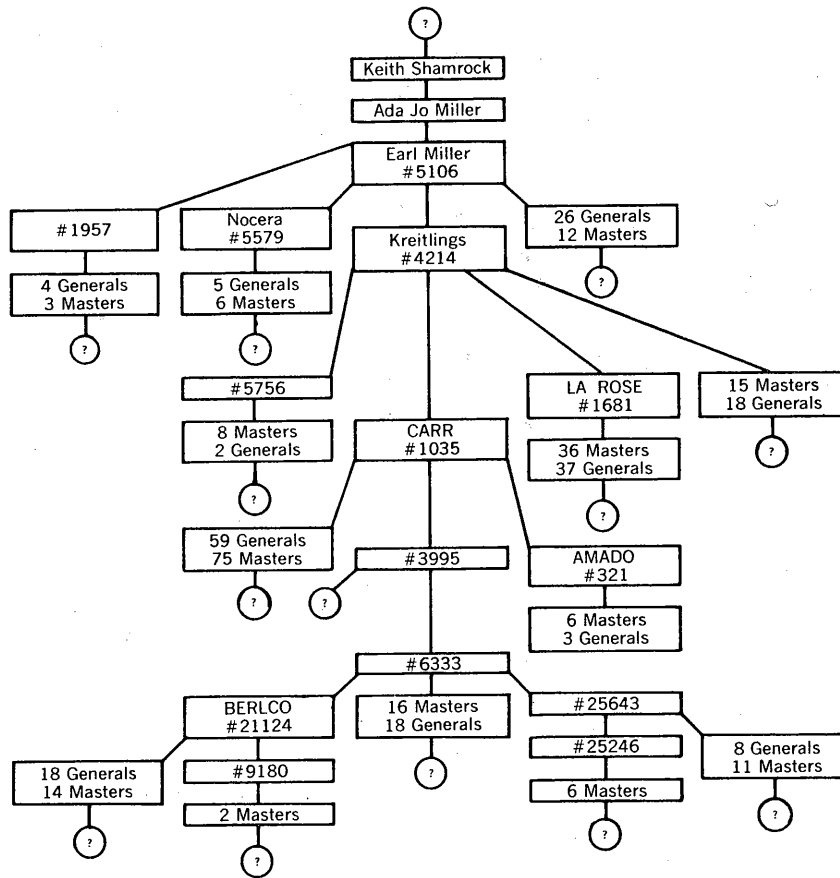
361. Mr. Pangerl, Holiday Magic's "top producer" for 1967, 1968 and 1970 (Tr. 9558) had recruited 200 Masters and 50 Generals in his Organization (Tr. 9562, 9570) with approximately only \$15,000 in products at list price value sold to his Organizers and Holiday Girls (at wholesale) for the year 1970. In 1970, Pangerl recruited 50 Masters. His release fee earnings alone since he has been in the business would range from approximately \$125,000 to \$150,000.

362. At a 65 percent discount, and selling to Organizers and Holiday Girls at 30 percent off, Pangerl's gross income on wholesaling cosmetics, as the year's top producer, would be only approximately \$5,000.

363. The diagram of Opportunity Meeting at CX 79Z37, as drawn by Holiday Magic, Inc. is as follows, after only three months:



364. Another example of the geometry of the marketing plan can be gleaned from CX 200A-Z177, which is a list of Master and General Distributors in the State of Illinois, and the identification of their sponsoring Generals (see also Tr. 9119, 9101).



The Symbols (Ⓢ) indicate that additional recruitment is either not available from the Exhibit CX200 or that it was too time consuming for complaint counsel to obtain.

365. A Holiday Magic distributor is not limited to recruiting other Distributors to a specific geographic area. (CX 78W; CX 86D; CX 1842Z6; CX 1800Z8).

366. There is no limit to the number of Master Distributors that a General Distributor may recruit into Holiday Magic, Inc.

CX 200A-Z177, where General Distributor Joseph T. LaRose, #1681, has 36 Masters and 37 Generals; General Distributor John Carr, #1035, has 79 Masters and 61 General Distributors; David Dow, #1607, has 5 Masters and 8 Generals; Kreitling, #4214, has 15 Masters and 21 Generals; Bush, #864, 8 Masters and 7 Generals; Berlco, #21124, 17 Masters and 17 Generals; Earl Miller, #5106, has 12 Masters and 29 Generals; Distributor #3260 has 5 Masters and 17 Generals; Distributor Dempsey recruited 50 Masters and 50 Generals (Tr. 6071); Distributor Pangerl has 200 Masters and 50 Generals (Tr. 9562, 9570). (Note: All Generals had previously been in the organization of the same General as a Master.)

367. There is no limit to the number of General Distributors that a General Distributor may recruit or sponsor into Holiday Magic.

CX 200A-Z177, where General Distributor La Rose, #1681, has 37 Generals under his sponsorship; Carr, #1035, has 61 Generals; Kreitling, #4214, has 21 Generals; Berlco, #21124, has 17 Generals; Miller, #5106, has 29 Generals, Distributor #3626 has 17 Generals; Distributor Pangerl had 50 Generals (Tr. 9570); Distributor Dempsey had 50 General Distributors (Tr. 6071).

368. There is no limitation as to the number of Master distributors that may be recruited in any geographic or market area.

(a) Chicago Metropolitan area, where approximately 1600 Masters and Generals were recruited in Cook County and DuPage County, of which approximately 600 became Generals (CX 200A-Z177).

(b) (Tr. 10339): Pangerl, who in testifying of an alleged limitation of one General per 10,000 population in Red Lion, Pa. and an alleged limitation of 5-7 Masters per General, stated that these Master distributors may be located anywhere in the country. (Therefore, even with the so-called limitations—which complaint counsel have shown to be non-existent, the Masters could literally wind up in one town. It is meaningless!)

369. Holiday Magic, Inc. has never announced a limitation on the number of distributors that may be recruited in any geographic area, except to use the concept of "limitation" as an impending event to apply greater psychological pressures for enrollment and upgrading distributors to the General position.

(a) See Part XXXII 4.

(b) Holiday Magic's witness Gerry Arrowood, the vice president of training and education (Tr. 6155) in 1969 (Tr. 6170) and supervisor of all the Trainer Generals (Tr. 6167) through 1971 (Tr. 6171) testified that she didn't know what the "limitations" were, but was sure "the company had it worked out." (Tr. 6175).

370. There is no limit to the number of Distributors that can be recruited into the program overall, or in any geographic area.

(a) CX 78Z52 and CX 79Z49:

There is no limit as to the number of direct distributors that you are allowed to recruit.

(b) CX 78J and CX 79J:

RECRUITING - You must maintain a constant Personnel Recruiting Program and encourage your distributor to do likewise. You should have no less than one recruiting meeting per week.

(c) CX 79Z33 (Opportunity Meeting script):

You know, there was only one other thing that I could possibly see that was wrong with this marketing concept, and that was the element of chance. The element of chance is right here (point) with this fifth man. He may do as he has always done and sponsor no one.

If this happens to you, that cuts down the size of your initial organization 20%. You don't want that to happen. Now obviously, the way to take the element of chance out is not to stop with five people. *Sponsor as many as you can.*

The same as _____ has done,
the same as _____ has done,
the same as _____ did.

[Spaces in original] [Emphasis added]

(d) CX 76Z7:

There are thousands of ways to recruit and hundred of thousands of people to be recruited.

*** Everyone is a potential recruit ***

(e) CX 78M:

A General can recruit persons as Master Distributors and should make every effort to do so.

(f) Holiday Magic vice president of sales Habuary testified that the Holiday Magic marketing program would never reach "saturation" because "Christianity *** is the same kind of program and they haven't saturated their field yet over 2,000 years." (Tr. 6091)

(g) CX 1800H:

NOTE: IN ALL CASES we have but one single objective—that is to use every situation to increase the size of our Distributor Organization. Build a Distributor Organization under a Health Food Store, Beauty Salon, Barber Shop, and the force of the marketing plan will do the balance of your job for you without the normal pampering required with retailers or the fear of competitors cutting you out. You may always lose the retail outlet but you will keep the Organization.

(h) Testimony of Instructor General Napoletano, who was an IG from July 1969 to Jan. 1970 that there had been no limitation on recruiting Master Distributors or General Distributors (Tr. 3614).

(i) The executive secretary to William Penn Patrick, Jane Alexander, who was with Holiday Magic through Jan. 1970 (Tr. 5494), testified that she never heard of any restrictions as to the numbers of distributors, either in geographic areas or in the organization of a particular distributor (Tr. 5522).

(j) Former Holiday Magic president Ben F. Gay testified that until he left Holiday Magic in Mar. 1971 (Tr. 9823), there were no limitations on recruiting in Fort Pierce, or anywhere (Tr. 9936).

(k) Judge Dudley, former Senior General of the Miami council, spoke to Fred Pape in Sept. or Oct. 1966 (Tr. 3369) when Dudley was Senior General (Tr. 3369) and Pape was a Holiday Magic official with the corporate team (Tr. 3368, 3370) and Dudley told Pape about the problems in Dade County and Broward County (in the presence of Judge Houston - Senior General of Broward County) and that there was an overpopulation of distributorships in Dade and Broward. Pape said Holiday Magic had no intention of limiting the number of distributorships whatsoever (Tr. 3371).

As Judge Dudley viewed the marketing plan, he felt it was a "fast buck deal similar to pyramid clubs in New England" that he had seen earlier in his youth (Tr. 3338, 3387, 3391) and that it was only a matter of time before everyone in the State of Florida would be selling Holiday Magic (Tr. 3372). The number of distributorships had been a matter of discussion for some time in the Miami council (Tr. 3373) and as Senior General Judge Dudley wrote to Pape, but all letters were ignored (Tr. 3375). On another conversation with Pape later on, in the presence of council members, Pape said, "When you have a bad crop, you burn the field." (Tr. 3377).

Pape did not at the time admonish the council that by headhunting they had brought about their own difficulties (Tr. 3405). Pape offered nothing constructive to alleviate the problems (Tr. 3406). Judge Dudley's interpretation of Pape's remark was that all distributors who had proliferated through the territory were to be abandoned by Holiday Magic (Tr. 3406).

Other Witnesses from Miami:

(1) Witness Braddock ceased activity after the first year in business because the council fell apart and she understood the whole area to be "saturated" with distributors (Tr. 3152).

(2) Witness Yanaros testified that she became inactive in Miami (Tr. 8166) because there were too many in Holiday Magic trying to sell the product (Tr. 3020, See also Tr. 2822, 2891, 2901).

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371. Holiday Magic, Inc. refers to its marketing plan as a "people business," and the plan is a people business.

(a) Corporate team member Mark Evans informed his audiences, with the approval of Fred Pape (CX 85; Tr. 939-41) as follows:

Only way to Sponsor.

Bring your prospects to opportunity meetings. Realize that this is a "people business". (CX 85B).

(b) Witness Pence saw HM Instructor General Jerry Booth, at Business Training in February 1968, tell men not to worry since they would not be retailing the product. "He said men are concerned with the wholesale side of business, and wholesale is people, and people equals money." (Tr. 3719-20). The Business Training class conducted by Booth "led us to believe this was a people business for men."

XXXVII. FT. PIERCE, FLORIDA—RECRUITMENT

372. Ft. Pierce, Fla., is an excellent example of the recruitment syndrome which is omnipresent in the Holiday Magic marketing plan because people in Ft. Pierce were essentially interested in recruiting other people, and not in selling cosmetics. See testimony of respondents' official Dempsey at 6046-6047, to wit:

Q. Would you describe what happened when you arrived in Ft. Pierce in connection with the distributors in Ft. Pierce in 1967?

A. We held a meeting with the—

Q. (Interposing) Who is we?

A. Mr. Pape and Miss McBath and myself, with the distributors in the council, the local council, and urged them to start getting serious about the retail, about their retail organization, because we felt it was an unhealthy situation there—

* * * * *

—due to the fact that they were recruiting people but were not building a solid retail organization.

Q. All right.

A. And in the middle of our discussion a fellow from the audience, Glen Harned, stood up and interrupted the meeting and said, "We don't want to get any Holiday Girls, and we don't want you people coming out here from California telling us how to run our business. We want to do it the way we are doing it, we just want to be left alone."

And then the other distributors clapped, applauded, and it was a bad scene.

Q. What did Pape say if anything?

A. Well, it got into a real heated open discussion, and it was not a success. I mean, the meeting was never concluded with them agreeing to do what we wanted them to do.

Q. What did he want them to do, Mr. Dempsey, what did he tell them he wanted them to do?

* * * * *

THE WITNESS: We wanted them to build a serious retail organization because—

* * * * *

Q. (Interposing) Wait, wait, did Pape tell them this?

A. Yes.

Q. O.K. Go ahead, tell us what he said.

A. He told them if he didn't start building a healthy retail organization that the whole program there in that area was going to go down the tubes, because all they were doing was head hunting.

373. Other witnesses testified substantially as Mr. Dempsey did on this occasion:

(a) *Gelaine Hutchinson*. Pape said the problem in Ft. Pierce could be overcome by retailing the product. Pape was told there were so many people selling the Holiday Magic product that the distributors would have to sell to each other. Pape said "you have a problem here." (Tr. 2184-2187). Hutchinson ceased doing business in Ft. Pierce; there was no one to sell products to. They had all been approached by other Holiday Magic distributors (Tr. 2215).

(b) *Jane Alexander*. Pape said Jim Hearn put Ft. Pierce on the map, and that everybody in Ft. Pierce has Holiday Magic in their garages but no product is moving. Pape went to Ft. Pierce because there were so many complaints about Holiday Magic he had to find out what was going on (Tr. 5521, 5703).

(c) *Jim Sowinski*. Pape asked Sowinski to become an Instructor General. Sowinski told Pape that there were a lot of people in Ft. Pierce who were not successful and that Pape should screen them better. Pape's reply was that you can't tell how a person will eventually turn out (Tr. 2010).

(d) *K. C. Sloane*. He wrote to Holiday Magic, saying there were too many distributors in Ft. Pierce and asked for help. Pape, Dempsey and others came, and Pape said "go out and retail." He said the problem was "of our own making and the solution was to retail." Pape said to Sloane "Mr. Sloane, you have a problem" (Tr. 2087, 2123).

374. (a) Holiday Magic, Inc. never imposed any restrictions of any kind to recruiting activities in Ft. Pierce even after it was made aware of the fact that nobody wanted to sell the products and that there were too many Masters and Generals in Ft. Pierce (Alexander-Tr. 5707, Gay-Tr. 9936).

(b) Other than the limitations on recruiting testified to by respondents' witnesses Coultas and Pangerl, neither Coultas nor Pangerl testified that they were aware of any restrictions placed by Holiday Magic on recruiting in any other market area (see testimony of Coultas-Tr. 9652-9772; Pangerl-Tr. 9209-9651, Tr. 10223-10377).

XXXVIII. Eugene, Oregon—Recruitment

375. Eugene, Ore., a city with a population of 76,346 in 1970 (RX 158) and growing, had approximately 8-9 General Distributors and 45 Masters, with a total of approximately 145 Organizers, Masters and Generals (George Shephard-Tr. 1916, 1917, 1919, 1920).

376. People in Holiday Magic were unable to make a living in Eugene - there was no opportunity there any more (General Shephard-Tr. 1919-1920). Mr. Shephard was aware of this situation because he was a General Distributor over everyone else in Eugene, and so he knew from his override statements that distributors were not making money (George Shephard-Tr. 1920).

377. Many people left Eugene to practice Holiday Magic elsewhere (Tr. 1919, 1191-92, 1945, 1313, 1232).

378. The problem in Eugene was that no one wanted to produce—they all wanted to bring in distributors instead (Tr. 1194-95, 1089-91, 1170, 1172, 1174).

379. Witness George Shephard testified that he informed Bill Bailey and Fred Pape about this, but neither did anything (Tr. 1937, 1939, 1940). Mr. Pape was presented with the problem in Eugene again when he was president of Holiday Magic, Inc. (Tr. 1940).

380. Witnesses from Eugene all told similar stories:

- (a) Bill Shephard (Tr. 1191, 1192, 1195).
- (b) McCrory (Tr. 1089-1091, 1097).
- (c) Creasy (Tr. 1170, 1172, 1174).
- (d) Richard Shephard (Tr. 1297, 1299, 1303).

The testimony of witness Jim Creasy vividly describes saturation in Eugene:

HEARING EXAMINER BUTTLE: He has a right to render a business judgment.
By Mr. Cameron:

Q. Mr. Creasy, what do you mean by the word "saturation"?

A. Well, everybody I talked to, after a fashion, not at first, but after maybe two months, everyone that I talked to that was in my caliber of person, people I knew or people that were friends of people I knew, had all heard about Holiday Magic. They had an ad on T.V., and everyone in Eugene—they were really hitting the ads, and everyone I talked to really knew about Holiday Magic, and that's what I mean about saturation, and it was tough to talk to them about it, because they were sick of Holiday Magic.

HEARING EXAMINER BUTTLE: How do you know they were sick of Holiday Magic?

THE WITNESS: Because they told me, Judge, they were upset because everybody was talking to them about it. Everyone I would talk to they would say, "Hey, you too, you are in the program." This is why I got out, it was insane to go any further. (Tr. 1159-1160).

XXXIX. Corporate Teams

381. Holiday Magic, Inc. sends its representatives, agents and corporate officials out into the field to recruit and "close" prospects brought

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to opportunity meetings by distributors, which are also conducted by the corporate teams.

(a) CX 14E - Wand - 9/66: The corporate team met with fantastic success during its two-week visit in Chicago. Distributors from 12 states brought in record numbers of recruits. Daily training classes were conducted by Ern Westmore, Mark Evans, Saul Davis, Bill Dempsey, and Anne Marie McBath. Also present were Trainer Generals Mary Ellen Yaggy, Margert Robertson and Avie Hearn.

The net result of the corporate team's Chicago effort, 564 new distributors were signed including more than 60 Masters who are already active producers. Opportunity meetings attracted as many as 200 people an evening. Mark Evans conducted business training classes with over 100 people. Retail training attracted over 50 people per class.

[Mark Evans] also broke his own record by signing 26 people for area distributors single-handedly in a single evening following an opportunity meeting. We are convinced that this guy is the finest mass closer in the United States.

All he did during the corporate team's two-week stay in Chicago was to single-handedly sign 278 new distributors. Not for himself, but for other distributors who brought in their own recruits.

*** Corporate team opportunity meetings are the easiest means of bringing recruits into the program. All you do is bring people in and let the experts sign them up. And, in addition, your people will also gain invaluable experience in the cosmetic, and business training meetings held during these sessions.

The corporate team is working to help you. Take advantage of their capabilities. If you are not convinced how successful this group is, just ask your fellow distributors who have already profited from this program.

(b) CX 11E Wand - 16/66: Special Holiday Magic corporate team carrying the message and training to distributors and prospects throughout Florida. During the entire five-day Hegira, Fred Pape, Saul Davis, Sam Gillespie, Mark Evans and Jim Hearn held nine training meetings and six opportunity meetings from Orlando to Miami Beach.

The whirlwind trip must be counted as a success for the task force in recruiting an estimated 500 Masters, Organizers and Holiday Girls during the [Florida] trip.

(c) CX 14G - Wand - 9/66: "The corporate team will be in New York for four weeks conducting electrifying opportunity meetings, Daily Business and Cosmetic Seminars*****

All distributors are invited to attend***

Bring your prospects to the meetings. Urge them to stay over and attend the Business and Cosmetic Instruction Seminars.

The corporate team will be there to help you! Just bring in your recruits and let the experts sell them for you.

(d) CX 2D - Wand - Sept. 1965: "In the next two months, the home office task force will be on the job in various parts of the country to help recruit key people for you.

(e) From Holiday Magic Instruction General manual at CX 1842Z29:

B. Corporate Team Assistance

The members of the Corporate team or Local Council will then wait approximately three minutes at the back of the meeting ROOM TO ALLOW early guests to leave then to circulate on to floor clockwise assisting distributors in presenting their presentations and completing the enrollments. (CX 1842Z29, CX 1842Z30).

C. Back Up Assistance

One or two of the strongest personnel should be left to roam the floor at random assisting where they are needed in completing hard to enroll guests. All members of the Floor team should carry or wear something outstanding such as a flower on their lapel or a brightly colored sketch pad, to present the presentations with.

(f) *Testimony* - (1) Witness George Shephard testified that Bill Bailey, Regional Supervisor for Holiday Magic, Inc., came to Portland to give Opportunity meetings, and "then helped us close" (Tr. 1934). Commissions went to the "sponsor" (Tr. 1942-43). He had also seen other Holiday Magic people "close" for distributors (Tr. 1929).

(g) Witness Pense testified that at opportunity meetings at which he had attended, he saw Fred Pape and Ben Gay walking around. Gay testified that it was part of his duties with Holiday Magic to run the corporate team and help "close sales" which means sell distributorships (Tr. 9896).

382. Instructor Generals and Trainer Generals are members of the Holiday Magic corporate team, and are paid for their effort by Holiday Magic, Inc.

(a) CX 29F - Wand - 1/68: During the latter part of 1967, the corporate teams, headed by the national field directors, united 35 cities during 40 weeks on the road. They talked to thousands of people, spoke at hundreds of meetings, taught classes, outlined retail producers, and answered thousands of questions.

Teaching cosmetics and business classes, sometimes in a different state every week, the trainer and Instructor Generals often live out of suitcases and see their families for only a few days each month.

(b) Former Instructor General Napoletano testified that he worked with the corporate team in Oklahoma City, and that Holiday Magic would assign a national field director and two Instructor Generals to go to various cities to help recruit, hold opportunity meetings, and conduct business training. Pay was \$300/week plus travel and lodging (Tr. 3919, 3494).

(c) Former Instructor General Sowinski testified that he personally participated in corporate team meetings in Texas and Ohio, at which time his duty was to conduct opportunity meetings, answer questions, and assist in enrolling people into the program (Tr. 2038-2039). He was paid \$200 a week for his services by Holiday Magic, Inc. (Tr. 2039).

383. Corporate team opportunity meetings are the easiest and most successful means for bringing distributors into the Holiday Magic program (CX 14E).

384. Teams called Sales Acceleration, headed by Fred Pape and Bill

Dempsey, with the corporate insignia "HM" on their jackets, augmented by high pressure tactics, would induce reluctant recruits and lower level distributors seeking to upgrade their status to either initially participate or further participate. Such Holiday Magic teams were reimbursed by the payment to them of half of the recruiting fees, overrides and release fees generated as the result of additional participations (Tr. 5639-5643, 3643, 3961, 3604, 3645-46, 3835-36, 3911, 3597, 3837).

XL. Holiday Girl Routes and Assignments

385. Early in Holiday Magic's history, the company recognized the possibility of saturation in that there would inevitably be more distributors than space available for them to retail Holiday Magic cosmetics directly to the consumer.

CX 1800T (Masters' and Generals' manual) relates the following:

Routes

Establishing routes for your retail distributors is another of your responsibilities. The senior General Distributor in your area has the total responsibility for the co-ordination of route assignments. He will assign an area to you and assist you in planning the actual routes. 75% of your area must be under service within 90 days from the date of the assignment. After that time all routes must be maintained. All route assignments will be made by the Master Distributor. Area assignments will be made by the Senior General responsible for the region. A General's order of preference in assigning an area will be based upon seniority and general effectiveness of Master Distributors competing for area assignments.

An area is to consist of 10,000 homes. A route is to consist of 250 to 500 homes. Route assignment should be based upon a person's general ability and overall effectiveness. Assign to routes only those persons who desire to service a route. You should also establish an order of preference based upon seniority since you will have more distributors than you will have routes available. Make sure that each distributor assigned to a route is properly trained and given continued supervision.

386. The situation of more distributors available to sell in a particular area than available space has been evidenced in one town only: Ft. Pierce, Fla.

(a) The population of Ft. Pierce, Fla., in 1970 was 29,721 (RX 153). But between the period Jan. 1, 1966 and May 31, 1966, twenty-three (23) Masters and Generals were recruited in Ft. Pierce; all told, 34 Masters and Generals were recruited in Ft. Pierce, Florida, between 12/65 and 7/25/67 (CX 2081Z6). That does not take into account the additional number of Organizers and Holiday Girls in Ft. Pierce during this same period.

(b) The Senior General of the Ft. Pierce council, K.C. Sloane, testified that he divided Ft. Pierce into twenty routes (Tr. 2091) and allocated them to Masters and Generals by "chance" (Tr. 2088). Mr. Sloane testi-

fied that the purpose of the routes was to keep the Holiday Girls from "Scrambling all over each other" (Tr. 2093).

(c) The second Senior General of Ft. Pierce, Gelaine Hutchinson testified that the council tried to form routes following the Holiday Magic guides of 225 homes per route (Tr. 2178). This would have produced approximately 29 routes by population standards of 1970.

(d) Senior General Hutchinson also testified that at one point the Ft. Pierce council divided Ft. Pierce into as many as 41 parts (Tr. 2178).

(e) At a meeting in Ft. Pierce attended by, among others, Fred Pape and Ben Gay, Gay testified that a woman General distributor related to Fred Pape that there were 42 Master and General Distributors in Ft. Pierce, Fla. and there are only 40 routes available in Ft. Pierce to be laid out (Tr. 9906-07).

After the woman spoke, there was applause from the crowd, and the meeting broke up. Pape then spoke to a smaller group stating that they may have 42 Masters and Generals in town and only 40 routes but most of the Masters and Generals weren't doing anything; therefore, he said it wasn't a valid complaint (Tr. 9908).

Fred Pape later stated to Hearn and Gay that if the distributors sold lipstick to the cows, there were plenty of customers, and that this became a company joke (Tr. 9908-09). Of the four corporate officials who testified after Mr. Gay, none stated that there was no such company joke going around Holiday Magic, Inc.

387. An allocation of territories for Holiday Girl distributors was undertaken in the Ft. Pierce and Miami areas by the respective councils due to the large number of Holiday Girls that were attempting to sell to one another's customers or prospective customers. Routes were exclusive territories which were assigned to Holiday Girls by first being given to a Master or General Distributor for reassignment.

(a) Witness Rothman, of Miami, testified that in approximately Sept., 1966, the Holiday Magic corporate team, at which Fred Pape was in attendance, found that some Holiday Girls were infringing on other Holiday Girl prospects. Pape said that they would have to route the Holiday Girls to avoid this (Rothman - Tr. 2900-01).

(b) Rothman added that Anne Marie McBath, who was with the corporate team, said the council would have to designate these areas for the Holiday Girls through the Masters and Generals (Tr. 2901-02).

Rothman added that after explaining the route system to his Holiday Girls he lost 25 of the 28 immediately, and the other three dropped out 3 months later (Tr. 2903-04).

(c) As explained by former Senior General Fechtal of the Miami council, the council would assign a route to a Holiday Girl, but she would

lose the route if business dropped below \$250 per month, and revert to the Master for reassignment before being available to other distributors (Tr. 2407-2410).

According to Fechtal, in Miami, at no time were more than 10 percent of the available routes taken (Tr. 2404).

Fechtal stated that he followed Holiday Magic rules in employing the route procedures (Tr. 2410).

388. Holiday Magic rules and regulations may be found in the record at CX 95E-G.

389. All routing was handled by the local "Councils" (CX 84C, CX 29G, CX 24G).

390. Holiday Girls assigned to routes are in business for themselves (CX 911).

391. Holiday Girl routes were "exclusive" territories (CX 76D, CX 84Z1).

XLI. Initial Misrepresentations

392. Pursuant to its Opportunity Meeting procedures which it places into the hands of its distributors for reiteration, Holiday Magic, Inc. has made the following statements and representations to recruits and prospective distributors, in the "Formula for Happy Living" movie (Physical Exhibit B).

(a) Tr. 9796: Patrick opens by saying: This is a story about a real financial opportunity. * * * what you are about to see can be the key to your financial future and security.

(b) Tr. 9797-98 Man B says * * * I bought the Holiday Magic idea right away. I started part time, and now I am full time and rapidly achieving the financial security that will help me to fulfill my long-cherished dreams.

(c) Tr. 9799 Man C states: now I have several hundred people working for me, and I am really happy with the progress I have made. I never dreamed that such a small initial investment could reap such large returns and that I would be earning several thousand dollars per month, as I am now.

(d) Tr. 9800 Man D: It is such a sound, profitable, and distinguished business, and easy too, I think anyone can do it.

(e) Tr. 9800: The folks you just met are only a few from the many walks of life that make up our Holiday Magic group.

* * * They found the method by which they will achieve their long-cherished dream of a new and better life.

(f) Tr. 9800: Let's go back for a moment and discover what it is that brought outstanding success to these people and thousands of others like them in Holiday Magic.

(g) Tr. 9800 - end: Now let's call our retailer distributor "Mary," and let's say that Mary begins today as a retail-distributor. What can Mary expect to earn in the next 30 days? Let's say that Mary has decided that her method of retailing will be through home parties, or what we call beauty seminars, and that she has decided to hold one beauty seminar per

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week. The maximum time required to hold one seminar is three hours, so Mary will work 12 hours this next month.

Statistics show that she will gain no less than five customers per seminar, or 20 customers for the month. Her average will be \$15 per customer. This \$15 per customer is particularly easy, since the Holiday Magic cosmetic line includes products for the entire family. Mary's sales volume will be \$300. She will receive 35 percent of \$300, or \$105, as her profit. An extra hundred dollars per month will do a great deal to relieve the family budget.

Let's say now that Mary desires to hold two beauty seminars per week. This means that she would work 24 hours per month. Mary's sales for the month would total \$601. She will now receive 40 percent of \$601, or \$240. \$240 profit is a very interesting part-time income.

Mary is earning \$10 per hour. Each month, Mary can service these 40 customers and still earn \$240.

Let's say that Mary's needs or desires are greater and she can hold three beauty seminars per week, or work 36 hours per month. That is a little more than an hour a day. Mary's sales volume would be \$901. Mary would earn 41 percent of \$901, or a profit of \$369.

Let's say that Mary services four customers a day and works 72 hours per month. Her retail-sales volume would be \$1,801. Mary would earn 44 percent of \$1,801, or \$792, as her profit for the month. All this for just two hours a day.

This is a very exciting income. In fact, \$792 times 12 months will give Mary an annual income of \$9,504. It all depends on Mary's needs and her desire. Mary can earn up to 55 percent on all other retail sales. You may note that the percentages keep increasing. Holiday Magic believes that those who do more earn more. Holiday Magic has the most exciting opportunity for those who desire it. And, now that you are aware of the first part of our formula of success, let's turn to the final and most exciting part of our story, which is the key to your financial opportunity.

You are about to see the most unique method ever devised to market a product. The success you desire and the goal you wish to reach can be achieved through this unique Holiday Magic concept. Now let's talk about the whole side of this business and what we call our sponsor system. A wholesaler has two primary functions: first, to supply his outlets with product and, secondly, to create new outlets. Let's say that during your first month on a part-time basis, while you are learning, you sponsor or create five outlets which must buy from you. Let's say that two are beauty salons, one is a barbershop, one is an organizer or subwholesaler, and one is Mary, the retailer, the housewife.

Now let's assume that each one of these outlets purchases only \$300 at retail from you during the calendar month. Their total purchase will give you the sales volume of \$1,500. \$1,500 places you at 43 percent on our volume schedule. Since your outlets are \$300, they are at 35 percent on the volume schedule. Your product is the difference, or 8 percent of \$1,500. This gives us a profit of \$120.

Since all of your outlets desire to increase their profits and can do so either by gaining more retail customers or sponsoring other outlets which must buy from them, you can expect the following results to accrue to you during your second month in the business:

Let's say that Mary's five outlets purchased \$1500 of Holiday Magic cosmetics at retail value from Mary. Mary, by maintaining her \$300 personal retail sales, must purchase a total of \$1,800 from you. Let's assume, for the sake of this example, that your other four outlets have done exactly the same as Mary. This means that your five outlets have purchased a total of \$9,000 at retail from you during this, your second month in the business.

Since you have now exceeded \$5,000 in sales in one month, you are now classified as a Master Distributor and your discount goes up to 55 percent. Your outlets are selling \$1,800 at 44 percent, but your profit is 11 percent of 9,000, or 990. You have earned \$990 from your first five outlets which you have sponsored.

Let's assume that during your second month, you have sponsored an additional or second five outlets and they, as your first group of five, have purchased \$300 each for a total of \$1,500. Since you are now a Master Distributor at 55 percent and they are at 35 percent, you can see that your profit from the second five outlets is 20 percent, or \$300. Add the profit of \$990 derived from your first five outlets to the \$300 profit from your second five outlets and you will realize a profit of \$1,290 from your second month.

At this point, you may desire to consider the possibility of working full time in your Holiday Magic cosmetic business. By the end of your third month with Holiday Magic, you will be pleased to discover that your first five outlets have reached the volume of \$9,000 each and, as you have done, they, too, become Master Distributors. At this point, they begin to purchase directly from the company.

Although you are no longer required to service them with product and they no longer need your service or your help, you begin to receive 2 percent of their volume. Two percent of \$9,000 is \$180 times five, which equals \$900. This 2 percent is a perpetual override for you each and every month so long as you both remain a part of the Holiday Magic organization or until either you or they become General Distributors.

Your total profit for the third month is calculated as follows: You receive \$900 as an override from your first five outlets without lifting a finger. Your second five outlets, sponsored during your second month, have now reached a volume of \$1,800, thereby giving you a profit on their volume of \$900. Assume that you have sponsored, during your third month, five new outlets and that each outlet purchased \$300 from you. Your profit from these five outlets would be \$300, giving you a total income for your third month from Holiday Magic of \$2,190.

Do you see what could happen for you? This is happening to countless others, as it will happen to you should you desire it.

The next position above Master Distributor is that of General Distributor. General Distributor has a purchasing discount of 65 percent. Let's assume that you have achieved a General's position with Holiday Magic. This will entitle you to receive 10 percent override on each of your Master Distributors.

Imagine only having a small organization such as the one just described in the previous example. What could this mean to you? What you have just seen is within your reach if you desire it. The chances are there are several people viewing this program with you who have achieved all of what you have seen in less than three months. Turn to these people. They are much like yourself. Ask them the magic question "How do I get started?" and this formula for happy living will be yours. This is your chance. This is your choice. This is your challenge.

(End of script of Physical Exhibit B.)

393. Through its opportunity meeting procedures, Holiday Magic, Inc., directly and through its distributors to whom it provides the scripts, has made the following statements and representation to recruits and prospective distributors, in the opportunity meeting script (CX 79 Z28-Z38).

You were invited here tonight to discuss a business—a very successful business. A business where people are earning \$100, \$300, \$500 extra per month—on a part-time basis.

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You will probably have the opportunity to meet several of these people tonight.

We will also be talking about a business where people are earning (point to each of these board figures) \$1000, \$3000, \$5000 and more per month with a full-time effort.

*** Why, over last 10 years it's [the cosmetics industry] grown an average of 9.6% per year—last year alone it grew 13.6%, so its on the uphill rise. That's why we're in it! That's why I'm in it. I want to be where the money is. Obviously so does Holiday Magic!

Holiday Magic's first month in business was December, 1964. The sales volume the first full month was \$16,000.

Ten short months later it had grown to One Million Dollars per month—11 months after that Two Million per month—2 months later Three Million per month and is Still Growing. There has to be something in that.

*** You know, I have been with Holiday Magic—months now and I have seen some fantastic, amazing things happen in those last—months. I have seen people like you and me earn \$5, \$10, \$15, and even \$20,000 per month. That is a tremendous amount of money.

Now I mention this not particularly to impress you with the calibre of people we have in Holiday Magic, but because I want your undivided attention over the next 25 minutes while I explain to you exactly the way that these people are making this kind of money.

*** Now as you will recall in the film, this is you and your first 30 days you sponsored five people into the business.

Now as you will recall these people did \$300 each. Because you have sponsored them, 5 X \$300 gives you a volume of \$1,500. That is the total volume they have purchased from you your first 30 days.

*** If you will refer to that 3 X 5 card in front of you, look at the first column, and you will find that the volume fits between two numbers. At \$1,501 you are at 43%. Your people at \$300 volume are at 35%. The difference is 8% and 8% of \$1,500 is \$120.

*** That's what you have earned your first 30 days in the business. Now that's not a great deal of money. It's certainly not the kind of money we were talking about earlier. But it is a beginning.

*** Let's analyze this for just a moment, and see just exactly what you have done to earn this money. You invited five people to a meeting just like this one tonight. We presented the opportunity to your people for you and after the meeting, we thoroughly answered all of their questions.

*** We then helped your sponsor them into the business and that's all you have done. For that, you have made \$120.

*** Assume that took you 30 days, Now let's look at your next 30 days in the business.

*** Let's assume that this person right in the middle here is Mary. We had Mary in training all this past month. Because she was in training, we had a further opportunity to thoroughly explain our business to her. We showed her all the wonderful things about Holiday Magic.

*** We showed her how she produced \$300 in volume, worked at 35% and earned \$105. We showed her that she was doing the work but you made more money than she did.

*** For that reason, we had Mary do the same thing that you did last month, sponsor five new people into the business. Let's see the reason why she did that.

*** We have determined that Mary's volume is now \$1,800. You have four others just like Mary, for a total of five. 5 X \$1,800 is \$9,000. That becomes your total volume for your second month in the business.

*** If you will pick up that 3 X 5 card again, you will find that the discount stops at \$5,000. After \$5,000, your total buying discount is 55%.

*** Your people—Mary and the four others—are at 44%. That's a difference of 11%. 11% of their \$9,000 in volume is \$990.

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*** That's what you have earned from your first five people their second month in the business. Now let's analyze this for a moment. Exactly what have you done to earn that \$990?

*** Every one of these new people in the business this month has been sponsored by someone that you brought into the business in the prior month. Actually you haven't done a great deal.

*** We now ask you to do the same thing you did last month, sponsor five new people.

*** Now, let's look at the next 30 days in the business—your third month.

*** Each one of these people will do the same thing that Mary has done and for the very same reason—they will reproduce themselves five times. And now that that has happened, you have reproduced yourself five times.

*** At that time you became a Master Distributor. As a Master Distributor you buy directly from Holiday Magic. You receive as their sponsor an override. In this case that override is 2%.

*** So, in your third month you have earned a total of \$900.00 from your first five people. Again, all the new people in the business this month were sponsored by someone you sponsored in a prior month. As yet you haven't done anything.

*** Let's look at these five people that you sponsored last month. Each one of them will sponsor five people as Mary has done and for the same reason, and you will earn an additional \$990.00.

*** Again, these people were sponsored by someone that you sponsored in a prior month. We now ask you to do the same thing you did last month, sponsor five new people.

*** And now that you have done that, you have earned another \$300.00. (Point to \$300 in right margin.) Added to this \$900.00 this brings your total income to \$2,109.00 your third month in the business and now we are talking about a lot of money.

*** Now in a moment I am going to show you how we turn this into a fortune in one easy step. But before I do, let me share with you a few things that occurred to me the first time I saw this presentation.

*** The first theoretical point is assuming that each one of your people is going to do \$300 in volume. Of course he is not going to. We know that.

*** This first person may do \$300, however, the next person may do \$450, the next person \$250, the next one \$75 and the last one \$600. Keep in mind this, we are talking about an average of \$300.

*** Now, the next theoretical point is assuming that each and every person is going to sponsor five people. Again, they are not going to. People do not put forth the same effort, consequently they do not get the same results.

*** However, this first person may sponsor five people, the second may sponsor fifteen, the third person twenty-five, the fourth person seven, and the final person may do as he always has done in life, nothing. Again, we're talking of an average of five people.

*** Our National Sales Manager, Mark Evans, sponsored 137 people his first 30 days in the business.

*** What will happen when you have some of these people in your organization? Of course that average of five will go way, way up. I hope that takes the theory out of that for you.

*** So, each month you bring in five new people and work with them for 90 days until they reach that size. And then it stops. Do you have any idea in the world what will be happening to you?

*** You will be earning in excess of \$900 each and every month as an increase in salary. In other words, you will be giving yourself a \$10,000 a year raise. Interesting, isn't it.

*** You know, there was only one other thing that I could possibly see that was wrong with this marketing concept, and that was the element of chance. The element of chance is right here, (point) with this fifth man. He may do as he has always done and sponsor no one.

*** If this happens to you, that cuts down the size of your initial organization 20%. You don't want that to happen. Now, obviously, the way to take the element of chance out is not to stop with five people. Sponsor as many as you can.

*** Now a few moments ago I told you that I was going to show you one easy step that will turn this amount of money into a fortune. I am going to show you that right now.

*** If you will recall in this film, it mentioned a position called a General Distributor. A General Distributor buys his cosmetics at 65% off retail.

*** Here you sit with five Master Distributors in your first organization. They are producing \$9,000 in volume, you are receiving a 2% override. That amounts to \$180.00. You have five of them so that was \$900 a month you were earning from your first five people, if you remained a Master Distributor.

*** But, let's make you a General Distributor at 65%.

*** Your people are at 55%, the difference now is 10%, instead of 2%. That's your override. 10% of their \$9,000 is \$900.00. You have five of them and so now you are earning \$4,500 a month and that is a great deal of money.

*** This is exactly the way that our people are making the kind of money that they are making and the kind of money that I was talking about earlier.

*** Let me share this with you. I presently am making this kind of money and more and there isn't a person in the room that isn't every bit as good and doesn't have every bit as much ability as I have. If I can do it, what can you do?

* * * * *

*** Now, a lot of people don't really understand a marketing plan like this. They say it just won't work. So we have another way of showing you our business. One that no one can argue with.

*** You know the world's largest cosmetic company last year sponsored over 200,000 part-time girls. That's right—over 200,000 girls. Do you think it's safe to assume that if you worked full time, 8 hours a day, five days a week that you would accomplish this one thing—sponsor two retail girls into the business?

*** Do you think that you could do that? Is there anyone in the room that doesn't think that they could sponsor two girls a week working at it full time? No one? Wonderful!

*** You are now sponsoring two girls a week and at the end of one year of hard work you have sponsored 104 girls. Now let's assume that you took two weeks for vacation, so you have sponsored only 100 girls.

*** Assume that they do no more than \$300 in volume. 100 X 300 is \$30,000 in volume that they are purchasing from you each and every month.

*** Right here people say "ha." There he goes with his big figures again. Well, \$30,000 is not a lot of money in the cosmetic industry.

*** Now, you will automatically be a Master Distributor at 55% because of the volume of your people. They are at 35% the difference is 20% and 20% of \$30,000 is \$6,000 a month in income that you're earning. It's a great deal of money, isn't it? That \$72,000 a year.

*** Now, remember that one easy step when you became a General Distributor? Let's do that now. Make you a General Distributor at 65%. The difference now is 30%, 30% of that \$30,000 is \$9,000 a month.

*** That Ladies and Gentlemen, is \$108,000 a year, and that is \$8,000 more than the President of this Nation makes. That is a lot of money, isn't it!

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*** Now, lots of people stop me right here and say, "Oh, those figures are ridiculous." They are not. Let's see how we got there.

*** We used two figures to get there—two numbers. We used 100 girls and every one in the room agreed that if they worked full time they could sponsor two girls a week and \$108,000 a year is certainly worth your full time efforts. Isn't it?

*** The only other figure that we used was \$300—\$300 in volume. Let's say for a moment that you say that you can't earn \$108,000 a year with Holiday Magic because your girls can't average \$300 in sales part time. I know that's ridiculous. But let's say for a moment that I go along with you and I agree that they can't average \$300 and can only average \$150, part time.

*** We will cut the figure in half and now you are earning \$4,500 a month. That was a lot more money than I was earning before I came into Holiday Magic.

*** Let's say that you can't earn \$4,500 a month because you don't think that your girls can do \$150 in volume. Let's say that you think they can only do half that much—a mere \$75.00 a month in sales. You are now earning in excess of \$2,600.

*** Let's say that you don't think your girls can do \$75.00 a month, that all they can do is a mere \$37.50 a month, a little better than a dollar a day, not in profit, in sales. You are now earning a little better than \$1,300 a month and you don't deserve a penny of it. Your girls aren't selling cosmetics they're using them.

*** If you totally commit yourself to working with your people and giving them everything in the world that they need to get the job done—give them all the training they need, the motivation, the supervision, give them of yourself, work with them—you will indeed earn \$9,000 a month. (Point to \$9,000 and underline).

*** If you only half commit yourself and you only give your people half of what they need, you will earn \$4,500. (Same for \$4,500).

*** If you "quarter" commit yourself, \$2,600, etc.

*** Ladies and Gentlemen, this is Holiday Magic and this is what we have to offer you.

*** At this time, I would like you to turn to the person who invited you here and ask them to help you select one of the four positions for you in Holiday Magic.

394. Through its opportunity meeting procedure and business training procedure, Holiday Magic, Inc., directly and through its distributors to whom it provides this material, has made the following statements and representation to recruit prospects and distributors sought to be upgraded to a higher level in the "six enrollments" (CX 1842U-Y, CX 1840Z, 74-81).

#3 WHOLESALE ENROLLMENT

For just a moment, put yourself in the position of a General Distributor working at 65%. Each time you create a new Master Distributor you receive 10% of the total retail volume that must change hands. Ten percent of \$5,000 has just earned you \$500.00 cash!

This newly created Master Distributor that you have just enrolled will want to become a General Distributor like you so that he may earn the kind of money that you are earning here. In order for any Master Distributor to become a General Distributor he must fulfill four qualifications.

First, be a Master Distributor, second have knowledge—this he gains through attending Instructor General classes—because final approval rests with the factory and they will not approve any General Distributor who does not understand the marketing plan. Third, submit a second certified check for \$2,500 to the factory—which is called a General's release fee—and will be held in escrow at the home office until the fourth qualification is

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completed, which we term recreating yourself. This means he must bring in a replacement Master Distributor to you, his sponsoring General Distributor, before you will release him from Master Distributor to become a General Distributor.

Herein —lies the strength of the Holiday Magic marketing plan: why Holiday Magic has grown so rapidly because he must always replace himself with a working indian before he can become a chief. Your number of Masters will never decrease—you will only grow in the number of Generals you have.

This replacement Master was brought into the sponsoring General Distributor which just caused another \$5,000 in retail product to be purchased from the factory and you, with your 10% override, have just been paid another \$500.00 in cash. But, the rules say that you must pay out \$200.00 in cash as a finder's fee to whomever brought in this Master—so you only net \$300.00 on replacement Masters. But the moment that the replacement Master is recorded at the factory the \$2,500 cash, being held in escrow, is released to you, the sponsoring General Distributor, for a total of \$3,300 cash each time you sponsor in a new General Distributor as a General Distributor.

If you did this only once each month, on a part-time basis for the next year, you will have earned \$39,600 cash at the end of 12 months and you would still have twelve Master Distributors below you. If you are only doing this once each month you are most certainly working part-time—one opportunity meeting per month, where you will bring a qualified prospect to the meeting who would want to earn that kind of money part-time. However, if you were to do this once each week for the next year, you will earn yourself in excess of \$150,000 cash.

(ENROLLMENT)

I've just shown you how to earn \$150,000 cash full time or \$39,600 on a part-time basis, but to truly understand the marketing concept you must attend the business training classes. You told me that you had a notebook and pen that you could use to take notes with in training classes, didn't you? Wonderful—put your names and mailing address right here on the application and I'll help you fill it out!

THE RETAIL ENROLLMENT

I am quite sure that anyone could find two part-time girls each week that would want to earn extra money with Holiday Magic and be able to buy her cosmetics at wholesale. When you sponsor two girls a week for the next year, taking two weeks off for vacation as most of us do; you will have 100 active girls. Now, these girls hold at least one home demonstration per week and they will average three hundred dollars per month in total product sold. Some may sell \$150, others \$450. They will average \$300 per month. 100 active girls times \$300 a month will give you \$30,000 a month flowing through you the General Distributor. Not one drug store or one beauty salon, but 100 separate outlets. You work at 65% and these girls work on a sliding scale and would be at 35%. Subtract that from your percentage and it will leave you with a 30% override on each of your girls.

30% of that \$30,000 flow of retail cosmetics will be earning you \$9,000 per month which is \$108,000 per year. (voice up) But now you have an up-grade problem. John, you and I realize that keeping 100 active retail girls in the field might be a lot of work, because some of these girls are going to start retailing more than \$300 in product which means your Holiday Girl goes to Organizer, then to Master then to General which gives you \$3,300, but you've lost one girl. So, let's say that you don't want to devote all your time to keeping these 100 girls working so let's hire a manager and pay that manager \$10,000 a year, if the girls maintain a \$300 a month average, you pay the manager a bonus of \$10,000 for a total of \$20,000 per year and the average person will work hard for \$20,000 per year. This leaves you with a net income of \$88,000 a year and I think you can afford it! Now, duplicate this

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manager in six or seven cities around the country and you will have an income in excess of \$500,000 a year!

(ENROLLMENT)

I have just shown you how to earn a half million dollars per year, but you must enroll in the training class to gain the *knowledge* necessary to conduct this business. Just put your name and mailing address right here on the application and I'll book you into your business training class ----- night at --- P.M.

(b) CX 1842Z5-Z6:

THE GENERAL'S RETAIL PRESENTATION:

Start your presentation by receiving a commitment from your prospect that he could find two girls a week that would like to earn more money!

If you found two girls a week for the next year, taking two weeks off for vacation (like most of us do) you would have one hundred (100) active Route girls beneath you. Now, a route girl does nothing more than service one hundred to two hundred separate homes each month and they will normally average nine hundred dollars (900) a month or more in total retail product sold. Now, some of these girls may only sell half of this amount, but other girls will sell double that amount. They will average nine hundred dollars (\$900) a month. Now, if you have one hundred (100) girls averaging nine hundred dollars (\$900) a month that is a total of ninety thousand dollars (\$90,000) a month flowing through you the General Distributor. Your route girls work on a sliding scale and will receive forty percent (40%) on all the product they retail! You are a General Distributor working at sixty-five percent (65%) which leaves you twenty-five percent (25%) override on each of your one hundred (100) active route girls, earning you twenty two thousand five hundred dollars (\$22,500) a month, which is two hundred seventy thousand dollars (\$270,000) a year. Now, let's go one step further. You and I realize that keeping one hundred (100) active route girls beneath you could be a problem, so let's hire a manager with a guarantee of ten thousand dollars (\$10,000) a year for keeping one hundred (100) route girls trained and in the field and then pay that manager a ten thousand dollar (\$10,000) bonus for maintaining a nine hundred dollar a month average per route girl, which is a total of twenty thousand dollars (\$20,000) a year to your manager and that will leave you two hundred and fifty thousand dollars (\$250,000) and I think you can afford it!

And, if you want to make one million dollars a year, just duplicate your manager in four separate cities with one hundred (100) active route girls beneath them. Your managers are doing all the work and you are making all the money.

395. Holiday Magic, Inc. has made the following statements and representations to recruits and prospective distributors directly in its "Formula For Happy Living" Booklet (CX 77), which is a recruiting booklet (CX 1800I).

(a) CX 77F: Let's talk about the magic of our marketing plan and how it may be the answer to your financial dream come true.

(b) CX 77D: Holiday Magic marketing plan very well may be the key to your financial future and security.

(c) CX 77B: Holiday Magic is that once in a lifetime opportunity that comes your way. If you are looking for a secure future and an immediate increase in you income, you will find this booklet the key to the door of your dreams come true. Read and study this booklet with great care, that door will open as surely as you do.

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(d) CX 77"O": This magic formula is now fulfilling the financial dream of thousands, as it will for you should you desire it. In Holiday Magic there is a place for you to enjoy this wonderful world of magic. Call the friend who left this booklet for you to read. Call now - you are expected!

396. Holiday Magic, Inc. has made the following statements and representations, directly and indirectly, to prospects and to distributors sought to be upgraded to the Master and General level, in its Masters' and Generals' manuals.

(a) CX 78Z64-65 and CX 79Z61-62:

A well-organized retail program will accomplish the following for you:

1. Put money in the bank for you, both on a short term and, especially, on a long term basis.

2. Reflect an overall firm business posture.

3. Provide a technique that will enable you to close more recruiting attempts at the Master level than you had been able to accomplish before.

4. Provide a method that will reap very large profits on a continuing basis with very little personal time and effort and NO additional expense.

* * * We suggest that financial rewards be discussed in terms that are commensurate with the local community earning capacity. In a small town, \$150 a month for part-time work is realistic remuneration for earnest effort. If the interviewer tells a woman that she can earn \$300 or \$400 a month, she is apt to be frightened away because earning this amount of money is unrealistic. On the other hand, in San Francisco or any other metropolitan area earning this amount of money does sound realistic.

(b) CX 78J; CX 79J: A Master Distributor who conducts himself ambitiously in following the Holiday Magic Formula for success will have a business which he can enjoy for the balance of his life with an income of \$15,000 to \$24,000 per year. Achieving this income level is not difficult * * *

(c) CX 78F and CX 79F: Once a man knows this business, he will not * * * he cannot * * * fail.

(d) CX 78T and CX 79T: Avoid buyer's chill; tell them they are going to be happier, healthier, wealthier and receive what they want out of life with the Holiday Magic program.

(e) CX 79Z60: Don't for a minute think that many people in the world earn as much as our average General does.

(f) CX 1800"O": The public is receiving our Holiday Magic products with great enthusiasm. Our repeat business is almost unanimous. See for yourself what a superb line of products we carry. Once you have tried them, you will never want to use anything else.

397. Through its Holiday Magic Wands, which are recruiting tools, Holiday Magic, Inc. has stated to recruits, prospective distributors and distributors it seeks to upgrade to the Master and General level, that " * * * the surest way to amass a fortune is through Holiday Magic * * * " (CX 21H - Apr. 1967).

(a) See also: CX 49F; CX 51K; CX 57D; CX 60F; CX 132C; CX 159A; CX 163E; CX 34E; CX 35G; CX 35J; CX 42B; CX 54A; CX 56B; CX 146T; CX 158A; CX 35F; CX 43H; CX 42G; CX 43D.

(b) See CX 64A-H, the Permanent Wand, which is replete with the big money potential in Holiday Magic.

398. Through its Holiday Magic Instructors and Trainer Generals, Holiday Magic, Inc. has made the following statements and representations to prospective distributors and to Holiday Girls it seeks to upgrade to the Master and General level:

3. HOLIDAY GIRL'S EARNING POWER

A full time Holiday Girl gives 4 individual demonstrations per day. A part-time girl gives two demonstrations per day. The times she usually sets for these demonstrations are - 10 a.m., 11:30 a.m., 1 p.m., and 2:30 p.m. The Holiday Girl that works part-time works either the morning hours or the afternoon hours depending upon the hours she has chosen to work.

We know that we can always count on a larger sale when we give an individual demonstration. As a matter of fact, it is usually around \$25.00.

However, just for the sake of taking a figure we are all familiar with, we will use the average of \$15.00 per sale. With 4 demonstrations per day at \$15.00, Suzy has a volume of \$60.00 per day. She works 5 days per week like everyone else and this would give her \$300.00 volume for the week. Multiply that with 4 weeks out of the month and we now have a sales volume of \$1,200 (And add \$1.00) for the month. Her profit the first month on this schedule and this average is \$504.42.

Following Suzy along during the second month, she will repeat the same performance plus she must service the customers from last month. Consequently, the earnings the second month will be even greater.

The time it takes Suzy to cover her Route is approximately 3 months, after which time she no longer needs to do any demonstrations or book any appointments. All she needs to do is every single month collect her automatic sales, which we will cover later in class and this takes around 3-4 hours per day. Her income will settle down to more than a full-time salary on a part-time basis.

Following is another example.

ERASE BLACKBOARD AND WRITE OF [sic] THE FOLLOWING FOR YOUR CLASS.

A Holiday Girl servicing a route is actually in business for herself, and she must consider it as such because the greater her efforts, the greater will be her earnings.

Let's use another example of what a Holiday Girl is capable of earning on a different schedule than the one we just talked about.

She gives three individual demonstrations per day and at each of these, sales total \$15.00, this will equal \$45.00 in retail volume per day.

$3 \text{ per day} \times \$15.00 \text{ Average} = \$45.00 \text{ Retail per Day} \times 20 \text{ Working Days} = \$900.00 \text{ Sales Volume.}$

There are 20 working days in every month. This means that her retail volume through individual demonstrations will be \$900.00 for the month.

She gives at least one Block Seminar a week. The hostess has a total of five buying guests an average of \$15.00 or \$75 per Block Seminar. This will give her an additional \$300.00 retail volume per month, or a total of \$1,201.00 retail.

$5 \times \$15.00 \text{ per Week Seminar} \times 4 = \300.00

This places her at 42%. This means that the Holiday Girl working routes has earned \$504.42 her first month in business. Referring back to the first month, she has established 60 customers from individual demonstrations and 20 customers from Block Seminars for a total of 80 customers for her first month.

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In her second month she will do exactly the same thing. She does three demonstrations per day for an average of \$15.00 volume per demonstration which gives her \$45.00 volume per day. During 20 working days, this gives her a total route volume of \$900.00.

She gives one Block Seminar per week with five ladies for an average of \$75.00 volume per week which would give her a total of \$300.00 volume from the Seminars. Total volume \$1,201.00. She services 80 customers from last month with a \$10.00 re-order. 80 customers $\times 10 = \$800.00$ service volume. This gives her a total for her second month of \$2,000.00. She is now at 44% which means that she has earned \$880.00 for her second month in business. Now, do you see what we have to offer a girl working routes?

Now let's see the same girl working a route as a Master Distributor, AND ASK, How many of you are Master Distributors?

You are a Master Distributor working a route of 250 homes doing a service volume of \$10.00 each, you would earn \$1,360. Have any of you thought of having a route of your own? Well, think about it!

250 Homes	
$\times \$10$ Service Volume	
<u>\$2,500.00</u>	
$\times 55\%$	
<u>\$1,360.00</u>	You Earn

How many of you are General Distributors? Let's see what you would make. Can you figure it out? Looks nice doesn't it.

The third and final earning power we will cover is also the amount of hours a Holiday Girl spends working a route.

USE BLACKBOARD:

First Month:

3 Demonstrations per day at \$10.00	\$ 30.00
5 days per week - \$150.00 per week	\$600.00 per month
1 block Seminar per week (5 ladies at \$10.00 each)	\$ 50.00 — \$200.00
Total retail volume for the month	\$800.00
\$800.00 at 40% - \$320.00 profit	

Total time worked: Demonstrations	4 1/2 hours
Booking	1
Total	<u>5 1/2 hours per day</u>

Second Month:

3 Demonstrations per day at \$10.00	\$600.00
1 Seminar per week	200.00
Total new business	<u>\$800.00</u>

80 Customers from previous month	
each re-ordering \$5.00-\$400.00	<u>\$400.00</u>
Total Volume for 2nd month	<u>\$1,200.00 plus</u>
\$1.00 (being a break in the refund schedule)	
\$1,201.00 at 42% - \$504.42 Profit	

Total hours worked: Demonstrations	4 1/2 hours
Booking	1
Service	1
Total	<u>6 1/2 hours per day</u>

Third Month:

3 demonstrations per day and 1 Block Seminar per week is repeated.

By this time you have 160 customers and together with the new business volume you now have \$1,600.00 for the month.

New business		\$ 800.00
160 customers at \$5.00		800.00
Total		<u>\$1,600.00</u>
\$1,600.00 at 43%		\$668.00 Profit
Total Hours worked: Demonstrations	4 1/2 hours	
Booking	1	
Service	2	
Total	<u>7 1/2 hours per day</u>	

Fourth Month:

For your fourth month we will change the schedule a little. Since you now have 240 customers you will find that you need more time for servicing. So we book and do 2 demonstrations per day instead of the previous 3. You continue to give 1 Block Seminar per week. Income eases, your route will be built by this time, but there are occasions when a route consists of a few more homes depending upon the area. However, if you are still building the fourth month, your total picture will look like this:

240 customers at \$5.00	\$1,200.00
New business	600.00
Total	<u>\$1,800.00</u>

Your profit is \$792.00

Hours worked: Demonstrations	3 hours
Booking	1/2
Service	3
Total	<u>6 1/2 hours</u>

Now you have built for yourself a sound business. You will have to spend approximately 3 and-a-half hours per day servicing these customers that you acquired during these four months. Your income will settle down to approximately \$600.00 per month. We will all agree that this is a very interesting income, since it is by now a part-time job. (CX 91D; CX 91H-M).

See additional Opportunity Meeting scripts at CX 78Z31-32; CX 96A-N; CX 97A-P; CX 98A-N; CX 99A-O; CX 100A-P; CX 1468A-P; CX 102A-P; CX 103A-K; CX 1840Z6-Z38.

See also additional six enrollments scripts at CX 85A-Z29; CX 86A-F; CX 91; CX 1840Z69-Z88.

See also additional manual misrepresentations at CX 78Z49-52; CX 78U; CX 78V; CX 78Z38; CX 78Z44; CX 78Z48; CX 1800B.

399. Distributor after distributor testified that they heard the representations as contained in the opportunity meeting scripts, business training classes, six enrollments, movies, manuals, wands and corporate team lectures. Cf. TR. 3389; 3392; 1093-1096; 1130; 1150-1153; 3684; 5993; 2538-39; 3613; 2401; 3049-3051; 3127; 1098; 2553.

(a) Witness Charles Porst testified that at an opportunity meeting given by Fred Pape, he heard Fred Pape say that one could make \$250,000 or more in Holiday Magic (TR. 3049-3050).

(b) Mrs. Stanley Pierce testified that at an opportunity meeting, she was told that she could make up to \$100,000 a year by recruiting (TR. 2259).

(c) Joseph Rothman testified that at a corporate team meeting attended by Fred Pape and William Penn Patrick, he heard Jim Hearn say that he had made a quarter of a million dollars in a very short period of time and that witness could make the same amount in less than a year (TR. 2893-2898).

(d) William Pence testified that his sponsor, in persuading him to come to an opportunity meeting, told him that he was making \$200,000 a year in Holiday Magic (TR. 3667).

XLII. Other Specific Misrepresentations

400. Holiday Magic, Inc., directly and through its distributors, falsely represents to prospective distributors and to lower level distributors it seeks to upgrade to the Master and General level, that:

(a) General distributors can reasonably anticipate a gross income of \$108,000 per year after their first year in the Holiday Magic business, by selling to Holiday Girls at wholesale, and working full time.

(b) General distributors can reasonably anticipate earning \$39,600 a year on a part-time basis by attending only one opportunity meeting a month and recruiting one General distributor a month.

(c) General distributors can reasonably anticipate earning \$150,000 a year on a part-time basis by attending only one opportunity meeting a week and recruiting one General distributor a week.

(d) It is easy for a General distributor to recruit other General distributors into Holiday Magic.

(e) General distributors can reasonably expect to earn \$2,190 gross profit his third month in the business and his first month as a General distributor.

(f) It is reasonably possible for a Holiday Magic distributor to earn \$500,000 a year.

(g) It is reasonably possible for a Holiday Magic distributor to earn \$1,000,000 a year in the Holiday Magic program.

(h) Not many people in the world earn as much as the average General in Holiday Magic.

(i) Master distributors can reasonably anticipate a gross income of \$72,000 per year after their first year in the Holiday Magic business, by selling to Holiday Girls at wholesale, and working full time.

(j) Master and General distributors who recruit Holiday Girls into the Holiday Magic business can reasonably expect that the Holiday Girls will produce and stay in business for at least one year and longer.

(k) It is easy to recruit two (2) Holiday Girls a week for a year, each of whom will produce sales for a year or longer.

(l) A Master distributor can reasonably anticipate earning a gross profit of \$1,290 his second month in the business, and his first month as a Master distributor, on a part time basis.

(m) Holiday Magic distributors can reasonably anticipate that they will earn \$500 per month on a part time basis.

(n) Holiday Magic distributors can reasonably anticipate that they will earn \$20,000 per month working full time in the Holiday Magic business.

(o) The only turnover problem a distributor will face in the Holiday Magic business is that a Holiday Girl will become a Master or a General distributor and earn the distributor \$3,300 in doing so.

(p) Achieving a lifelong income of \$15,000 to \$25,000 for a Master distributor is not difficult.

(q) Organizer distributors can reasonably anticipate recruiting five (5) distributors each month for their first three months in the Holiday Magic business, on a part time basis.

(r) Organizer distributors can reasonably anticipate that the distributors they have recruited as organizers will in turn recruit five distributors apiece, on the average, each month as they come into the Holiday Magic business.

(s) Organizer distributors can reasonably anticipate earning a gross profit of \$990 their second month in the Holiday Magic business, on a part time basis.

(t) Distributors who choose to retail the Holiday Magic products to the ultimate consumer can reasonably expect to gross between \$300 and \$900 per month.

(u) Holiday Girls will average \$15 per customer in retail sales.

(v) Holiday Girls can easily earn \$10 an hour.

(w) By working only one hour a day, a Holiday Girl can reasonably anticipate a gross income of \$901 and a gross profit of \$369 per month.

(x) By working only two hours a day, a Holiday Girl can reasonably anticipate a gross profit of \$792 a month.

(y) A full time Holiday Girl will have a gross volume of \$60 per day, \$300 per week, and \$1,201 for the month.

(z) A full time Holiday Girl will have a gross profit of \$504.42 her first month in the business.

(z-1) The gross profit of a Holiday Girl her second month in the Holiday Magic business on a full time basis will be greater than \$504.42.

(z-2) Holiday Magic can be the key to a person's financial future and security.

(z-3) Anyone who wants to can be a success in the Holiday Magic program.

(z-4) Holiday Magic is a sound, profitable and distinguished business.

(z-5) There are "thousands of successful people in Holiday Magic".

(z-6) Holiday Magic, Inc. is a once in a lifetime opportunity.

(z-7) Holiday Magic, Inc. is fulfilling the financial dreams of thousands, and that it will work for any person who desires it.

(z-8) A man who knows the Holiday Magic business cannot fail.

(z-9) The public is receiving the Holiday Magic products with great enthusiasm, and the repeat business is almost unanimous.

(z-10) The surest way to amass a fortune is through Holiday Magic, Inc.

(z-11) That Holiday Magic, Inc. provides training and meeting facilities to distributors at no cost to them (See CX 79Z28 and TR. 1571, 1526, 1520).

(z-12) CX 1800Z13: "Any person who fails in the Holiday Magic program must fall into one of the following categories:

1. Lazy
2. Stupid
3. Greedy
4. Dead

401. All of the above described representations are false, misleading and deceptive because:

(a) Holiday Girls, when they are working, average approximately \$75.00 per month in volume - or \$22.50 gross profit per month.

(1) "Top producer" with her Holiday Girls averaged \$66 per month in direct retail sales (TR. 7004).

(2) Holiday Magic's Holiday Girl survey shows that active Holiday Girls - who reported on their sales volume, averaged \$138.40 per month (CX 878-1095, CX 1560).

(3) Al Pangerl, Holiday Magic's all time top producer, had Holiday Girls average \$75 a month (TR. 10367).

(b) Holiday Girls, when they are working, average less than \$300 a month retail volume, and Holiday Magic, Inc. is aware of this.

(1) Coultas - TR. 9680: \$300 requirement for a Holiday Girl was unrealistic.

(2) Coultas - TR. 9760: Is aware that excluding considerations of turnover, the Holiday Girls who do sell - on the average - sell less than \$300 a month at retail volume.

(3) TR. 5993 - Former Senior General of N.Y. and Former National Field Director Christie: Doesn't recall a single Holiday Girl who averaged \$300 a month in retail volume for a year's time.

(4) President and Top Producer Al Pangerl's Holiday Girls averaged \$75 per month (TR. 10367).

(5) Former President Ben Gay had only one Holiday Girl in his distributorship - termed by Holiday Magic as "one of the most successful" (CX 64C) earn at least \$300 volume in one month. The next highest was \$100 volume in one month (TR 9868).

(6) See Holiday Magic's own survey, 2(a) (2) above.

(c) The turnover of Holiday Girls is such that the average Holiday Girl works for approximately six weeks (see VIIA5).

(d) On the average, Organizers, Masters and Generals recruit less than one Holiday Girl in the lifetime of their distributorships (see CX 457A-C).

(e) At most, and assuming that no Organizers recruit Holiday Girls, the average number of Holiday Girls recruited by Masters and Generals is less than 5, in the lifetime of their distributorships (see CX 457A-C).

(f) Most Master and General distributors do not make the money which Holiday Magic, Inc. represents can be reasonably anticipated by selling cosmetics at wholesale because:

(1) Only 8-10 percent of Master and General distributors in Holiday Magic earn a minimum of \$12,000 per year - Davis -TR. 6286 (expert witness called by Holiday Magic).

(2) "There is a very, very slim minority [of Masters and General distributors] that earns in excess of \$25,000" in Holiday Magic (Davis - TR. 6287).

(3) As of Sept. 1969, Holiday Magic's total cumulative cosmetic sales at retail list price value was \$76,329,757 (RX 16; TR. 9212).

The total number of Masters in Holiday Magic at any time as of Feb. 26, 1969, which is prior to the total cumulative volume is 9,252 (CX 457A).

The average volume of purchases for Master and General distributors in their lifetimes as distributors is less than \$8,250. (Dividing \$76,329,757 by 9,252 Master and General distributors.)

(4) With an average volume of \$8,250, there is no way mathematically that most Master and General distributors can earn between \$72,000 and \$108,000 a year gross income selling cosmetics at wholesale. At the 35 percent level for Holiday Girls, gross income will average out to between \$1,650 for Masters and \$2,475 for Generals!

(5) With Holiday Girls averaging between \$75 and \$139 when they are

working - for six week periods, there is no way that most Holiday Girls will average \$900 per month or even \$300 per month at retail volume.

(6) Respondents' former East Coast regional vice president and current president of SDI, the Instructor General program, testified that he doesn't know what percentage of distributors made \$108,000 in Holiday Magic, but that it was a "small percentage" (Dempsey -TR. 6070).

(7) Holiday Magic president Al Pangerl never heard of a single Master who made \$72,000 a year (Pangerl - Tr. 9613).

(8) Holiday Magic president Al Pangerl doesn't know of a single General Distributor who made \$49,000 attending one opportunity meeting a week (Pangerl - Tr. 9615).

(9) Holiday Magic president Al Pangerl, the top money maker in Holiday Magic for three years, including 1970, testified that he sold only \$15,000 at retail value to his Organizers and Holiday Girls in 1970 (Tr. 9559-9560).

(g) Distributors do not recruit on the average five new distributors a month.

(1) Since Holiday Magic's first month in business was Dec. 1964, if this were the case, Holiday Magic would have had over 390,625 distributors in its program after only seven months, which it did not (CX 457A-D).

(h) It is not easy to recruit other distributors into the program at the Master and General level:

(1) The vast majority of people have neither the desire nor the potential to become Holiday Magic distributors (Tr. 6586).

(2) For some, recruiting is easy, for others, tremendously difficult (Davis - Tr. 6286).

(3) Making profits by release fees (sponsoring General distributors) "is a highly speculative way of receiving return on money." (Baumgarten - Tr. 6616).

(4) It is highly speculative to encourage a Master to go General with the hope that he will be able to encourage others to do the same (Baumgarten - Tr. 6617).

(i) Distributors in Holiday Magic do fail, and that the vast majority fail:

(1) With at least between 20-25,000 Masters and Generals recruited into Holiday Magic, as of May 1972, (Tr. 9759, 9984) Holiday Magic had approximately 2842 active Masters and Generals (Tr. 9629, 5881). All others are no longer in business, and it can be presumed that most active Distributors are recent entrants into the program.

It can also be presumed that many distributors remain active although not successful in their businesses.

(2) With an average monthly retail volume of \$75 to \$139 per Holiday Girl, and an average of less than five Holiday Girls, and a turnover rate of one Holiday Girl every six weeks, there is NO WAY that Master and General Distributors cannot for the most part fail in their wholesale cosmetics business.

(j) Holiday Magic, Inc. makes and keeps no records or studies of the public's acceptance of Holiday Magic products (Tr. 10386, 10391-92, 10396).

(k) Master and General Distributors are required to pay for Council privileges (see Part XXXI).

402. Holiday Magic, Inc. directly and indirectly misrepresents to prospective distributor and recruits at its Opportunity Meeting procedures, that:

(a) There is no turnover of Holiday Girls, except that Holiday Girls who average more than \$300 per month will become Masters and Generals.

(1) CX 79Z34:

You know the world's largest cosmetic company last year sponsored over 200,000 part time girls. That's right -- over 200,000 girls. Do you think it's safe to assume that if you worked full time, 8 hours a day, five days a week that you would accomplish this one thing -- sponsor two retail girls into the business?

Do you think that you could do that? Is there anyone in the room that doesn't think that they could sponsor two girls a week working at it full time? No one? Wonderful!

You are now sponsoring two girls a week and at the end of one year of hard work you have sponsored 104 girls. Now let's assume that you took two weeks for vacation, so you have sponsored only 100 girls (40).

Assume that they do no more than \$300 in volume (41). 100×300 is \$30,000 (42) in volume that they are purchasing from you each and every month.

Right here people say "ha." There he goes with his big figures again. Well, \$30,000 is not a lot of money in the cosmetic industry. If we are talking about a store purchasing \$30,000 in volume, it would be ridiculous. If we were talking about a beauty salon grossing in total sales \$30,000 a month it would be absurd. If we were talking about a jewelry store, a small grocery store, a fur shop, a clothing store, an appliance store, grossing \$30,000, of course it would be ridiculous. But, that's not what we are talking about. We are talking about the efforts of 100 people and we are talking about their efforts in the cosmetic industry.

We used two figures to get there -- two numbers. We used 100 girls and everyone in the room agreed that if they worked full time they could sponsor two girls a week and \$108,000 a year is certainly worth your full time efforts. Isn't it?

(2) CX 90-L = Opportunity Meeting Script, Jan. 1970:

First let me tell you something that was a real surprise to me when I first heard it. - Did you know that the world's largest cosmetic company last year sponsored over 400,000 girls to work part time? -- That's right over 400,000 girls. Keeping that in mind, do you think it's safe to assume that if you worked full time -- 8 hours a day - five days a week -- that you would accomplish this one thing - recruit two (A) Holiday Girls into the business on a part time basis?

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Do you think that you could do that? Is there anyone in the room who doesn't think that he could sponsor two girls a week if he worked at it full-time? -- No one? --Wonderful!

Let's assume that you are now sponsoring and training two girls a week and at the end of one year of hard work you have sponsored 104 girls. No let's assume that you took two weeks for vacation, so you trained only 100 girls. (1)

(3) CX 90S-T = (The retail enrollment)

It's not too difficult to find two girls per week who would work part time to earn extra money with Holiday Magic and who would like to be able to buy their cosmetics at wholesale. If you were to sponsor two (2) girls a week for the next year, taking two weeks off for vacation, you would have 100 active girls. * * * Now you have an upgrade problem. John, you and I realize that keeping 100 active retail girls in the field is a lot of work. Some of these girls are going to start selling more than \$300 in product, which means your Holiday Girls may move up to become an Organizer, then to Master, then to General, which may earn you \$3,300, but you've lost one girl, and now you have a replacement problem.

(4) CX 1842 W-X =

I am quite sure that anyone could find two part time girls each week that would want to earn extra money with Holiday Magic and be able to buy her cosmetics at wholesale. When you sponsor two girls a week for the next year, taking two weeks off for vacation as most of us do; you will have 100 active girls. Now, these girls hold at least one home demonstration per week and they will average three hundred dollars per month in total product sold. Some may sell \$150, others \$450. They will average \$300 per month. 100 active girls times \$300 a month will give you \$30,000 a month flowing through you the General Distributor. Not one drug store or one beauty salon, but 100 separate outlets. You work at 65% and these girls work on a sliding scale and would be at 35%. Subtract that from your percentage and it will leave you with a 30% override on each of your girls.

30% of that 430,000 flow of retail cosmetics will be earning you \$9,000 per month which is \$108,000 per year. (voice up) But now you have an up-grade problem. John, you and I realize that keeping 100 active retail girls in the field might be a lot of work, because some of these girls are going to start retailing more than \$300 in product which means your Holiday Girl goes to Organizer, then to Master then to General which gives you \$3,300, but you've lost one girl. So let's say that you don't want to devote all your time to keeping these 100 girls working so let's hire a manager and pay that manager \$10,000 a year, if the girls maintain a \$300 a month average you pay the manager a bonus of \$10,000 for a total of \$20,000 per year and the average person will work hard for \$20,000 per year. This leaves you with a net income of \$88,000 a year and I think you can afford it! Now, duplicate this manager in six or seven cities around the country and you will have an income in excess of \$500,000 a year!

(5) CX 1842-56

THE GENERAL'S RETAIL PRESENTATION:

Start your presentation by receiving a commitment from your prospect that he could find two girls a week that would like to earn more money!

If you found two girls a week for the next year, taking two weeks off for vacation (like most of us do) you would have one hundred (100) active Route girls beneath you. Now, a route girl does nothing more than service one hundred to two hundred separate homes each month and they will normally average nine hundred dollars (900) a month or more in

total retail product sold. Now, some of these girls may only sell half of this amount, but other girls will sell double that amount. They will average nine hundred dollars (\$900) a month. Now, if you have one hundred (100) girls averaging nine hundred dollars (\$900) a month that is a total of ninety thousand dollars (\$90,000) a month flowing through you the General Distributor. Your route girls work on a sliding scale and will receive forty percent (40%) on all the product they retail! You are a General Distributor working at sixty five percent (65%) which leaves you twenty-five percent (25%) override on each of your one hundred (100) active route girls, earning you twenty two thousand five hundred dollars (\$22,500) a month, which is two hundred seventy thousand dollars (\$270,000) a year. Now, let's go one step further. You and I realize that keeping one hundred (100) active route girls beneath you could be a problem so let's hire a manager with a guarantee of ten thousand dollars (\$10,000) a year for keeping one hundred (100) route girls trained and in the field and then pay that manager a ten thousand dollar (\$10,000) bonus for maintaining a nine hundred dollar a month average per route girl which is a total of twenty thousand dollars (\$20,000) a year to your manager and that will leave you two hundred and fifty thousand dollars (\$250,000) and I think you can afford it!

And, if you want to make one million dollars a year, just duplicate your manager in four separate cities with one hundred (100) active route girls beneath them. Your managers are doing all the work and you are making all the money.

403. That training facilities and meeting rooms at the Holiday Magic councils will be provided and made available by the the corporation to distributors at no cost to them:

(1) CX 79Z30-31

Let's analyze this job for a moment, and see just exactly what you have done to earn this money. You invited five people to a meeting just like this one tonight. We presented the opportunity to your people for you and after the meeting, we thoroughly answered all of their questions.

We then helped you sponsor them into the business and that's all you have done. For that, you have made \$120.

Let's assume that this person's report in the middle here is Mary. We had Mary in training all this month, we had a further opportunity to thoroughly explain our business to her. We shared her and the wonderful things about Holiday Magic.

We should hear how she produced \$300 in volume, worked at 35%, and earned \$105. So in your third month you have earned a total of \$900 from your first four people. Again, all the new people in the business this month were sponsored by someone you sponsored in a prior month. As yet you haven't done anything.

(2) See witnesses who testified they were not informed of dues requirements for council until after they became Master distributors at TR. 1520, 1571, 1526.

(3) Council signs refer to Holiday Magic throughout and gave appearance of Holiday Magic corporate offices.

(i) TR. 1499; TR. 3898.

(ii) Holiday Magic, Inc. tells its councils to drape the opportunity meeting room with Holiday Magic banners and photos of Patrick - TR. 3899; CX 90F ("the room should be draped with Holiday Magic

banners to give the appearance of Holiday Magic Opportunity Meeting”).

(4) At CX 90U - “The Six Enrollments” used Jan. 1970 =

NO. 6 GUEST ENROLLMENT (Use only when necessary as a final step)

If John hasn't enrolled by now, back way off, because something is radically wrong. Turn to John and say, “Now, John, I don't know what I've missed explaining but I've missed something. I've tried to show you how you could earn some really attractive profits in the retail side of the business and even as much as \$39,600 per year part time in the wholesale side of the business and I still haven't gotten it across to you.

Now what I would like to do is invite you to our next business training class as my guest so that you can see the training that we offer, meet some people and really see what Holiday Magic is all about. That will be next (Thursday at 8:00 p.m.) and I'll be by to pick you up so we can be there on time. Bring that notebook and pen that you said you had with you, okay?” (When he comes to class and signs the roll sheet, you may assume that he will come into the program.)

After teaching the above in training class, explain:

Business training is provided by functioning councils, Masters and Generals who belong to these councils pay small monthly fees to support them. When your guest is invited to a council training meeting he will have to sign the guest register and you're going to try to use the training facilities to sponsor your guest into the program.

John has been invited as a guest and when John signs his name on the sign-up sheet, he has just theoretically enrolled. Try to persuade John to take home a \$39 demonstration kit. John may not wear cosmetics - but his wife does. He may not be the least bit interested in this program right now but he may be.

(c) That there are no substantial business or operating expenses for distributors, and that gross income is “net income” or “profit.”

(1) CX 79Z31, compares gross income with salaries.

(2) CX 79Z31, 32, 33, 234, 235, CX 1842V, X, Z, Z5, Z8, refer to gross income as earnings.

(3) CX 7933 refers to gross income as a “salary.”

(4) CX 1842T, Z2 refers to taking home in cash one's gross income.

(5) CX 1842O, W, refers to gross income as cash earnings.

(6) CX 1842X refers to gross income less a manager's salary only as a “net income.”

(7) CX 1842Z3 refers to gross income less a finder's fee as “net profit” and release fee income as “profit.”

(8) Nowhere in the Opportunity Meeting procedure is any inclination given to prospective distributors of the nature and amount of reasonably anticipated expenses.

404. Many participants at the time that they enter the program do not fully understand the Holiday Magic marketing plan.

CX 1842W; CX 90T (“You must enroll in the training class to gain the knowledge necessary to conduct this business.”)

See also (McKinnon) TR. 4057, (Duden) TR. 1759.

405. Holiday Magic, Inc., through its Opportunity Meeting procedure, has a policy of failing to inform prospective distributors, recruits and prospects of the number of prior entrants in Holiday Magic, Inc. in the geographic or market area in which the prospect is enrolling or the degree of consumer acceptance of the Holiday Magic cosmetics (see Part VIII).

406. By failing to inform prospective distributors of any limits of market structure for product and distributorships, the consumer acceptance of the Holiday Magic products, and other market surveys or data, the prospective distributor is falsely given a reasonable expectancy of receiving larger profits or earnings than is actually the case.

407. Holiday Magic, Inc. in its Opportunity Meetings, compares the large profits of the cosmetics industry at manufacturing levels with the expected earnings for distributors, who are at other levels in the business.

CX 79Z28 indicates as follows:

Let's talk about the Cosmetic Industry for a minute now.

It's a big business -- a growing business -- a multi-BILLION dollar a year business.

I don't know of one stock broker who isn't commending it for its growth.

And why shouldn't they. It's one of the fastest growing industries in the world today.

Why, over the last 10 years it's grown an average of 9.6% per year -- last year alone it grew 13.6%, so its on the uphill rise. That's why we're in it! That's why I'm in it. I want to be where the money is. Obviously so does Holiday Magic!

408. By comparing the allegedly large profits in the cosmetic industry with Holiday Magic distributorships, Holiday Magic, Inc. misrepresents to prospective distributors that they have a reasonable expectancy of receiving the same large profits at their levels that may be available to other levels in the business.

409. Holiday Magic, Inc. in its opportunity meetings and statements and representations in the Holiday Magic Wands represents to prospective distributors and recruits, and the lower level distributor it seeks to upgrade to the Master and General Level, that the retail list price value of Holiday Magic products sold by Holiday Magic to its distributors actually represents either the gross income of Holiday Magic, Inc. or the actual sales of products to consumers:

(a) CX 79Z28 (Opportunity Meeting Script):

Holiday Magic's first month in business was December, 1964. The sales volume the first full month was \$16,000.

Ten short months later it has grown to ONE MILLION DOLLARS per month -- 11 months after that TWO MILLION per month -- 2 months later THREE MILLION per month and is STILL GROWING. There has to be something in that.

(b) Wand - CX 4B - November 1965

Today the company has expanded into 22 states and gross sales have reached the 1,000,000 a month level.

(c) CX 4C - Holiday Magic sales figures for the first of the month of operation are as follows: October 1965 - \$1,077,055.42.

(d) Wand - CX 14D - 1966: Fred Pape talked about how Holiday Magic had, just last month, surpassed 1.5 million dollars in monthly sales.

(e) Wand - CX 17C - 12/66: " * * * in two short years we find ourselves with a multi-million dollar operation doing a monthly sales volume in excess of \$3,000,000."

(f) CX 17E - "I remember when * * * \$3 million a month in retail sales was a dream of the future."

410. In referring to the retail "sales volume" a sales figure as it does, Holiday Magic, Inc. misrepresents to prospective distributors and recruits and to distributors that it seeks to upgrade to the Master and General level that the sales volume figures are indicative of sales to the consuming public, and thereby are falsely given a reasonable expectancy of receiving the large profits or earnings based upon such consumer acceptance.

See RX 16, TR. 9212 (Holiday Magic only uses retail list price figures) and TR. 10281-82; 10396. (Holiday Magic doesn't know what the retail sales actually are.)

XLIII. The Adoption Policies of Holiday Magic

411. Witness Janz testified that she told Fred Pape in May 1965, in San Rafael, Calif., that her sponsoring General, John Woloshyn, gave her no training. Pape said he would check into the matter (TR. 5350).

On a second occasion, after May 1965, Janz approached Pape about Woloshyn's lack of training at a corporate team meeting. The response was that training was coming and that Janz didn't need Woloshyn. (TR. 5351)

Janz paid \$100 for training subsequently (TR 5351).

412. Witness Don Kelly joined Holiday Magic in Sept. 1967 (TR. 5434), recruited by Rick Spranzo and John Woloshyn (TR. 5434).

Spranzo informed Kelly that as soon as he understood the marketing plan, he would be better off taking the \$5,000 worth of merchandise and dumping it in the desert (TR. 6442, 5468).

Kelly complained to Holiday Magic in letter of Dec. 26, 1967 about Woloshyn and Spranzo (CX 1342A, B), claiming he was brought into Holiday Magic under "false pretenses" (CX 1342A), such as misrepresentations as to numbers of distributors already in Phoenix, that \$2500

could net him \$38,000, that he had to pay for the school, and that the ad he was recruited under was not a legal Holiday Magic ad.

Mr. Kelly asked for his money back (CX 1342A-B).

On Jan. 9, 1968, Holiday Magic replied that Spranzo and Woloshyn did help Kelly, and that all purchases were final, even though Spranzo and Woloshyn left Phoenix 3 weeks after Kelly joined (part XLI-2).

413. Witness Herb Davis met up with John Snider, John Woloshyn and Rick Spranzo after answering an ad in the Phoenix paper and joined Holiday Magic as a Master in July 1969 (TR. 1356, 1341, 1351-52).

Spranzo, Woloshyn and Snider all guaranteed Mr. Davis a return of his money within 45 days (TR. 1351-52). Davis heard Snider and Woloshyn promise to set up an organization for him, to hire and train Holiday Girls, recruit Organizers and Masters, and turn them into Generals. He was told a General would make \$39,000 a year by recruiting one General a month, and that he would make \$9,000 a month profit by recruiting two Holiday Girls a week (TR. 1349-50). All he had to do was supply them with product (TR. 1349).

He was also told by John Snider, a General, that National TV on the Johnny Carson show was planned by Holiday Magic for Jan. 1970 (TR. 1346). He was shown the "ads" with the opportunity meeting film (TR. 1349).

He was also told there was more money in recruiting Masters and turning them into Generals than in retailing (TR. 1357).

In Aug. 1969, Davis complained to Holiday Magic vice president Powell about the representations, the false and broken promises, the stacking of masters, and the lack of training as promised. He also wrote in Oct. 1969, complaining about Spranzo and Woloshyn (CX 1397A).

Holiday Magic, Inc. acknowledged receipt of Davis' complaint in Oct. 1969 (CX 1398).

414. Witness Elvin Cherrington answered an ad in a Phoenix paper on July 1, 1969, and met John Snider, John Woloshyn and Rick Spranzo (TR. 1418-1424).

He was told he "wouldn't have to do hardly anything" to earn \$108,000 a year, and that he could earn \$39,000 a year by recruiting one general a month for 12 months (TR. 1422).

He was also shown "TV Commercials" which he was told would appear on National television in Jan. 1970 (TR. 1424).

Spranzo said there was no selling - that they would hire and train the people to do the selling for Cherrington.

He talked to Vance Powell, Holiday Magic's regional vice president in the latter part of 1969, at which time Powell said he had also talked to Herb Davis (TR. 1451 - 1452).

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Mr. Cherrington to this day hasn't attended Instructor General School, but is a Holiday Magic General Distributor (TR. 1453, 1474).

Mr. Cherrington's money would not be refunded (CX 1411).

415. Witness Ted Crosby tells a similar story involving Spranzo, Woloshyn and Powell. Crosby answered an ad in a Phoenix paper in July, 1969 (TR. 1487).

Spranzo said he was a General Distributor with Holiday Magic, sent to Phoenix to open up a new area, and that distributorships were going fast (TR. 1492). He was shown the Holiday Magic Council and told "there are your offices, here is where we will have your new Holiday Girls. They are for your use." (TR. 1500).

Crosby was shown two commercials and Spranzo said they were going on national television on the Johnny Carson show (TR. 1504-06).

Spranzo also told Crosby that "we do not bring you into the program and drop you," but that "we work with you and start you making money" (TR. 1509).

Crosby saw Vance Powell in 9/69 or 10/69 (TR. 1590) and told him everything Spranzo had said to him, asking for his money back (TR. 1548, 1564, 1589-90). Also wrote to company, which was acknowledged Sept. 26, 1969 (CX. 1353).

Powell told Crosby that he agreed that what Spranzo had done was "fraudulent," but that it was Holiday Magic policy not to return any money (TR. 1889-90). Powell said he would take steps to stop Spranzo because he had done it before (TR. 1594).

416. Witness Vermilye also met up with Spranzo and Woloshyn, and became a Master Sept. 11, 1969. By letter of Nov. 12, 1969, Vermilye detailed his gripes about Spranzo and Woloshyn to Holiday Magic (CX 1379A-D).

Spranzo said that he and Woloshyn would help Vermilye, but he got nothing (TR. 1679).

By letter of Nov. 14, 1969, Patrick acknowledges Vermilye's letter, and states he has received similar reports from Crosby (CX 1380).

Meanwhile, Holiday Magic, Inc. is returning no money and waxing verbal about the great Rick Spranzo.

CX 538A-D distributed by Holiday Magic, Inc. in late 1969 (TR. 5555) and referring to the month of August, states in part:

Now working Phoenix, Arizona, Rick Spranzo's work in the Holiday Magic program has taken him from Northern California (his home) to Seattle, Washington where he helped build a strong Distributor Council and helped many distributors achieve success in the Holiday Magic program.

Rick's high sales volume, his ticket to entry in the \$25,000 Round Table Club, shows his good work in Phoenix. Building his own sales organization and working with other distributors, Rick has seen the area develop sufficiently for the establishment of a Distributor Council with lots of enthusiastic members.

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Next for Rick could very well be membership in the President's \$50,000 Club!

Ad in CX 151K - Family News - 9/5/69: Longtime distributor RICK SPRANZO has just become Round Table Club member number two! RICK'S volume at retail value has topped \$25,000 in one month so he'll be receiving a handsome leatherbound Accutron desk clock with a hand-tooled medallion opposite, describing his achievement. RICK'S work has been centered mainly in the Phoenix, Arizona, area. Congratulations!

Holiday Magic would now have us believe that action was taken to terminate Spranzo. But see RX 120 in which Spranzo was "terminated" as of Dec. 1969, but only for supplying other distributors who had gone General with replacement Masters (RX 120C). No mention is made of promises of help, guarantees of income, TV commercials, etc.

417. Termination? Spranzo is now working in Tucson. Witness Duden reports answering an ad in the Tucson paper on Feb. 8, 1970 (TR. 1696, 1762), less than two months after Spranzo's alleged termination.

Spranzo tells Duden he will hire and train Holiday Girls for him, and have high school boys to get leads for the girls (TR. 1698).

Spranzo assured Duden he would have his investment back (of \$6,000) in two months (TR. 1700). Spranzo's "training" consisted of two 1/2 hour classes, which consisted of what to say to a prospect who compared Holiday Magic to a pyramid (TR. 1708).

Duden spoke to Vance Powell, Feb. 18, 1970, Holiday Magic's vice president (TR. 1712) and told Powell he didn't like the operation (TR. 1715). Powell said Duden should be recruiting organizers (TR. 1717). Duden told Powell assistance was needed, and Powell told Duden he needed the Holiday Magic manuals (TR. 1718). This he had to pay for (TR. 1762).

Duden requested his money back from Holiday Magic 7/15/70 (TR. 1727). Told Holiday Magic he was defrauded and that Spranzo didn't keep his promises (TR. 1764) and even offered to return all stock (TR. 1764-65).

By letter of 8/3/70, Holiday Magic told Duden that "regardless of past obstacles," his financial goals could be achieved. He was also told that no monies can be refunded (CX 1419A-B). See also CX 1422.

418. Witness Thomson testified that he met up with Spranzo in Feb. 1970 (TR. 1833) when he became a Master. Spranzo said he would hire and train boys to make appointments for Holiday Girls (TR. 1830).

Thomson spoke to Holiday Magic vice president Vance Powell, complaining about no business guidance from Spranzo (TR. 1842). Powell told Thomson to check the Masters and Generals' procedure handbook, which Thomson didn't have, so Powell told him he would get it for him, but never did (TR. 1844).

Thomson complained Apr. 22, 1970 to Holiday Magic (CX 1444A-C).

By July 1970, respondents "terminated" Spranzo again, this time as

stated in RX 120A: "[T]he main reason for your termination is your insistence upon continuing to place unapproved ads in Texas newspapers."

419. Former Holiday Magic president Ben Gay, who terminated Mr. Spranzo (RX 120A, 120C; Gay - Tr. 10193, 10096) testified that Spranzo was terminated because his activities were causing trouble with the attorney general's office in Arizona, and not because he violated company policies (Tr. 10112-10114). The concern was in getting caught, and not in the malpractice (Gay - Tr. 10115).

Gay notes that it took 5 years to get to Spranzo (Tr. 10113) and that Spranzo had recruited over 100 Masters and Generals (Tr. 10202).

None of Spranzo's distributors were ever refunded their money by Holiday Magic (Tr. 10203) all of the distributors who testified lost money (CX 1829A, B; Tr. 1382, 1460, 1524, 1679, 1720, 1854).

420. Holiday Magic, Inc. represents and requires its distributor to represent to prospective distributors and recruits that the distributors are representatives and agents of Holiday Magic, Inc.

(a) Opportunity Meeting scripts: CX 79Z28:

Good evening, ladies and gentlemen. My name is _____ and I am a _____ with Holiday Magic. ** [space in original].

You will see a film which explains our general program. ***

So as we say in Holiday Magic, let's get started! ***

We're really proud of that film. They're all real people - Holiday Magic people. ***

So at this time it is my pleasure to introduce as a General Distributor with Holiday Magic. ***

listen carefully to one of Holiday Magic's most successful men, Mr. _____.

You know, I have been with Holiday Magic months now ***.

Now I mention this not particularly to impress you with the calibre of people we have in Holiday Magic, ***.

Our National Sales Manager, Mark Evans, sponsored 137 people his first 30 days in the business.

This is exactly the way our people are making the kind of money that they are making ***

Many of us in Holiday Magic are earning this kind of money and more ***

Ladies and Gentlemen, this is Holiday Magic and this is what we have to offer you.

At this time, I would like you to turn to the person who invited you here and ask them to help you select one of the four positions for you in Holiday Magic.

(b) Six Enrollments:

CX 1842R, CX 90P: Now, _____ I am going to explain the four basic positions that Holiday Magic has to offer and I want you to select the position that you feel will suit your needs best.

CX 86A: We offer four positions to every person who comes into Holiday Magic.

421. Bill Dempsey, when he appeared in Chicago with Holiday Magic president Fred Pape (Tr. 3703) and Mark Evans, national sales manager,

on Feb. 10, 1968 (Tr. 3703), at a meeting of all Masters and General Distributors who had completed Instructor General courses (Tr. 3703) was at the time vice-president of sales, East Coast (Tr. 3703). He stated, as reported by witness Pence, that:

*** when the dust cleared, the only thing that counted was who had the money, and he had it, and then he flashed three or four one hundred dollars bills in the air.

The next thing, the next statement along those lines that he made, was that you are to consider a prospect, *** that he has my money in his wallet, and whatever method that I can use to get my money back out of his wallet, that was perfectly all right. (Tr. 3710).

422. Mr. Dempsey testified for respondents after Mr. Pence did, but did not deny the allegation. Respondent William Penn Patrick is also quoted by witness Pence as saying:

There is no reason why you shouldn't be earning \$3,300 a month at least. If you can't do that, then get out. (Tr. 3684).

See CX 85U and CX 86C, wherein \$3,300 a month is described as being earned by recruiting and upgrading one General a month.

423. Corporate Team opportunity meetings given in Miami featured Jim Hearn (Tr. 2004) at which he gave his standard presentation:

Now, I came into this program, and there are two horses to ride, a fast horse and a slow horse. The fast horse is the recruiting fees of bringing people into the business where a lot of money exists, and the slow horse is building up a retail organization, with Holiday girls and so forth, to retail cosmetics. I am riding the fast horse. I suggest that if you want to make a lot of money fast, ride the fast horse. You can go either way you want.

XLIV. Advertising

424. Respondent Holiday Magic, Inc. has represented directly or by implication, or by adopting and ratifying the misrepresentations of its distributors, that:

(a) Holiday Magic, Inc. does and will utilize television advertising throughout the country through its Wands and manuals which it distributes to all distributors:

(1) CX 78Z31 - Television advertising is conducted on a saturation schedule. Everyone knows the power of T.V. advertising.

(2) CX 1C - Wands 8/65: The corporation intends to support this training by creating in the public mind an image of the Holiday Girl as a real authority in the field of cosmetics care and beauty. We will achieve the creation of this image through television advertising and other mass media.

(3) CX 37M - Wands 9/68: HM distributors are about to see the first television commercials to be broadcast on a national basis by independent distributors.

(4) CX 64A - Wands (Permanent) HM plans National T.V. Watch for us in your city.

(5) CX 159M - FN 4/10/70: HOLIDAY MAGIC ON NATIONAL T.V. ***

(6) CX 79Z9: The corporation will use television as its primary advertising medium. From time to time it may use other media.

(7) Physical Exhibit B. Tr. 9803: Each Holiday Magic retail distributor is thoroughly trained in cosmetic knowledge, samples, exciting hostess gifts, superb literature, and supporting product advertising.

(8) CX 76Z19 (Script on technique to recruit a Beauty Salon): Mrs. Jones, I am _____ with Holiday Magic. I'm sure that you have heard of us. You haven't? Well, Mrs. Jones, this is one reason why I am here. We will be going on T.V. very soon and we would like to give you some free advertising. * * *

* * * All that we expect of you is to act as a depot for our T.V. advertising so girls will be able to buy products from you when they need them.

(b) That one million dollars was being spent to advertise Holiday Magic products in national magazines (see CX 25A-E - Wands 8/67; Gay-Tr. 9990; Coultas-Tr. 9676).

(c) Holiday Magic, Inc. represented to its distributors that the magazine ads were helping distributors (Lipska-Tr. 10403-04).

(d) That television commercials would appear on national television on the Johnny Carson show.

425. In truth and in fact, respondents do not advertise their products to the extent that they or their representatives represent:

(a) Holiday Magic, Inc. has never advertised on network television (Lipska-Tr. 9258).

(b) Holiday Magic, Inc. has never advertised on television that covered more than half the nation (Lipska-Tr. 9259).

(c) Holiday Magic's "advertising" expenditures for the fiscal year ending Sept. 1965 were \$43,764; Sept. 1966 - \$165,380; Sept. 1967 - \$444,524; Sept. 1968 - \$287,742; Sept. 1969 - \$110,322; Sept. 1970 - \$220,099; and Sept. 1971 - \$107,715. These figures include advertising, promotion, entertainment, salaries, special brochures, productions, announcements to distributors and "perhaps the Holiday Magic Wands" (Tr. 6388, 6390, 9260, 9261).

(d) Sherman Coultas was aware of spot T.V. for Holiday Magic only in San Francisco, Milwaukee and Minneapolis (Coultas-Tr. 9687).

(e) Holiday Magic spent only between \$150,000 and \$300,000 (Lipska-Tr. 10385-92) or \$200,000 (Gay-Tr. 9990) on the \$1,000,000 magazine advertising representation.

(f) Distributors were constantly and continually advised that Holiday Magic was engaging in a continuing national advertising program in women's magazines even though the said campaign lasted only several months and was already terminated (Lipska-Tr. 10385-92; 10403-4; Gay-Tr. 10133, 9990; Guard-Tr. 10494; Coultas-Tr. 9690; CX 90K - National Adv. Marketing or recruiting tool; RX 164).

(g) Holiday Magic, Inc. has no knowledge as to whether or not the magazine ads had helped distributors (Lipska-Tr. 10403-4).

426. Holiday Magic, Inc. has ratified and adopted the representations of Joh Woloshyn and Rick Spranzo that Holiday Magic products will be

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advertised on national television on the Johnny Carson show, by failing to take any action in refunding the monies to distributors who relied upon said misrepresentation on becoming Holiday Magic distributors.

427. Holiday Magic is estopped from denying the ratification and adoption of the misrepresentation of television advertising by Messrs. Spranzo and Woloshyn because of the Holiday Magic recommendation that ads such as those shown by Spranzo and Woloshyn be incorporated into the opportunity meeting presentation (see CX 712).

XLV. Employment Offers - Help Wanted Ads

428. Holiday Magic, Inc. has represented directly or indirectly, to prospective distributors, that employment is being offered:

(a) See CX 1800A-Z1-5:

NEWSPAPER ADS

For Holiday Girls: Housewife make \$50 to \$100 per month in your spare time. Phone _____.

I WANT A HUSBAND. Who will draw his wife's attention to this ad. Glamorous profession. Looking for qualified applicant. Ages 18-55. Call Mr. _____ for appointment 9-5 (Phone No.).

If you are interested in part time work and would like to earn \$5000 per month in your spare time working from your home write Box _____.

For Organizers:

LOOKING FOR THE RIGHT KIND OF MAN: Must have management potential and like to work with attractive women. Phone _____.

DO IT NOW * * * Phone _____: Brand new company with exciting ideas. Fantastic financial opportunity if you qualify. DO IT NOW * * * Phone _____.

REWARD: If you can handle people, will work hard, DON'T want to sell, want a millionaire's income, Call _____.

UNIQUE URGENT POSITION: Not a better opportunity in _____ county for the man who can fill this position. For appointment only with _____, call (Phone No.).

WANTED—Lazy salesman accustomed to a high standard of living. Phone _____ for interview.

For Masters:

I AM LOOKING FOR A MAN who is capable of earning \$20,000 to \$30,000 annually. Fantastic financial opportunity if you qualify. Must have management ability. Phone _____.

TIRED of answering door-to-door selling ads? I'm looking for a man who likes to WORK and to whom \$25,000 per year is a reality. If you are this man and can supervise an organization of attractive women, call me Monday 7-1 P.M. _____.

MAJOR COMPANY BUILDING COMPLETE EXECUTIVE AND SALES FORCE IN _____ EXCEPTIONALLY HIGH INCOME IF YOU QUALIFY.

EXECUTIVE and PEOPLE with MANAGER potential needed for expanding California company. If you qualify and can accept \$25,000 per year as a reality call for appointment. _____.

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429. All Holiday Magic distributors are independent contractors and not employees (Answer, p. 4).

430. All Holiday Girls are in business for themselves; never hired on salary (Gillespie-Tr. 9307).

431. Distributors were placing ads indicating that they were offering employment, and this was not the case (Coultras-Tr. 9663). See also CX 1976A-I; Tr. 4423-4446), which were ads placed by witness Vardervelde seeking Holiday Girls.

432. Holiday Magic tells its distributors to place ads in local newspapers, as one of the quickest methods of mass recruiting, utilizing the ads appearing in the manuals:

The placement of advertisements in local newspapers is one of the quickest methods of mass recruiting.

But always make reference to the "Holiday Magic Distributor Manuals" for the proper ads to be placed in the newspaper, "How to Interview properly", and how to use "Telephone Book-In Procedures." (CX 1840Z59).

XLVI. Price Discrimination

433. Holiday Magic, Inc. sells Holiday Magic products directly to its General Distributors and its Master Distributors.

(a) See VII C and D.

(b) A Holiday Magic Instructor General at the time he testified, Kenneth Belton stated at Tr. 4963:

Q. Mr. Belton, as a Master distributor, did you purchase products from Holiday Magic?

A. Yes, sir.

Q. Do you recall what products you purchased from Holiday Magic?

A. Everything from an antibody (sic) lotion to lipstick to colognes, hair sprays, shampoo, many different items.

Q. These are the Holiday Magic cosmetic line?

A. And home care products such as floor wax and furniture polish.

Q. As a general distributor did you also purchase from Holiday Magic, Inc.

A. Yes.

Q. Would you tell us again what products you purchased from Holiday Magic as a General?

A. The same.

(c) Gillespie-Tr. 9371-73 - "Holiday Magic did business with the Masters and Generals."

Gillespie-Tr. 9415 - "Masters and Generals normally purchased from the company."

Gillespie-Tr. 9419 - "Master buys from Holiday Magic."

(d) Stipulation of Counsel at Tr. 2623:

HEARING EXAMINER BUTTLE: They will stipulate with you that masters and generals purchased their product from Holiday Magic; am I correct?

MR. WOLFSON: Yes, Judge * * *

HEARING EXAMINER BUTTLE: Mr. Mitchell, do you stipulate to that?

MR. MITCHELL: Sure, Your Honor.

(e) Statements in movie, Manuals, Bulletins:

(1) Physical Exhibit B - Movie "Formula for Happy Living" at Tr. 9807:

By the end of your third month with Holiday Magic, you will be pleased to discover that your first five outlets have reached the volume of \$9,000 each and, as you have done, they, too, become Master Distributors. At this point, they begin to purchase directly from the company.

Although you are no longer required to service them with product and they no longer need your service or your help, you begin to receive 2 percent of their volume.

(2) CX 77G:

Once a distributor reaches a volume of \$5,000 in any one calendar month, he remains at 55%. He is then classified as a master distributor and will buy directly from the company.

(3) CX 78Z13-14 describes the "ordering procedure for Master and General distributors." No differences appear for the two artificially named echelons.

(4) At CX 78Z14:

NOTE: Masters and Generals deal directly with the Home Office, ordering in case lots only.

(5) CX 78T states as follows: General Distributor "Can work wholesale or retail or both as he desires. Does not supply his Masters with product." While a Master Distributor "Buys product directly from factory to supply his Organizers and Holiday Girls."

(6) The Corporate Team in the person of Mark Evans also stated at CX 85E: The position above the Organizer is that of the Master Distributor who works at 55% discount and purchases his merchandise directly from the factory.

(7) See also CX 106A-K, entitled "Masters and Generals Procedure Handbook," dated Jan. 1968. The booklet shows that Masters and Generals are treated exactly alike in ordering and dealing with respondent Holiday Magic, Inc. CX 106H and CX 106I show the same order forms used by both "echelons." At CX 106C: "Only Master and General Distributor's orders should be submitted to Holiday Magic. All other distributors purchase through their sponsor. * * * Masters and Generals order from Holiday Magic in case lots only."

(8) CX 78Z56:

When your Direct Distributors become Master Distributors, you are no longer required to service them with products. They buy directly from the Company * * *

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(9) CX 1351 is a letter from Holiday Magic to Master Distributor Crosby, dated Sept. 24, 1968:

As a Master Distributor you are going to be placing orders with our Distributor Accounting Department. Our utmost concern is processing all your orders quickly and efficiently.

Your distributor identification number * * * is permanent. Please use it in all correspondence and, above all, on each and every order.

Please don't forget to sign each of your orders.

An unsigned order or personal check will be returned to you, thereby delaying your order. (Same letter CX 1376A, CX 1390, CX 1443 (2/20/70)).

(10) CX 1382A, B at B: Holiday Magic letter to distributor on request for transfer to another General:

Since you are a Master distributor, you deal directly with the company. You promote your own programs, and you service the interests of those in your organization. If you do not belong to a council, we suggest you join a council in your area. This action would keep you in the center of business and promotional activities.

(11) CX 1F - Wand - Aug. 1965: Jan Gillespie says—this office must have two (2) copies of all orders from Master and General Distributors.

(12) CX 28C - Wand - Nov.-Dec. 1967:

Distributors will receive an updated statement of account with each order processed with our present new system * * *

(13) CX 28K - Wand - Nov.-Dec. 1967:

Central Filing maintains master and general distributors' files, which contain all correspondence and orders for each distributor.

(14) CX 79Z14:

After it is assigned, the Master Identification Number must be correctly entered on all orders. Our files, bookkeeping, and shipping orders all require this number.

(15) See also Tr. 3096; Tr. 3442, CX 1896A-Z3, Tr. 2887; CX 1880L-P, Tr. 4074, CX 1911A-F, CX 192ZA-C, CX 1928Z-K, CX 1931-B.

434. Master and General Distributors use the same order forms, employ the same ordering procedures, and receive the same account statements from Holiday Magic on their orders:

(a) CX 79Z21-Z25: Chapter entitled "PROCESSING OF MASTERS' AND GENERALS' ORDERS." There are no distinctions made between Masters and Generals.

(b) CX 79Z15: Master and General Distributor Order Form. Note that the identification number referred to is the Master Identification Number, and not the General Identification Number. At the bottom "Masters order case lots. Retail Distributors may order unit lots."

(c) Distributor order forms for both Masters and Generals appear in the record at CX 411, 412, 414, 416. Masters and Generals order on the same forms, but at the different prices and discounts indicated.

(d) CX 106J: This is the account for both Masters and Generals. Column 7 showing percent retail paid, in this case 45 percent reflects a Master order (see CX 106E-F) wherein this "DATA PROCESSING INVOICE" is explained. At No. 7, it reads:

Discount rate. Figures shown represent the percentage of the retail cost you are paying: *i.e.*, 100% in this column indicates a no discount item. 45% in this column means you are paying 45% of the retail price, or 55% Masters' discount, etc.

435. Master Distributors do not order from or through an account of a General Distributor; they had their own accounts, and General Distributors receive copies of the Master's account orders along with a 10 percent override.

(a) Cf. CX 2053A-M; CX 2054A-L.

(b) CX 78"0": 10 percent override. This is the override that a General Distributor receives on his Masters' purchases. He receives this check monthly directly from the Home Office together with a copy of that Master's official monthly purchase record. He receives this override until the day that his Master becomes a General Distributor.

(NOTE: What need would there be for a copy of the Master's monthly purchase record if the Master really ordered through the General's account?)

436. Merchandise which is on "back order" is shipped automatically when in stock (CX 19H; CX 78Z21).

437. General Distributors do not maintain inventory sufficient for Master Distributors. They sell only to Holiday Girls and Organizers, and the CRS or CDC provides for inventories at \$4,000 per Master and General (see Part XXX).

438. Master distributors purchase at a price which is 45 percent of the retail list price (55 percent discount off list) and Generals purchase at a price which is 35 percent of the retail list price (65 percent off list) (Tr. 6176; CX 2063-CX 2113 and all supporting documents).

439. General distributors receive a price discount which is a 22.2 percent discount off the selling price to Master Distributors. (General pays 35 cents on the dollar, Master pays 45 cents on the dollar for the equivalent products. Difference of 10 cents; $10/45 = 22.2$ percent discount from Masters' cost.)

440. Master Distributors buy at a price which is 28.6 percent greater than the selling price to the General Distributors.

(General pays 35 cents on the dollar, Master pays 45 cents for the equivalent products; difference of 10 cents; $10/35 = 28.6$ percent of General's cost.)

441. Master and General Distributors are at the same functional levels of distribution.

(a) Masters and Generals sell at wholesale to Organizers and Holiday Girls: (Tr. 2452; Tr. 2318; Tr. 2803-2804; Tr. 2949; Tr. 3138; Tr. 3311; Tr. 4641; Tr. 2515; Tr. 4080; CX 2078A-B; CX 2079A-C; CX 2080A-C.)

(b) Masters and Generals sell at retail to the consuming public. (Tr. 2518-2519; Tr. 2810; Tr. 3077; Tr. 3236; Tr. 3458; Tr. 3151; Tr. 3004; Tr. 3314; Tr. 5480; Tr. 5097; Tr. 4969; Tr. 5114; Tr. 7973; Tr. 8594; Tr. 5254; Tr. 4639; Tr. 7838-7939; Tr. 4481).

(c) Masters and Generals have their Organizers and Holiday Girls trained at the Holiday Magic councils, to which they pay dues. (Tr. 2520-2521; Tr. 2552; Tr. 4118-4119; Tr. 4312-4313; Tr. 4390; Tr. 4392; Tr. 5092).

(d) Masters and Generals maintain their individual inventories, either at their own place of business or at CDC or CRS locations, at which they pay dues. (Tr. 4378; Tr. 4500-4501; Tr. 4510; Tr. 4699; CX 2009A; CX 2007; CX 2022; Tr. 5279; CX 2062; Tr. 2525-2526).

(e) General distributors testified that they performed the same function as General distributors that they did as Master distributors. (Tr. 9910, 9830 - Gay; Tr. 2887 - Rothman; Tr. 4310-4311 - Aldridge).

(f) Holiday Magic Masters' and Generals' manuals (CX 104, CX 112, CX 100, CX 109 and CX 110) indicate the functional characteristics and sameness for Masters and Generals.

(g) Holiday Magic provides the same manuals for Masters and Generals. (See CX 78F; CX 79F).

The purpose of this [Masters' and Generals'] manual is to provide Masters and Generals with procedures and techniques which will save time, experimentation, and expensive errors. Holiday Magic, Inc. expects each Master and General to be thoroughly knowledgeable in the methods used to build and sustain an effective Holiday Magic Cosmetic Program.

(h) See CX 368A: "Generals, Masters and Organizers are all trained to do the same thing. They're all Organizers." And CX 76Z3-Z4: "The most important principle that an Organizer must remember is - that the immediate delivery of product is necessary. Failure to have an adequate amount of products on hand to service your organization will result in organizational stagnation. There is no short cut to immediate delivery." And CX 33H - Wand - 5/68: "Masters, Generals and Organizers supervise their Holiday Girls."

(i) Sponsor trains his new distributors, not the General who is getting an override on the Sponsor's purchases.

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(1) CX 104B: “* * * it must be remembered that the Sponsor [of] a new distributor is still primarily responsible to the new Distributor, and this responsibility is never delegated to others, regardless of geographical consideration.”

(2) At CX 104M-O, the definition of Sponsor includes Generals, Masters and Organizers.

442. General distributors engage in their wholesale business activities in the metropolitan areas - city and surrounding suburbs - of the city or suburb in which they live. Cf. Chicago - Tr. 4164-4165; Tr. 4495; Tr. 4638; Tr. 5116; Tr. 7838; Tr. 7985-7986; Milwaukee - Tr. 4791; Tr. 4810; Tr. 4955-4956; Tr. 5215; 5217; Tr. 4697-4698; Miami - Tr. 3366; Tr. 2891; Tr. 3144; 3147; Tr. 2752; Tr. 2550; Tr. 3033.

443. Other Master and General distributors testified that they engaged in wholesale business activities from a radius of substantial numbers of miles from the cities in which they lived. Cf. (Tr. 5216-5217 (Schmidt - 50 miles), Tr. 4811 (Lipscomb - 20 miles), Tr. 5028-5029, 5052 (Boellein - 2-5 miles), Tr. 4955-4956 (Belton - 10 miles), Tr. 4698 (Andert - 40 miles), Tr. 4292 (Shumaker - 5-10 miles), Tr. 4658 (Bong - 50 miles), Tr. 5116 (Hines - 6 miles)).

444. Master Distributors engage in their Holiday Magic wholesale business activities in the metropolitan areas - city and surrounding suburbs - of the city or suburb in which they live. (Florida - Tr. 2451 (Muff), Tr. 2810 (Sedler), Tr. 2604, 2608 (Izzard), Tr. 3449 (Sutliff); Chicago - Tr. 4116 (Hines), Tr. 4535 (Dobrenik), Tr. 4310 (Aldridge), Tr. 4372 (Vanadia), Tr. 7972 (Cylkowski), Tr. 7983 (Bosan), Tr. 4194 (Faktor); Milwaukee - Tr. 5478, 5481 (Prah), Tr. 4997-4998 (Fischer), Tr. 5097 (Janssen)).

445. General distributors testified that they engaged in their wholesale and/or retail business areas in the same geographic or market area as General distributors as they had done when they were Master distributors. (Milwaukee - Tr. 5216-5217 (Schmidt); Tr. 5025, 5038, 5052 (Roehlein), Tr. 4991 (Toepfer); Chicago - Tr. 4496 (Justen), Florida - Tr. 2885, 2888, 2891 (Rothman)).

446. Holiday Magic, Inc. makes available and sells its entire line of Holiday Magic products to Master Distributors and General Distributors: (See Finding 7, also CX 79Z21-Z25, CX 411, 412, 414, 416, CX 79Z15, Tr. 2580 (Frank)).

447. Master and General Distributors engaged in direct wholesale sales activities (sales to Holiday Girls, Organizers and retail stores) in the same geographic areas.

See attached charts following finding 449 under column entitled "wholesale" for Miami, Chicago and Milwaukee. For each city, there is a separate chart for Master and General Distributors. Those who operated at the wholesale level are indicated by the areas listed under the column entitled "wholesale," which show where they conducted their recruiting activities and where their respective Holiday Girls and Organizers sold. Compare the areas under the column entitled "wholesale" for Generals with those under the column entitled "wholesale" for Masters.

448. Master and General Distributors engage in direct retail sales activities to members of the consuming public in the same geographic areas.

See the same attached charts under the column entitled "retail" for Miami, Chicago and Milwaukee. Compare the areas under that column for Masters with those areas listed under that column for Generals following finding 449.

449. Masters, Generals, Organizers and Holiday Girls engage in direct retail sales activities to members of the consuming public in the same geographic areas.

See the same attached charts for Miami, Chicago and Milwaukee. See also the areas in the charts for both Masters and Generals under the columns entitled "wholesale" which show where Holiday Girls and Organizers sold and compare those areas with the areas listed under the columns entitled "Retail" which show where Masters and Generals retailed.

Charts for Masters and Generals, separately, indicating where they conducted their wholesale and retail activities in the Miami-Dade County area, their addresses, the periods of time that they were active as Masters and Generals, and the numbers of Holiday Girls and Organizers that they had selling in their organizations during the period 5/66 to 7/68, are as follows:

MIAMI-DADE COUNTY AREA

Masters	Wholesale (Sales to Holiday Girls, Organizers and Retail Stores)	Retail
Charles Porst 113 N.W. 108th St. Miami (3048) Master (10/66-1968) (Tr. 3049, CX 1876)	Recruited 10 HGs and 3 Organizers (Tr. 3045, 3055). His HGs sold in N.W. Dade and N. Dade between Flagler Street and Broward County line-(Tr. 3057).	Sold in N. Dade and W. Dade (Tr. 3077)

MIAMI-DADE COUNTY AREA

Masters	Wholesale (Sales to Holiday Girls, Organizers and Retail Stores)	Retail
Myrna Sedler 13840 S.W. 73rd St., Miami (Tr. 2800) Master (12/66-5/67) (Tr. 2801, 2818)	Had a HG selling in S. Dade County (Tr. 2810.)	Retailed in S.W. Miami (Tr. 2810)
William Izzard 1416 N.W. 175th St. (Tr. 2602) Master (6/66-1/68) (Tr. 2602, 2617)	Had 18 direct HG and organizers and 8 indirect HGs and organizers. They sold principally in N.W. Miami and some sold in Miami Beach, Hollywood, and Miami. (Tr. 2604, 2608)	
Mrs. Stanley Pierce 154 S.W. 82nd Ave. Miami (Tr. 2257) Master (10/66-5/67 (Tr. 2257, 2261-62)	Had 2 HGs operating in Hialeah. (Tr. 2262)	
Thomas Q. Sharpe, Jr., 1115 Obisho, Coral Gables, Florida (Tr. 3204) Master 5/66-1968 (3-04, 3213)	Had HGs (Tr. 3223, 3236)	Retailed in Miami area (Tr. 3236)
Helen Stuliff 13430 S.W. 78th St., Miami (Tr. 3441) Master (10/66 at least to 5/67) (Tr. 3441, 3460)	Had 6 HGs and 1 organizer (Tr. 3446). Had HGs selling in S.W. Miami (Tr. 3449). Had an organizer selling in Miami Beach (Tr. 3450).	Retailed in S.W. Miami (Tr. 3458).
Marie Yanaros 7340 S.W. 150 Ter., Miami (Tr. 2998) Master 5/66-8/66 (Tr. 2998)		Retailed in S.W. Miami (Tr. 2999).