complied with this order, submit to the Commission a detailed written report of its actions, plans and progress in complying with the provisions of Part IV of this order.

VIII

It is further ordered, That all charges respecting respondent L. G. Balfour be, and they hereby are, dismissed.

It is further ordered, That the Commission's decision is hereby modified by striking therefrom the Commission's findings that respondents misrepresented the extent of fraternities' trademark protection and the Commission's findings relating to the manner or motive of Balfour's acquisition of Burr, Patterson and Auld Company and Edwards Haldeman.

IN THE MATTER OF

UNIVERSE CHEMICALS, INC., ET AL.

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

Docket 8752. Complaint, Dec. 5, 1967—Decision, Sept. 23, 1971*

Order adopting the initial decision of the hearing examiner which found respondent Jordan L. Lichtenstein, an officer of Universe Chemicals, Inc., a Chicago paint company, to be subject to the order to cease using misrepresentations to sell its products and recruit dealers.

FINAL ORDER

This matter having been heard by the Commission upon respondent Jordan L. Lichtenstein's appeal from the Initial Decision,[1] and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having concluded on this record and the facts and circumstances set forth therein, and for the reasons expressed in the accompanying opinion, that the initial decision and order issued by the examiner should be adopted as the decision and order of the Commission;

It is ordered, That the Initial Decision and the order contained therein be, and they hereby are, adopted as the decision and order of the Commission.

---

*Reported in 77 F.T.C. 598 as amended by Hearing Examiner's order of July 10, 1968.

[1] *See* 77 F.T.C. 598.

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

Opinion of the Commission

SEPTEMBER 23, 1971

By Jones, *Commissioner:*

On December 5, 1967, the Commission filed a complaint against Universe Chemicals, a corporation, and Raymond L. Rosen and Jordan L. Lichtenstein, as individuals and officers of said corporation, charging violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (1964), in the marketing of water repellent paints and coatings.[1]

The complaint, as amended by July 10, 1968,[2] charged that respondents, in the course of their business, made numerous misrepresentations concerning the nature of their products and the benefits to be derived from their dealerships. More specifically, the complaint charged respondents with misrepresenting that the corporate respondent was affiliated with the Union Carbide Company and that their products were manufactured and tested by the Union Carbide Company (Compl. paras. 6(1)–(3), 7(1)–(3)). The complaint also charged that respondents misrepresented to prospective dealers the speed with which they could expect to sell respondents' products, their right to return unsold products, and the expected profits to be earned through their dealerships (Compl. paras. 6(6)–(8), 7(6)–(8)). Further, the complaint charged that the respondents falsely represented their guarantees and the contents and qualities of their products (Compl. paras. 6(4), (5), (9)–(12); 7(4), (5), (9)–(12)).

An Initial Decision by Hearing Examiner Moore holding against the respondents was appealed to the Commission on the grounds that the hearing examiner had denied respondents due process of law by

[1] The following abbreviations will be used for citations: Transcript of proceedings, "Tr."; complaint counsel's exhibits, "CX"; and Examiner's Initial Decision, "ID". Briefs of either the respondent (Res.) or complaint counsel (C.C.) will be cited as follows: Brief on appeal, "App. Br."; answering brief, "Ans. Br."; and reply brief, "Rep. Br.".

[2] The hearing examiner amended the complaint during the proceedings in the first trial to expand the alleged misrepresentations concerning the qualities of respondents' products. [The complaint as amended is reported in 77 F.T.C. 598.]

[3] The Commission remanded the case because of its conclusion that the hearing examiner's decision to schedule hearings at four different locations violated Section 3.41(b) of the Commission's Rules of Practice. The Commission directed that hearings in the second trial be held at a single location determined with regard to the convenience of the parties.

directing that hearings should be held in more than one city. After argument, the Commission agreed and remanded the case for a trial *de novo*.[3]

Thereafter, Hearing Examiner Bennett was designated to conduct the second trial which proceeded to hearing in August 1969. In his Initial Decision [77 F.T.C. 598], Examiner Bennett found that respondents had engaged in all the false and deceptive practices charged in the complaint and he also entered a proposed order requiring them to cease and desist from these practices. Counsel for respondents filed a notice of intention to appeal from the examiner's decision but later withdrew it on the grounds that the corporate respondent had made an assignment for the benefit of creditors and would no longer continue in business.[4]

The order has become final as respects the corporate respondent and one of the individual respondents, Raymond L. Rosen. Respondent Jordan L. Lichtenstein, however, notified the Commission that he wished to appeal from the Initial Decision but was financially unable to retain counsel.[5]

Pursuant to its decision in *American Chinchilla Corp.*, FTC Docket No. 8774 (Dec. 23, 1969) [76 F.T.C. 1016], and its Policy Statement of December 15, 1970,[6] the Commission assigned a hearing examiner to make findings on Mr. Lichtenstein's financial status. On the basis of an affidavit filed by Mr. Lichtenstein concerning his financial resources,[7] the hearing examiner found that he lacked sufficient funds to retain counsel to prosecute his appeal to the Commission. By order dated December 8, 1970, the Commission granted Mr. Lichtenstein leave to proceed *in forma pauperis* and referred the matter to the Committee on the Federal Trade Commission of the Antitrust Section of the American Bar Association for the designation of counsel to represent Mr. Lichtenstein.[8] Thereafter, Mr. Lee N. Abrams served as counsel for Mr. Lichtenstein in perfecting his appeal of this case.

On the appeal which is now before us, respondent Lichtenstein does not challenge the hearing examiner's specific and detailed findings of

---

[4] Letter from Franklin M. Lazarus to the Secretary of the Federal Trade Commission, April 4, 1970.

[5] From the time an answer to the complaint was filed on January 10, 1968, until this point in the proceedings, all of the respondents had been represented by Attorney Franklin M. Lazarus.

[6] The procedures for assessing indigency claims are set forth in the Commission's Statement of Policy: Respondents Unable to Afford Counsel, 35 Fed. Reg. 18998 (Dec. 15, 1970).

[7] In his affidavit dated November 3, 1970, Mr. Lichtenstein indicated *inter alia* that he was unemployed, had no assets, and was "taking bankruptcy."

[8] Following the *American Chinchilla* decision, the Antitrust Section of the American Bar Association created a panel of lawyers willing and able to represent respondents who were found by a hearing examiner to be unable to afford counsel.

fact and of law or any aspect of the cease and desist order. His sole claim of error is that the Commission denied him (as well as the other two respondents) due process of law by proceeding against him without taking any action against his competitor and former employer, Hydralum Industries, Inc., despite the fact that the marketing practices which the examiner found to be in violation of Section 5 of the Federal Trade Commission Act had been substantially copied from Hydralum (Res. App. Br. at 5).

The record shows that prior to organizing Universe Chemicals, both Lichtenstein and Rosen were employed by Hydralum which sells water repellent paints and coatings (Tr. 22, 32). In February 1965, they organized Universe Chemicals which also engaged in selling water repellent paints and coatings under the trade names, "Kleer-Kote" and "Kolor Kote" (Tr. 9, 121–22). Rosen and Lichtenstein were the stockholders, officers, and directors of the corporate respondent and formulated, directed, and controlled its practices and policies (Res. Ans. Br. 1; Tr. 111; ID 7).

The examiner found that upon leaving the employment of Hydralum, respondents adopted methods of doing business similar to those which had been pursued by Hydralum (Tr. 33, 121, 122, 1101; ID 8, 37). Specially, respondent Lichtenstein testified that they used a similar method of product distribution and similar sales presentations (Tr. 121, 1101). Many of the promotional materials which the examiner found were used in violation of Section 5 of the Federal Trade Commission Act had been copied from those used by Hydralum, including several of Hydralum's brochures, product labels and demonstration materials (Tr. 96–7, 102–103, 1101, 1133, 1146).

Lichtenstein testified that on two occasions during his employment with Hydralum, in 1960 or 1961 and again around 1964, Hydralum was investigated by the Federal Trade Commission.[9] Mr. Lichtenstein gave virtually no testimony as to the events surrounding the first investigation but stated that during the second investigation officials examined and copied "hundreds and hundreds" of documents in Hydralum's flies but that no action was taken by the Commission as a a result of this investigation (Tr. 1102–1104). When asked if one of Hydralum's sales brochures which was later copied by Universe Chemicals was obtained during the FTC investigation, Mr. Lichtenstein replied that he did not know from his personal knowledge but he

[9] Lichtenstein testified that the first FTC investigation occurred about three or three and a half years before the second investigation, and that the latter took place about a year before he left Hydralum to establish Universe Chemicals (Tr. 1103–1104), Thus. the investigations must have occurred in 1960 or 1961, and again in 1963 or 1964.

"assumed" it was (Tr. 1102). He testified that since the Commission did not proceed against Hydralum, he felt he would not be violating the law in copying the brochure (Tr. 1103).

Mr. Lichtenstein also stated that during the Commission's investigation of Universe Chemicals in 1967, a Commission representative told him that the Commission had "a little bit of evidence against Universe Chemicals and a whole room full of evidence against [Hydralum and its affiliates]" (Tr. 1106).

Respondent Lichtenstein now contends on appeal that the Commission should postpone the effective date of the hearing examiner's order until the Commission concludes its investigation of Hydralum's marketing practices which are similar to those found unlawful in the instant case. In support of this contention he argues that the Commission has denied him due process of law in two respects. First, he claims that he reasonably relied upon the Commission's failure to take action against Hydralum as evidence that its marketing practices were lawful, that he was thereby misled into believing that he could legally copy these practices, and that the Commission is, therefore, estopped from proceeding against him. Second, he claims it is unfair to permit his competitor, Hydralum, to continue operating its business in a manner denied to him. We will deal with these contentions seriatim.

ESTOPPEL ARGUMENT

Respondent Lichtenstein's contention that he was misled by the Commission is not borne out by the facts and circumstances upon which he seems to rely.

Mr. Lichtenstein does not contest the examiner's findings that he engaged in a series of misrepresentations and deceptions concerning the origin, contents, qualities and guarantees of his products and the benefits of his dealerships. It is inconceivable that he can now seriously urge that while these statements were false—he makes no claims that they were not—he was of the view that in some way these deceptions had become immunized merely because a prior company for which he had worked had also engaged in some similar false and misleading sales promotions and had not been proceeded against by the Commission.

Certainly the Commission gave him no grounds for believing that those materials he copied from Hydralum were lawful. In his testimony Mr. Lichtenstein stated that he had observed that Hydralum was investigated by the Commission, but he admitted that he did not have firsthand knowledge of which documents or sales materials were

uncovered (Tr. 1102). There was no evidence that the Commission investigators ever informed Mr. Lichtenstein that they approved the materials they discovered. He stated that he merely "assumed" they were lawful, although he further testified that "[o]f course, I didn't have any knowledge of the way the Federal Trade Commission operated." (Tr. 1103.) In short, Mr. Lichtenstein relied upon the Commission's failure to proceed against Hydralum without any knowledge of the reasons for this inaction. Under such circumstances, we cannot find that Mr. Lichtenstein was misled by the Commission.

The courts have frequently held that the principles of estoppel shall not be applied against government agencies in suits to enforce a public right or protect a public interest. *Wallace Corp.* v. *NLRB*, 323 U.S. 248, 253 (1944); *Utah Power and Light Co.* v. *United States*, 243 U.S. 389, 408–09 (1917); *P. Lorillard Co.* v. *FTC*, 186 F. 2d 52, 55 (4th Cir. 1950); *United States* v. *Vulcanized Rubber & Plastics Co.*, 178 F. Supp. 723, 726 (E.D. Pa. 1959), *aff'd* 288 F. 2d 257 (3rd Cir. 1961), *cert. denied*, 368 U.S. 821 (1961). In the instant case, the estoppel defense should similarly be denied Mr. Lichtenstein since to do otherwise would frustrate the aim of the Federal Trade Commission Act to prevent unfair and deceptive practices and would leave him free to engage in such practices to the severe detriment of the public.

CLAIM OF UNFAIRNESS

Respondent Lichtenstein further argues that the Commission has deprived him of due process of law by unfairly preventing him and his corporation from operating a business in a certain manner, while permitting his competitor, Hydralum, to conduct its operations in exactly the same manner.

The courts have held, however, that a litigant has no *right* to be free from prosecution merely because his competitors, who are also alleged to be engaged in the same challenged practices, have not been similarly proceeded against. *See FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411 (1958). If the law were otherwise and the Commission were required to proceed similarly against all competitors, "Commission orders would be forever pending and unlawful practices rarely, if ever, corrected." *United Biscuit Co.* v. *FTC*, 350 F. 2d 615, 624 (7th Cir. 1965), *cert. denied*, 383 U.S. 926 (1966).

Thus, the courts have recognized that the Commission must have broad discretion in selecting cases to proceed against so that it may:

> [D]evelop that enforcement policy best calculated to achieve the ends contemplated by Congress and * * * allocate its available funds and personnel

in such a way to execute its policy efficiently and economically. *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411, 413 (1958).

The Commission's discretion in this area is limited, however, to the extent that its selective enforcement of the law cannot be "patently arbitrary and capricious." *FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244, 250 (1967). The record of the instant case, however, is totally devoid of even a suggestion that would indicate or even imply that the Commission acted in an arbitrary or capricious manner in bringing the instant case. There is no evidence that the Commission singled out Mr. Lichtenstein for prosecution to the exclusion of others in the water repellent paint business. In fact, the opposite is true. Complaint counsel indicates that the Commission has been investigating and proceeding against a number of respondents' competitors, and several of them are now under cease and desist orders.[10] Thus, we find no reason to conclude that the Commission has been unfair or arbitrary in also proceeding against Universe Chemicals and respondent Lichtenstein.

We note that unlike the typical case in which a respondent seeks to stay prosecution on the grounds that he will suffer financial loss if he is prohibited from practices open to his competitors, Mr. Lichtenstein will incur no financial hardship if the cease and desist order against him takes immediate effect. Factually, the immediate entry of the order will not place him at a competitive disadvantage, since he states that he does not intend to establish a similar company in the water repellent paint business. It is difficult to see how the effectiveness of the order can in any way affect his ability to obtain and hold a job.

Finally, we point out that even if respondent succeeded in demonstrating that he would suffer substantial injury through the enforcement of this order, the Commission would not be required to withhold its enforcement of the order. *FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244, 251 (1967). Our overriding concern must be to protect the public from illegal practices which we have found to exist, and in this case, the only means to assuring that the public will be adequately protected is to immediately put into effect the cease and desist order.

Accordingly, we deny respondent Lichtenstein's claim that the effective date of the cease and desist order against him should be postponed and adopt the hearing examiner's Initial Decision and the order contained therein.

---

[10] The following companies, which were alluded to during Mr. Lichtenstein's testimony (Tr. 117, 1104–05), are under Commission orders: *Thermochemical Products, Inc.*, Docket No. 8725 (July 25, 1969) [76 F.T.C. 107]; *Wilmington Chemical Corp.*, Docket No. 8648 (June 17, 1966) [69 F.T.C. 828]; and *Excel Chemical Corp.*, Docket No. C–1432 (Sept. 30, 1968) [74 F.T.C. 880].

IN THE MATTER OF

NATHAN DIAMOND TRADING AS EMPIRE FURNITURE STORES, ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-2052, Complaint, Sept. 24, 1971—Decision, Sept. 24, 1971

Consent order requiring a Los Angeles, Calif., individual trading as a seller and distributor of furniture to cease violating the Truth in Lending Act by failing to use the terms "cash price," "cash downpayment," "amount financed," "finance charge," "annual percentage rate," and other terms required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Nathan Diamond, individually, and trading as Empire Furniture Stores or Nat Diamond's Empire Furniture Stores, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Nathan Diamond is an individual trading as Empire Furniture Stores or Nat Diamond's Empire Furniture Stores at two locations in Los Angeles, California, 4431 West Adams Boulevard and 4525 South Central Avenue.

PAR. 2. Respondent is now and for many years has been engaged in the offering for sale, sale, and distribution of furniture and other merchandise to the public through retail stores.

PAR. 3. In the ordinary course and conduct of his business, respondent regularly extends, and for sometime has extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of his business and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing his customers to execute retail installment conditional sales contracts. Respondent has made no other written disclosures in order

to comply with the Truth in Lending Act. By and through the use of these contracts, respondent:

1. Fails to clearly, conspicuously, and in meaningful sequence make the required disclosures, as prescribed by Section 226.6(a) of Regulation Z.

2. Fails to use the term "cash price" to describe the cash price of the goods sold by him, as prescribed by Section 226.8(c)(1) of Regulation Z.

3. Fails to use the term "cash down payment" to describe any downpayment in money, as prescribed by Section 226.8(c)(2) of Regulation Z.

4. Fails to use the term "amount financed" to describe the amount financed, as prescribed by Section 226.8(c)(7) of Regulation Z.

5. Fails to use the term "finance charge" to describe the finance charge, as prescribed by Section 226.8(c)(8)(i) of Regulation Z.

6. Fails to print "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

7. Fails to disclose the sum of the cash price and the finance charge, and to describe that sum as the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

8. Fails to use the term "total of payments" to describe the sum of the payments, as prescribed by Section 226.8(b)(3) of Regulation Z.

9. Fails to disclose the annual percentage rate with an accuracy to the nearest quarter of one percent, as prescribed by Section 226.5(b)(1) of Regulation Z.

10. Fails to print "annual percentage rate" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

11. Fails to make the disclosures required by Sections 226.8(b)(4) and 226.8(b)(5), as prescribed by Sections 226.8(a) and 226.801 of Regulation Z.

PAR. 5. By and through the acts and practices set forth above, respondent failed to comply with the requirements of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to Section 103(q) of the Act, such failure to comply constitutes a violation of the Truth in Lending Act and, pursuant to Section 108 thereof, respondent has violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Nat Diamond is an individual and sole proprietor of Empire Furniture Stores, also known as Nat Diamond's Empire Furniture Stores. He owns and operates two furniture stores. His office and main place of business is located at 4431 West Adams Boulevard, Los Angeles, California. The other store is located at 4525 South Central Avenue, Los Angeles, California.

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

ORDER

It is ordered, That respondent Nathan Diamond, individually, and trading as Empire Furniture Stores or Nat Diamond's Empire Furniture Stores, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer

credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to clearly, conspicuously, and in meaningful sequence make the required disclosures, as prescribed by Section 226.6(a) of Regulation Z.

2. Failing to use the term "cash price" to describe the cash price of the goods sold by him, as prescribed by Section 226.8(c)(1) of Regulation Z.

3. Failing to use the term "cash down payment" to describe any downpayment in money, as prescribed by Section 226.8(c)(2) of Regulation Z.

4. Failing to use the term "amount financed" to describe the amount financed as prescribed by Section 226.8(c)(7) of Regulation Z.

5. Failing to use the term "finance charge" to describe the finance charge, as prescribed by Section 226.8(c)(8)(i) of Regulation Z.

6. Failing to print "finance charge" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

7. Failing to disclose the sum of the cash price and the finance charge, and to describe that sum as the "deferred payment price," as prescribed by Section 226.8(c)(8)(ii) of Regulation Z.

8. Failing to use the term "total of payments" to describe the sum of the payments, as prescribed in Section 226.8(b)(3) of Regulation Z.

9. Failing to disclose the annual percentage rate with an accuracy to the nearest quarter of one percent, as prescribed by Section 226.5(b)(1) of Regulation Z.

10. Failing to print "annual percentage rate" more conspicuously than other required terminology, as prescribed by Section 226.6(a) of Regulation Z.

11. Failing to make all the required disclosures in one of the following three ways, in accordance with Section 226.8(a) or 226.801 of Regulation Z:

(a) Together on the contract evidencing the obligation on the same side of the page and above or adjacent to the place for the customer's signature; or

(b) on one side of a separate statement which identifies the transaction; or

470-883—73——33

(c) on both sides of a single document containing on each side thereof the statement "Notice: See other side for important information," with the place for the customer's signature following the full content of the document.

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

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

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the respondent's business such as dissolution, assignment or sale resulting in the emergence of a successor business, corporate or otherwise, the creation of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

IN THE MATTER OF

GERMAN AUTO AGENCY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2053. Complaint, Sept. 28, 1971—Decision, Sept. 28, 1971

Consent order requiring an Arlington, Va., firm which sells, services and repairs used Volkswagen automobiles to cease misrepresenting that they are franchised Volkswagen dealers, that they sell new cars, failing to disclose that their cars are used, failing to reveal that the odometers have been altered and failing to disclose that their warranties are not the same as those of authorized Volkswagen dealers. Respondents are also required to make all the disclosures required by Regulation Z of the Truth in Lending Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that German Auto Agency, a corporation, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, hereinafter referred to as respondents, have violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent German Auto Agency is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 3000 North 10th Street, in the County of Arlington, Commonwealth of Virginia.

Respondent George Sprague is an individual and officer of corporate respondent and respondent Ray Culbertson is an individual. The said individual respondents cooperate and act together to formulate, direct and control the acts and practices thereof including the acts and practices hereinafter set forth. Respondent George Sprague's address is 5443 85th Avenue, Lanham, Maryland. Respondent Ray Culbertson's address is 6010 Softwood Trail, McLean, Virginia.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, and service and repair of used Volkswagen automobiles, and other used automobiles, to the public.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in COUNT I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said automobiles to be sold to purchasers thereof located in the District of Columbia and in Maryland and in Virginia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their used Volkswagen auto-

mobiles, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers transmitted through the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of such advertising representations but not all-inclusive thereof is the following:

(Located on either side,
'69 of a silhouette of '70
a Volkswagen)
$95 down
$58 mo. 36 mos.
$2207 deferred payment price
15.09 annual percentage rate
100% warranty
$1,695 up

Finance Manager on duty 9 A.M. 'til 9 P.M.
All Federal Taxes Included

German Auto Agency
3000 10th Street, N. Arlington, Va.
522-3444
'Til 9 P.M.

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. The respondents are an authorized Volkswagen dealer, franchised by the manufacturer to sell Volkswagen automobiles.

2. The respondents have in stock and sell new and unused Volkswagen automobiles to the public.

PAR. 6. In truth and in fact:

1. The respondents are not an authorized Volkswagen dealer and are not franchised by the manufacturer to sell Volkswagen automobiles.

2. The respondents do not have in stock and do not sell new and unused Volkswagen automobiles to the public.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were, and are, unfair, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid, the respondents have failed to disclose to purchasers of Volkswagen automobiles that said automobiles have been manufactured specifically for sale in a foreign market rather than the United States and that, therefore, the specifications of the Volkswagen automobiles sold by respondents differed, among other ways, in components, such as engine size, from new and unused Volkswagen automobiles of the same year manufactured specifically for and sold by authorized Volkswagen dealers in the United States. These differences, which are not readily apparent to the public, and which would be recognized only by trained and experienced persons, affected the performance of the automobile, the person's convenience, and the cost and time for repairs.

Therefore, the respondents' failure to disclose such material facts as aforesaid was, and is, an unfair, false, misleading and deceptive act and practice.

PAR. 8. In the further course and conduct of their aforesaid business, respondents have, in many instances, provided purchasers of Volkswagen automobiles with warranties for service and repair of the automobiles. In such instances, respondents have failed to disclose to the purchasers the material fact that warranties provided by respondents are not identical in coverage and duration to new car warranties provided by authorized Volkswagen dealers. Further, respondents, in some instances, have failed to inform said purchasers that work to be done under the warranties is to be performed only by respondents. In the absence of said disclosures, and in the absence of disclosures that respondents are not authorized Volkswagen dealers and that said Volkswagen automobiles are not new and unused automobiles, prospective purchasers of said automobiles expect and believe that said warranties are the same in coverage and duration as said new car warranties, and that work thereunder can be obtained from authorized Volkswagen dealers.

Therefore, respondents' failure to disclose such material facts, as aforesaid, was and is, an unfair, false, misleading and deceptive act and practice.

PAR. 9. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of used Volkswagen automobiles of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of

the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in COUNT II as if fully set forth verbatim.

PAR. 12. Since July 1, 1969, in the ordinary course and conduct of their business, as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 13. Subsequent to July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with other than open end credit sales, as "credit sale" is defined in Regulation Z, have caused and induced their customers to execute retail installment contracts, hereinafter referred to as "the contract." Respondents provide customers with no consumer credit cost disclosure other than on the contract.

By and through use of the contract, respondents have:

1. Failed, in some instances, to furnish customers with the disclosures required by Regulation Z to be furnished prior to consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

2. Failed, in some instances, to disclose the annual percentage rate, computed accurately to the nearest quarter of one percent in accordance with the provisions of Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z. Thereby respondents in some instances understated and in some instances overstated the annual percentage rates.

3. Failed to include in the finance charge the amounts of charges or premiums for credit life insurance written in connection with the credit transaction, in instances where respondents failed to obtain from

the customer desiring such insurance coverage a specific dated and separately signed affirmative written indication of such desire, in violation of Section 226.4(a)(5) of Regulation Z; respondents thereby failed, in those instances, to disclose the finance charge accurately as computed in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z.

4. Failed, in some instances, to disclose the amount of the unpaid balance, as required by Section 226.8(c)(5) of Regulation Z.

5. Failed, in some instances, to disclose the amount financed, as required by Section 226.8(c)(7) of Regulation Z.

6. Failed, in some instances, to make all disclosure required to be made by Sections 226.8(b) and 226.8(c) of Regulation Z, computed in accordance with Sections 226.4 and 226.5 of Regulation Z and disclosed in the form and manner prescribed under Section 226.6 of Regulation Z, in violation of Sections 226.6 and 226.8 of Regulation Z.

PAR. 14. Subsequent to July 1, 1969, in the ordinary course and conduct of their business, respondents have caused to be published advertisements for their used cars, as "advertisement" is defined in Regulation Z, which advertisements aid, promote or assist directly or indirectly extensions of consumer credit. Through these advertisements, respondents:

1. Failed to accurately disclose the "deferred payment price," as required by Section 226.10(d)(2)(v) of Regulation Z.

2. Stated that a downpayment in the amount of $95 would be accepted in connection with the advertised extensions of credit, when in fact respondents did not usually and customarily accept and were not willing to accept downpayments in that amount.

PAR. 15. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with Regulation Z constitute violations of that Act, and pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission, having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint

to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission, having considered the agreement and having accepted same, and the Agreement Containing Consent Order having thereupon been placed upon public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent German Auto Agency is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 3000 North 19th Street, County of Arlington, Commonwealth of Virginia.

Respondent George Sprague is an individual and officer of said corporation and respondent Ray Culbertson is an individual. Respondent George Sprague's address is 5443 85th Avenue, Lanham, Maryland. Respondent Ray Culbertson's address is 6010 Softwood Trail, McLean, Virginia.

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

ORDER

I

It is ordered, That respondents German Auto Agency, a corporation, and its officers, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of used Volkswagen automobiles, or any other products or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are an authorized Volkswagen dealer or are a franchised dealer of the Volkswagen factory; or misrepresenting, in any manner, the respondents' trade or business connections, associations, affiliations or status.

2. Representing, directly or by implication, that respondents have

in stock or sell new or unused Volkswagen automobiles or misrepresenting, in any manner, the condition or character of the vehicles which respondents stock or sell.

3. Advertising any used vehicle or group of used vehicles without clearly and conspicuously disclosing in any and all advertising thereof that the vehicle or vehicles are used.

4. Offering for sale or selling any Volkswagen automobile which has been used without clearly and conspicuously disclosing by decal or sticker attached thereto that the vehicle is used.

5. Failing orally to disclose to prospective customers prior to the showing of any vehicle to a prospective customer on which the odometer has been replaced or the true mileage altered, that the mileage indicated thereon does not reflect the actual miles the vehicle has been driven.

6. Offering for sale or selling any used Volkswagen automobile on which the odometer has been replaced, or the true mileage altered, without clearly and conspicuously disclosing by decal or sticker attached thereto that the mileage indicated on the vehicle does not reflect the actual miles the vehicle has been driven.

7. Failing to disclose orally and in specific detail to a prospective customer if a vehicle being offered for sale to that prospective customer differs in any of its components or in any other manner from new and unused vehicles of the same make and year produced for sale in the domestic American market.

8. Offering for sale or selling any used Volkswagen without clearly and conspicuously disclosing by decal or sticker attached thereto that the vehicle being offered for sale differs in any of its components or in any other manner from new and unused vehicles of the same make and year produced for sale in the domestic American market, and itemizing such differences in detailed and specific terms.

9. Failing to orally disclose prior to the time of sale, and in writing on any bill of sale or any other instrument of indebtedness, executed by a purchaser of respondents' Volkswagens and with such clarity as is likely to be observed and read by such purchaser, that:

> Warranties provided by respondents are not identical to warranties provided by authorized Volkswagen dealers and that service and repair of Volkswagens under said warranties will only be performed by respondents.

10. Representing, directly or by implication, that automobiles are warranted by respondents unless the nature, conditions and extent of the warranty, identity of the warrantor and the manner in which the warrantor will perform thereunder are clearly and conspicuously disclosed.

II

It is ordered, That respondents German Auto Agency, a corporation, and its officers, and George Sprague, individually and as an officer of said corporation, and Ray Culbertson, individually, and respondents' agents, representatives and employees, directly or through corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, assist directly, or indirectly, any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR § 226) of the Truth in Lending Act (Public Law 90–321, U.S.C. 1601, *et seq.*) to forthwith cease and desist from:

1. Failing to make all disclosures required to be made by Regulation Z prior to consummation of the transaction, as required by Section 226.8(a) of Regulation Z.

2. Failing to disclose the "annual percentage rate," using that term accurate to the nearest quarter of one percent, computed in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

3. Failing to disclose accurately the amount of the finance charge computed in accordance with Section 226.4 of Regulation Z, as required by Section 226.8(c)(8)(i) of Regulation Z, whether by failing to comply with Section 226.4(a)(5) of Regulation Z, or otherwise.

4. Failing to disclose the amount of the "unpaid balance," using that term, as required by Section 226.8(c)(5) of Regulation Z.

5. Failing to disclose the "amount financed," using that term, as required by Section 226.8(c)(7) of Regulation Z.

6. Stating in any advertisement the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, without stating all of the following items in terminology prescribed under Section 226.8 of Regulation Z, as required by Section 226.10(d)(2) of Regulation Z:

(i) the cash price;

(ii) the amount of the downpayment required or that no downpayment is required, as applicable;

(iii) the number, amount, and due dates or period of repayment scheduled to repay the indebtedness if the credit is extended;

(iv) the amount of the finance charge expressed as an annual percentage rate; and

(v) the deferred payment price.

7. Failing, in any advertisement to aid, promote or assist, directly or indirectly, any extension of consumer credit, as "advertisement" and "consumer credit" are defined in Regulation Z, to accurately disclose the amount of the "deferred payment," when that amount is required to be disclosed under the provisions of Section 226.10(d)(2) of Regulation Z; or stating that no downpayment or any specific amount of downpayment will be accepted in connection with the advertised extension of credit unless respondents do, in fact, usually and customarily accept or will accept downpayments in that amount.

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

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

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

IN THE MATTER OF

ROBERT W. RICKLES TRADING AS CORTLAND MUSIC COMPANY

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

Docket C-2054. Complaint, Sept. 28, 1971—Decision, Sept. 28, 1971

Consent order requiring a Cortland, Ohio, seller and distributor of new pianos to cease misrepresenting that the pianos are repossessed or being offered

for the unpaid balance, using any false or deceptive statements to obtain leads, misrepresenting the amount of savings available to purchasers, and failing to furnish a copy of this order to each salesman and employee.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Robert W. Ricklefs, an individual, trading and doing business as Cortland Music Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Robert W. Ricklefs is an individual trading and doing business as Cortland Music Company, with his office and principal place of business located at 141 Mecca Street, Cortland, Ohio.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale, and distribution of new pianos to the public at retail.

PAR. 3. In the course and conduct of his business as aforesaid, respondent now causes, and for some time last past has caused, pianos, when sold, to be shipped from his place of business in the State of Ohio to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of said pianos, respondent has made, and is now making, numerous statements and representations in advertisements inserted in newspapers of general circulation and in oral sales presentations made by his salesmen to prospective purchasers and to purchasers with respect to the quality, condition, characteristics, and price of said pianos, the terms and conditions of sale, and of the status and position of his salesmen.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

FOR SALE: SPINET PIANO

Wanted, responsible party to take over a spinet piano. Easy terms available. Can be seen locally. Write Credit Manager, P.O. Box 35, Cortland, Ohio 44410.

* * * * * * *

Reissue full 10 yr. warranty

* * * * * * *

Cortland Music Co.

Assistant Credit Manager

* * * * * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, and in connection with oral statements and representations of respondent and his salesmen, respondent has represented, and is now representing directly or by implication:

1. That pianos, partially paid for by previous purchasers, have been repossessed and may be purchased for the unpaid balance of the original purchase price.

2. That he is making bona fide offers to sell the pianos described in said advertisements.

3. That the advertised pianos are being offered for sale at special or reduced prices and that purchasers will thereby be afforded savings from respondent's regular selling prices.

4. That persons responding to said advertisements will deal with credit department or other personnel not compensated by sales commissions.

PAR. 6. In truth and in fact:

1. Few, if any, repossessed pianos are shown or made available for the unpaid balance of the original purchase price to persons responding to said advertisements. To the contrary, most, if not all, of the pianos shown or made available to such persons are new.

2. Respondent's offers are not bona fide offers. To the contrary, they are made for the purpose of obtaining leads to prospective purchasers. Respondent's salesmen, thereafter, call upon such persons and attempt to, and do, sell new pianos to them.

3. The advertised pianos are not being offered for sale at special or reduced prices, nor are purchasers thereby afforded savings from respondent's regular selling prices for new pianos. To the contrary, the prices at which respondent sells said pianos are his regular selling prices.

4. Persons responding to said advertisements do not ordinarily deal with the credit department or other personnel. To the contrary, they

are induced to purchase pianos by sales personnel compensated by sales commissions.

Therefore, the statements and representations as set forth in Paragraph Four and Paragraph Five hereof were and are false, misleading, and deceptive.

PAR. 7. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of pianos of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent of aforesaid false, misleading, and deceptive statements, representations, and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said pianos by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30)

days, now in further conformity with the procedure described in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Robert W. Ricklefs is an individual trading and doing business as Cortland Music Company, with his office and principal place of business located at 141 Mecca Street, Cortland, Ohio. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale, and distribution of new pianos to the public at retail.

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

ORDER

It is ordered, That respondent, Robert W. Ricklefs, an individual, trading and doing business as Cortland Music Company or any other name or names, and respondent's agents, representatives, salesmen, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of pianos or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that pianos or other merchandise have been repossessed or in any manner reacquired from a former purchaser, or are being offered for sale for the unpaid balance, or any portion thereof, of the original purchase price, or for the amount or any portion of the amount owed by a former purchaser; however, it shall be a defense hereunder for respondent to show that said advertised products actually are of the character stated and are offered for sale and sold on the terms and conditions represented.

2. Representing, directly or by implication, that any pianos or other merchandise are being offered for sale when such offer is not a bona fide offer to sell the advertised merchandise on the terms and conditions stated.

3. Using any sales plan or procedure involving the use of false, misleading, or deceptive statements to obtain leads or prospects for the sale of pianos or other merchandise.

4. Using any deceptive sales scheme or device to induce the sale of pianos or other merchandise offered by respondent.

5. Misrepresenting, in any manner, the amount of savings

available to purchasers or prospective purchasers of pianos or other merchandise.

6. Misrepresenting, in any manner, the title, status, or position of any agent, representative, salesman or employee.

7. Failing to serve a copy of this order upon each present and every future agent, representative, salesman, and employee engaged in the sale of pianos or other merchandise; failing to obtain from each such person so served a written acknowledgement of the receipt thereof and an agreement in writing to abide by the terms of this order; and failing to discharge any such person so served for failure to abide by the terms of this order.

It is further ordered, That respondent, for a period of one year from the effective date of this order, shall furnish each newspaper or other advertising media which is utilized by the respondent to obtain leads for the sale of pianos or other merchandise, or to advertise, promote, or sell pianos or other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

It is further ordered, That the respondent shall notify the Commission, at least thirty (30) days prior to any proposed change in his business organization such as dissolution, assignment, incorporation, or sale resulting in the emergence of a successor firm, partnership, or corporation, or any other change which may affect compliance obligations arising out of this order.

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

IN THE MATTER OF

COMPACT VACUUM CENTERS, INC., ET AL.

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

Docket C-2055. Complaint, Sept. 30, 1971—Decision, Sept. 30, 1971

Consent order requiring a Kansas City, Mo., seller of vacuum cleaners, electrical appliances, soaps and group purchasing memberships to cease misrepresenting the advantages of its group buying program, that members of such programs have been selected by computer, that respondent will provide money to purchase goods for members at lower prices than at local retail outlets, that goods will be delivered in two or three days, that members will have little or no difficulty in buying or shipping from local merchants, that pur-

chasers of electrical appliances will receive a free supply of soap, and that members are entitled to a ten-year membership on their initial contract; respondents are also forbidden to sell customers' notes without transferring all defenses against respondents which shall appear as a "Notice' printed on all contracts, make any contract binding on buyer prices to midnight of the third day, disclose to buyers that contracts are cancellable up to the third day, and fail to refund monies paid on cancelled contracts.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Compact Vacuum Centers, Inc., a corporation, and Argo O. Weissenbach, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Compact Vacuum Centers, Inc., is a corporation organized under and by virtue of the laws of the State of Missouri. It existed and did business with its principal office and place of business located at 6122 Troost Avenue, in the city of Kansas City, State of Missouri.

Respondent Argo O. Weissenbach is an individual and officer of said corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 3515 East 61st Street North, Kansas City, Missouri.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of electric vacuum cleaners and other electric appliances, and soaps, and memberships in group purchasing programs to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made, and are now making, through their salesmen and represent-

atives, numerous statements and representations with respect to the nature of their offer and the savings available through the use of their services.

Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

Your name has been selected from an IBM system in New York.

You can purchase household products for a discount of 40 percent to 80 percent.

You can purchase anything through our program except groceries, liquor, and Volkswagens.

We will give you $300 worth of soap for free.

You will receive a ten year membership in Family Shoppers Union.

You will be furnished all catalogues necessary to enjoy savings in purchasing the various items.

PAR. 5. Through the use of the statements and representations set forth above, and others similar thereto but not specifically set out herein, and through said statements orally made by respondents, their employees, agents, and representatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Members of respondents' group buying program will enjoy substantial savings in the purchase of all products with the exception of groceries, liquors, and certain types of automobiles.

2. Members of respondents' group buying program will be furnished by respondents all catalogues through which the savings are made available.

3. Purchasers of respondents' soap or electrical appliances or other goods or products, or a membership in respondents' group buying program will receive a free gift consisting of some appliance or other item.

4. The offer of the free gift or of other goods or services of respondents is limited as to time.

5. Potential customers of respondents' group buying program and other services and products have been specially selected by computer.

6. Respondents' program is being offered on a promotional or trial basis and will be available at a later time but at a much higher price.

7. If a member of respondents' group buying program cannot purchase a particular item at a reduced price through respondents' program, respondents will provide the means to purchase the item at a local retail outlet.

8. Respondents will pay the member of respondents' group buying program twice the amount of the difference in price if the member can-

not purchase an item at a reduced price through respondents' program.

9. Merchandise or products ordered through respondents' group buying program will be delivered in two or three days following such order.

10. There is little or no difficulty in acquiring the identification number of various items of merchandise from retail merchants for the purpose of using such number in ordering the particular item through respondents' buying program.

11. The cost of shipping goods purchased through respondents' buying program is minimal or will be paid for by respondents.

12. Purchasers of memberships in respondents' group buying program or purchasers of electrical appliances or other goods from respondent will receive soap or detergent valued at $300, absolutely free, or will receive a two years' supply of soap or detergent absolutely free.

13. Payment on the initial contract entitles the purchaser to a membership in respondents' group buying program for ten years.

PAR. 6. In truth and in fact:

1. Purchasers of memberships in respondents' group buying program will not enjoy substantial savings in the purchase of goods and products.

2. Members of respondents' group buying program will not be furnished all catalogues through which purchases may be made and savings result.

3. Members of respondents' group buying program do not receive a free gift consisting of an appliance or other item; all items received by such purchasers are more than compensated for by payment on the initial contract.

4. The offer of the free gift is not limited as to time because there is no free gift, and memberships in respondents' buying program and whatever item of merchandise available to purchasers of such program are available on a regular basis to members of the public.

5. Potential purchasers of memberships in respondents' group buying program have not been specially selected by computer, but most of these potential purchasers are contacted as a direct result of referrals from friends or acquaintances.

6. Respondents' program is not being offered on a promotional or trial basis but is available to all members of the public at an established price.

7. Respondents do not as a matter of course provide any payment for the purpose of purchasing goods for their customers.

8. Respondents as a matter of course do not pay members of their group buying program twice the amount of the difference in price if a member cannot purchase an item at a reduced price through respondents' program.

9. Orders for merchandise placed through respondents' program will not be delivered in two or three days but, rather, delivery may take a matter of weeks.

10. There may be a great deal of difficulty in acquiring the identification number of various items of merchandise from retail merchants for the purpose of using such number in ordering the particular item through respondents' buying program.

11. The cost of shipping goods purchased through respondents' group buying program is never paid for by respondents and in many cases such cost is much greater than any savings which might be realized through the use of respondents' program.

12. Members of respondents' group buying program or purchasers of respondents' electric appliances or other goods do not receive $300 worth of soap or detergent or a one year's supply of soap or detergent, but rather the amount of soap provided by respondents may last only a few weeks, and its value is less than $300.

13. Payment on the initial contract does not entitle the purchaser to a ten-year membership in respondents' group buying program, but rather a yearly fee is necessary for the membership to be kept active.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their products and services, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading, and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, may cut off various personal defenses, otherwise available to the obligor, arising out of respondents' failure to perform or out of other unfair, false, misleading or deceptive acts and practices on the part of respondents.

2. In a substantial number of instances, through the use of the false, misleading and deceptive statements and representations set out

in Paragraphs Four and Five above, respondents have been able to induce customers into signing a contract with the respondents on the respondents' initial contact with the customer. In such situation, it is highly improbable that the customer was able to seek out advice or make an independent decision on whether or not he should enter into the contract and, therefore, had to rely heavily on the advice and information given to him by respondents.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms, and individuals in the sale of electric vacuum cleaners and other electrical appliances, group buying programs, soap, and other products of the same general nature and kind as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services by reason of such mistaken and erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Compact Vacuum Centers, Inc., is a corporation organized under and by virtue of the laws of the State of Missouri. It was existing and doing business with its office and principal place of business located at 6122 Troost Avenue, Kansas City, Missouri.

Respondent Argo O. Weissenbach is an individual and officer of Compact Vacuum Centers, Inc. He formulates, directs, and controls the acts and practices of said corporation and his address is 3515 East 61st Street North, Kansas City, Missouri.

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

ORDER

It is ordered, That respondents, Compact Vacuum Centers, Inc., a corporation, and its officer, Argo O. Weissenbach, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution of vacuum cleaners or other electrical appliances, soap or detergent or memberships in group purchasing programs or other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that members of respondents' group buying program will enjoy substantial savings in the purchase of all products except groceries, liquors, and certain types of automobiles.

2. Representing directly or by implication that members of respondents' group buying program will enjoy substantial savings in the purchase of any products or goods unless it is shown that such a savings as represented will actually result after the inclusion of shipping charges and service charges and whatever other charges, fees or costs which may accrue to the transaction or misrepresenting in any manner the savings available to members of respondents' group buying program.

3. Representing directly or by implication that members of respondents' group buying program will be furnished by respondents, free of charge, all catalogues through which the savings are made available.

4. Misrepresenting directly or by implication that purchasers of memberships in respondents' group buying program or purchasers of goods or products from respondents will receive any free gift or misrepresenting the nature or value of such gift.

5. Representing directly or by implication that respondents' offer of a free gift or offer of sale of any service or product is limited as to time.

6. Representing directly or by implication that potential purchasers of respondents' goods or services or memberships in respondents' group buying program have been and are being specially selected by computer.

7. Representing directly or by implication that respondents' program is being offered on a promotional or trial basis and that it will be available at a later time but at a much higher cost.

8. Representing directly or by implication that respondents will provide money to purchase goods for members of respondents' group buying program if such members cannot purchase a given item through respondents' program at a savings from that which such member would pay for such item at a local retail outlet.

9. Representing directly or by implication that respondents will pay a member of respondents' group buying program twice the amount of the difference in price if such member cannot purchase an item through respondents' program at a price that is less than the price offered to such member at a particular local retail outlet.

10. Representing directly or by implication that merchandise or products ordered through respondents' group buying program will be delivered in two or three days following such order, or misrepresenting in any manner the length of time necessary for delivery of such merchandise or product.

11. Representing directly or by implication that a member of respondents' group buying program will have little or no difficulty in acquiring the identification numbers of various items of merchandise from retail merchants for the purpose of using such number in ordering the particular item through respondents' buying program.

12. Representing directly or by implication that the cost of shipping goods purchased through respondents' buying program is minimal or will be paid for by respondents, or misrepresenting

in any manner the cost involved in paying shipping charges for the goods purchased through respondents' group buying program.

13. Representing directly or by implication that purchasers of memberships in respondents' group buying program or purchasers of electric appliances or other products from respondents will receive, free of charge, a quantity of soap or detergent valued at $300, or will receive, free of charge, a one year supply of soap or detergent, or misrepresenting in any manner the value of any gift provided by respondents to such purchasers.

14. Representing directly or by implication that members of respondents' group buying program are entitled to a ten-year membership in such program merely on the basis of payment on the initial contract or misrepresenting in any manner the extent of the membership granted.

It is further ordered, That respondents:

A. Cease and desist from assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other such documents evidencing the indebtedness.

B. Include the following statement clearly and conspicuously on the face of any note, contract or other evidence of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder of this instrument takes it subject to all rights and defenses which would be available to the purchaser in any action arising out of the contract or transaction which gave rise to the debt evidenced hereby, notwithstanding any contractual provisions or other agreement waiving said rights or defenses.

C. Cease and desist from contracting for any sale which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of consummation of the transaction.

D. Disclose, orally prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument executed by the buyer with such conspicuousness and clarity as likely to be observed and read by such buyer, that the buyer may rescind or cancel the sale by directing or mailing a notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the

sale. Upon such cancellation the burden shall be on respondents to collect any goods left in buyer's home and to return any payments received from the buyer. Nothing contained in this right-to-cancel provision shall relieve the buyer of the responsibility for taking reasonable care of the goods prior to cancellation and during a reasonable period following cancellation.

E. Provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

F. Refund immediately all monies to customers who have requested contract cancellation in writing within three (3) days from the execution thereof.

G. Shall forthwith distribute a copy of this order to each of its present and future salesmen and representatives and other persons engaged in the sale and/or distribution of respondents' goods or services and to secure from each such salesman, representative or other person a signed statement acknowledging receipt of said order.

H. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, merger or sale resulting in the emergence of a successor, or any other change in the corporation which may affect compliance obligations arising out of the order.

I. Shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail, the manner and form in which they have complied with this order.

IN THE MATTER OF

AMERICAN MODELS SERVICE, INC., ET AL.

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

Docket C-2056. Complaint, Sept. 30, 1971—Decision, Sept 30, 1971

Consent order requiring an Elmwood Park, Ill., seller and distributor of photographs and television tapes of clients to a single model agency to cease using its present trade name unless it also states that it is not a model agency, misrepresenting to prospective clients that they have acting or modeling talent, misrepresenting that any particular person had obtained employment as the result of respondents' services, guaranteeing that their clients will get modeling or acting jobs, and misrepresenting that the price of respondents' services is less than the cost to them.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that American Models Service, Inc., a corporation, and Forbes B. Lindenfeld, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect, as follows:

PARAGRAPH 1. Respondent American Models Service, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 7310 West North Avenue, Elmwood Park, Illinois.

Respondent Forbes B. Lindenfeld is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been engaged in advertising, offering for sale and selling their services which consist of the preparation and distribution of photographs and television tapes of clients to a single model agency.

PAR. 3. In the course and conduct of their business, respondents have caused their services performed at their place of business located in the State of Illinois, to be sold to persons in States of the United States other than the State of Illinois. Respondents also disseminate advertisements by means of the United States mails, and use the services of salesmen who call on prospective purchasers of respondents' services located in states other than the State of Illinois. Respondents are now and at all times mentioned herein have been engaged in a substantial course of trade in said services in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their services, the respondents have made, and are now making, numerous statements and representations in advertisements which appear in conjunction with respondents' corporate or trade name, American Models Service, Inc., and which are distributed to prospective purchasers through the United States mail in the states in which respondents do business. Typical, but not all inclusive thereof are the following:

Since I am looking for a child for use as a model for TV commercials, it was suggested that I contact you.

If your child has the necessary attributes, I would like to arrange a TV audition.

I have been advised that you have a child that may have the attributes to work as a professional model.

To determine if your child will fill our needs and for our mutual interest, * * * would you please call me at your convenience.

PAR. 5. By and through the use of the above-quoted statements and representations referred to in Paragraph Four, and others not herein expressly set out, appearing in conjunction with respondents' trade or corporate name, American Models Service, Inc., the respondents have represented, and are now representing, directly or by implication that:

1. American Models Service, Inc., is a model agency.

2. Respondents undertake to secure employment for persons as models or actors.

3. Respondents have prior information about the modeling or acting talents or other qualifications of prospective clients or purchasers of respondents' services.

4. Respondents' services are offered only to persons who have the talent or qualities necessary to be a model or actor.

PAR. 6. In truth and in fact:

1. American Models Service, Inc., is not a model agency.

2. Respondents do not undertake to secure employment for persons as models or actors. Respondents' business is that of preparing photographs and television tapes of clients and submitting the photographs and tapes to a single model agency.

3. Respondents do not have prior information about the modeling or acting talents or other qualifications of prospective clients or purchasers of respondents' services. The names of such prospects are obtained by respondents from mailing lists.

4. Respondents' services are offered to prospective clients or purchasers without regard to their modeling or acting talent or qualifications. Respondents' services are offered to persons whose names appear on the above-mentioned mailing lists used by respondents.

Therefore, the statements and representations as set forth in Paragraph Five hereof were, and are, false, misleading, and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause their salesmen to visit persons who respond to such mail advertisement. For the purpose of inducing prospective clients to enter into contracts and pay fees, respondents, through oral statements by their salesmen represent directly or by implication that:

1. Other clients secured employment as models or actors for advertisements or commercials featuring:

a. Bayer Aspirin
b. Oscar Mayer Wieners
c. Frito-Lay Potato Chips

2. Respondents' representatives are talent scouts who are qualified to determine the talent or qualities necessary to become a model or actor.

3. Prospective clients or purchasers of respondents' services are assured of employment as models or actors.

4. The fee paid by purchasers of respondents' services is only to show "good faith" and is far less than the cost of the services performed by respondents.

PAR. 8. In truth and in fact:

1. Other clients of respondents have not secured employment as models or actors in advertisements or commercials for the companies and products set forth in Paragraph Seven hereof.

2. Respondents' representatives are not talent scouts, nor are they qualified to determine the talent or qualities necessary to become a model or actor. Furthermore, respondents' representatives are salesmen who sell on commission.

3. Prospective clients or purchasers of respondents' services are not assured employment as a model or actor and employment as such is in all respects uncertain.

4. The fee paid by purchasers of respondents' services exceeds the cost to respondents of services performed by respondents and results instead in a profit to respondents.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, false, misleading, and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of services, facilities and products of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' services, facilities and products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now con-

stitutes, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Models Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 7310 West North Avenue, Elmwood Park, Illinois.

Respondent Forbes B. Lindenfeld is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, American Models Service, Inc., a corporation, and its officer, Forbes B. Lindenfeld, individually, and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of their services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "American Models Service, Inc.," or any abbreviation or simulation thereof as part of respondents' trade or corporate name, unless there is a clear and conspicuous disclosure, in immediate conjunction therewith, that respondents' business organization is not a model agency; or misrepresenting through the use of the trade or corporate name the nature or character of respondents' business.

2. Representing, directly or indirectly:

(a) That respondents have prior information concerning a prospective client's acting or modeling talent; or misrepresenting in any manner the method by which respondents obtain the names of prospective clients.

(b) That respondents' services are offered only to prospective clients who have the qualities or talent necessary to be a model or actor; or misrepresenting in any manner that prospective clients have the qualities or talent necessary to be a model or actor.

3. Representing directly or indirectly that any particular person had obtained employment as a model or actor generally or in a particular job as a result of respondents' services unless such is the fact.

4. Representing directly or indirectly that respondents utilize talent scouts who are qualified to determine if any person has the qualities necessary to become a model or actor.

5. Representing directly or by implication that respondents' clients are guaranteed or assured modeling or acting jobs; or misrepresenting in any manner the employment opportunities available to persons using respondents' services.

6. Representing directly or by implication that respondents' services are offered for sale at a price less than the cost to respondents; or misrepresenting in any manner the price at which such services are offered or the cost to respondents.

7. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in selling respondents' services and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

ENCORE ELECTRONICS, INC., DOING BUSINESS AS CALTRADE MANUFACTURING & TRADING COMPANY, ET AL.

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

Docket C-2057. Complaint, Sept. 30, 1971—Decision, Sept. 30, 1971

Consent order requiring a San Francisco, Calif., importer of foreign made transistorized radios and distributor of them for resale to cease misrepresenting the number of transistors in the radio sets offered for sale, and selling any radio set which has on its face any misrepresentation as to the number of transistors.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Encore Electronics, Inc., a corporation, also doing business as Caltrade Manufacturing & Trading Company, and Irwin M. Randolph, individually and as officer and director of said corporation, hereinafter referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR § 414) and by this and other means have violated the provisions of the Federal Trade Commission Act, and it appearing to the

Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Encore Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 360 Ninth Street, San Francisco, California.

Respondent Irwin M. Randolph is president and a director of said corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in importing transistorized radios from foreign manufacturers and distributing these radios to wholesale and retail purchasers for resale to the purchasing public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused their products to be imported into the United States and, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents make or transmit representations in promotional materials and on labels attached to or imprinted on the radios concerning the number of transistors contained in the radios exported as aforesaid and imported, bought and distributed by them in the United States in the manner above described.

PAR. 5. In the course and conduct of their business, respondents make or transmit representations in promotional materials and on labels attached to or imprinted on the radios concerning the number of "Solid State" devices contained in the radios imported, bought and distributed by them and thereby represent, directly or by implication, that a particular set so described contains that number of transistors.

PAR. 6. In representing directly or indirectly the number of transistors or "Solid State" devices contained in their radios, respondents have transmitted transistor counts to their customers that have included in the count transistors that do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals.

PAR. 7. On May 14, 1968, after due notice and hearing, the Commission promulgated its Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR 414), effective December 10, 1968. On the basis of its findings, as set out in the "Accompanying Statement of Basis and Purpose" of the said Trade Regulation Rule, the Commission determined that it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

Represent, directly or by implication, that any radio set contains a specified number of transistors when one or more of such transistors: (1) are dummy transistors; (2) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals.

PAR. 8. Notice is hereby given that the presentation of evidence in the course of a hearing in this proceeding may be required to dispose of the issues that may arise as a result of the allegations contained in Paragraphs One through Seven herein, and that if the issues presented as a result of the allegations contained in those paragraphs should be resolved in substantiation of such allegations then the above Trade Regulation Rule is relevant to the alleged practices of the respondents. Therefore, the respondents are given further notice that they may present evidence, according to Section 1.12(c) of the Commission's Procedures and Rules of Practice, to show that the above Trade Regulation Rule is not applicable to the alleged acts or practices of respondents. If the Commission should find that the above rule is applicable to the alleged acts or practices of the respondents, then it will proceed to make its findings, conclusions, and final order in this proceeding on the basis of that rule. A copy of the rule and Accompanying Statement of Basis and Purpose, marked Appendix A, is attached hereto and made a part of this pleading.

PAR. 9. The aforesaid methods of competition and acts and practices of respondents, as alleged in Paragraph Eight hereof, were and are contrary to the provisions and requirements of the Commission's Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR § 414) and thereby constituted, and now constitute, unfair methods of competition in commerce and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

470-883—73——35

Decision and Order

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Encore Electronics, Inc., also doing business as Caltrade Manufacturing & Trading Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and place of business located at 360 Ninth Street, San Francisco, California.

Respondent Irwin M. Randolph is an officer and a director of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, Encore Electronics, Inc., and Irwin M. Randolph, individually and as officer and director of said corporation, and respondents' agents, representatives, employees, directly or

through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of radio receiving sets, including transceivers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the terms transistor or "Solid State" or any other word or phrase that any radio set contains a specified number of transistors when one or more such transistors: (a) are dummy transistors; (b) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (c) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals, provided, however, that nothing herein shall be construed to prohibit in connection with a statement as to the actual transistor count (computed without inclusion of transistors which do not perform the functions of detection, amplification and reception of radio signals), a further statement to the effect that the sets in addition contain one or more transistors acting as diodes or performing auxiliary or other functions when such is the fact.

2. Misrepresenting, in any manner, the number of transistors or other components in respondents' products or the functions of any such component.

3. Selling any radio set currently on hand which contains on the face of the product any misrepresentation as to the number of transistors in the product without first removing said misrepresentation or obscuring said misrepresentation in a manner reasonably calculated to prevent reappearance of the misrepresentation.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

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

IN THE MATTER OF

VARCO CHEMICAL CORPORATION, ET AL.

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

Docket C-2058. Complaint, Sept. 30, 1971—Decision, Sept. 30, 1971

Consent order requiring an Englewood Cliffs, N.J., seller and distributor of industrial cleaner and solvents to cease misrepresenting that sales solicitations are at the invitation of prospective customer, the container sizes or quantities, that any sample will be sent without cost, and refusing to accept return of shipment within approval time.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Varco Chemical Corporation, a corporation, and Rubin Newman, individually and as an officer of said corporation, and Joel Winston, individually and as general manager of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Varco Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 467 Route 9W, Englewood Cliffs, New Jersey.

Respondent Rubin Newman is an officer of said corporation; respondent Joel Winston is general manager of said corporation. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices heerinafter set forth. Their business addresses are the same as that of the corporate respondent.

PAR. 2. Respondents, in the course and conduct of their business, have been and are now engaged in the advertising, offering for sale, sale and distribution of industrial cleaners and solvents, including Jet-Kleen #100 and Varco Solv-212, which they ship or cause to be shipped from their warehouse in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a

substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 4. In the course and conduct of their aforesaid business, respondents, their salesmen and representatives have employed, and are employing a method of telephone solicitation in connection with the sale of their products which deceived companies, and other business entities, as to the nature and purpose of the solicitations.

Typical and illustrative of statements and representations employed, but not all inclusive thereof, are the following:

1. That a person or persons employed by the company or other business entity receiving the call has expressed an interest in respondents' products or has made inquiry with respect to said products, and that respondents are calling in response to said expression of interest or inquiry;

2. That respondents' products, Jet-Kleen #100 and Varco Solv–212 are offered for sale and sold only in quantities of 20, 30, and 50 gallon drums, and are not available for purchase in smaller quantities.

3. That a small sample of either of the aforesaid products, or both, will be sent.

4. That initial orders are sent on approval and may be returned and cancelled without cost merely by calling respondents' salesman for shipping instructions.

PAR. 5. By and through the use of the foregoing statements and representations, and others of similar import and meaning, but not expressly set forth herein, and by means of the manner in which these statements are made, respondents have represented and are now representing directly or by implication:

That the telephone solicitations are made in response to inquiries or expressions of interest made to respondents by some named or unidentified person employed by the company or other business entity which is the recipient of the solicitation.

That respondents' Jet-Kleen #100 and Varco Solv-212, are available for purchase only in large quantities and may not be purchased in less than 20 or 30 gallon drums.

That a small sample of said products will be sent without cost or obligation.

That initial orders are readily cancellable and returnable without further obligation on the part of the purchaser, except for return freight cost.

PAR. 6. In truth and in fact;

1. Respondents have not received any inquiries from any person or persons employed by the firm being solicited, nor do they call in response to said communication or inquiry, and the decision to solicit for sales purposes is made by respondent or its representatives.

2. Respondents' products, Jet-Kleen #100 and Varco Solv–212, are available for sale in quantities as small as 6 gallons.

3. Small samples of respondents' products are not shipped free of charge or obligation. Instead, respondents have shipped and are shipping their products in quantities of 20 gallon drums and above to companies and other business entities and billing said companies and other business entities for said products without their knowledge and consent.

4. Initial orders are not readily returnable and cancellable by telephoning respondents' salesman and obtaining shipping instructions. Instead, companies and other business entities that agree to receive respondents' product on approval, but which later desire to return said product, are told that advance written authorization must first be obtained from respondent. Respondents then thwart, delay and prevent return and subsequent cancellation of said unwanted products.

THEREFORE, The aforesaid statements, representations and practices were and are unfair, false, misleading and deceptive, and constitute the shipment of unordered merchandise.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead companies and other business entities into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and of the respondents' competitors and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging respondents named in the caption hereof with violation of

Section 5 of the Federal Trade Commission Act, and respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Varco Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 467 Route 9W, Englewood Cliffs, New Jersey.

Respondent Rubin Newman is an officer, and Joel Winston is general manager of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That Varco Chemical Corporation, a corporation, and Rubin Newman individually and as an officer of said corporation, and Joel Winston individually and as general manager of said corporation, and respondents' agents, representatives or employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of industrial cleaners and solvents, or other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting directly or by implication that any person making a sales solicitation, by telephone or otherwise, in connec-

tion with the sale of any of respondents' products is calling in response to an inquiry made to respondents by some named or unidentified person employed by the company or other business entity receiving the call.

2. Misrepresenting directly or by implication the container sizes or quantities of its products which are offered for sale on approval or which are offered for final sale.

3. Misrepresenting directly or by implication that any sample will be sent without cost or obligation.

4. Thwarting, delaying, refusing to accept, or preventing by any method or means, the return or cancellation within the approval period of all or part of any shipment sent on approval when the material is in the same condition and container as it was at time of receipt by the consignee.

It is further ordered, That respondents maintain full and accurate records of any and all complaints, inquiries, and the like, received from customers or prospective customers, pertaining to any of the acts or practices prohibited by this order, for a period of one year after their receipt, and that such records be made available upon request for examination and copying by a duly authorized agent of the Federal Trade Commission during the normal business hours.

It is further ordered, That respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services and shall secure from each such salesman or other person a signed statement acknowledging receipt of a copy of this order.

It is further ordered, That respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

SCHOOL SERVICES, INC., ET AL.

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

Docket 8729. Complaint, Feb. 13, 1967—Decision, Oct. 4, 1971

Upon remand by the United States Court of Appeals, District of Columbia Circuit, 425 F.2d 583, and in view of the change in the composition of the Commission, an oral re-argument was ordered. The respondents, operators of a Washington, D.C., trade school and the school's franchisees, were ordered to cease misrepresenting that they extend loans to students, that the schools have any relation with the government, that the offered courses qualify students as airline stewardesses or buyers for retail stores, that respondents find jobs for students, using false inducements to obligate enrollees to pay money, and failing to furnish any franchisee with a copy of this order. The existing order against School Services, Inc., 74 F.T.C. 920, is dismissed and the motion of Vincent Melzac to dismiss complaint is denied.

OPINION OF THE COMMISSION

OCTOBER 4, 1971

This case is before the Commission upon the remand of March 20, 1970, by the United States Court of Appeals for the District of Columbia, of the Commission's decision and opinion of October 10, 1968, in the captioned matter. In view of the change in the composition of the Commission which took place subsequent to the Court's remand, the Commission decided that re-argument will better enable it, as now constituted, to carry out the Court's instruction to review the conclusions of the hearing examiner in light of all the evidence of record. Accordingly, by order of October 29, 1970, the Commission scheduled oral re-argument on the appeal by counsel supporting the complaint from the hearing examiner's initial decision for February 9, 1971. On January 26, 1971, respondents filed a motion to dismiss the complaint on the ground that the individual respondent, Vincent Melzac, had divested himself of any equity interest in the corporate respondents. In addition, Vincent Melzac filed an affidavit to the effect that he has completely divorced himself from the "school" business and does not have any present intention of returning to that business in the foreseeable future. Subsequently, during the course of oral re-argument before the Commission on February 9, 1971, counsel of record informed the Commission that he was appearing solely on behalf of the individual respondent, Vincent Melzac, but was no longer representing any of the corporate respondents. He

reiterated his position that the complaint against Vincent Melzac should be dismissed because he is no longer in the "school" business.

It has long been settled of course that abandonment of the challenged practices does not ordinarily bar the issuance of an order to cease and desist. In fact, in the very first Commission decision to be judicially reviewed after the enactment of the Federal Trade Commission Act, respondent unsuccessfully raised the issue of "abandonment" in an effort to avoid entry of an order, *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307 (7th Cir. 1919). Since then a long line of decisions attests to the validity of this rule. The last time this issue was litigated before the Commission was in *Consolidated Mortgage Company, et al.*, F.T.C. Docket 8723, issued February 19, 1968 [73 F.T.C. 376], [CCH 1967–1970 Transfer Binder] Trade Reg. Rep. ¶ 18,235. There the Commission held that "an order is justified in this case against the individual respondents in spite of the declared present intention of each not to re-enter such business at any future date" (at 20,623). On appeal this holding was specifically affirmed (*Lester S. Cotherman et al.* v. *Federal Trade Commission*, 417 F.2d 587, 595–96, (5th Cir. 1969)).

Particularly applicable to the instant proceeding is the holding in *C. Howard Hunt Pen Co.* v. *Federal Trade Commission*, 197 F.2d 273 (3rd Cir. 1952) in which the Court observed the following:

> Petitioner alleged in its answer to the complaint that it has no intention of resuming that practice but there is no specific testimony to that effect. We see no reason why even if there had been the Commission would have been bound simply by the promise of the petitioner. Particularly is this true where petitioner's claim before the Commission and before this court has been that it was not guilty of any deception * * *. (at 281)

The same reasoning applies here and also particularly because of respondent's claim that he has not been guilty of any deception. Respondent's motion to dismiss the complaint is, therefore, denied.

With respect to the corporate respondents, the franchising corporation, Cinderella Career and Finishing Schools, Inc., The Stephen Corporation which operates a Cinderella Career and Finishing School, and School Services, Inc., a corporation which purchases student tuition notes, the Commission has before it the affidavit of the individual respondent, Vincent Melzac, dated January 26, 1971, and the affidavit of counsel supporting the complaint dated July 9, 1971, to the effect that these corporations are no longer in business. It is not known, however, whether these corporations have been dissolved or are merely dormant and thus capable of renewed business activity at any moment. On balance, therefore, it appears that the public interest requires that

these corporations, with the exception of School Services, Inc., be retained as respondents in this proceeding. For reasons stated in this opinion, the complaint against School Services, Inc., is being dismissed.

The complaint in this case charges the respondents with violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a)(1), in the operation of a finishing school. The complaint alleges that respondents disseminate false and misleading advertisements and engage in a variety of unfair or deceptive acts and practices in connection with the operation of their finishing school in order to enroll prospective students for one or more of the courses of instruction offered by respondents.

Specifically, the complaint includes allegations that respondents represent that they grant educational loans to students when in fact the student signs a negotiable installment contract; that respondents represent contrary to fact that their school or the courses it offers have been officially approved by a government or nonprofit organization; that respondents misrepresent that the school offers courses of instruction which will qualify students to become airline stewardesses or buyers for retail stores; that respondents misrepresent that in almost all cases they will find jobs for their students through their job placement service; and that respondents frequently represent, solely for the purpose of enrolling a prospective student in an expensive course of study, that such a course will enable the student, in most cases, to obtain a better job through respondents, when such is not a fact.

The proceeding involves three corporate respondents and the individual respondent Vincent Melzac. Cinderella Career and Finishing Schools, Inc. (Cinderella) is a corporation which franchises, for a fee, a system of operating and developing finishing schools. Its franchisees operate under the trade style of Cinderella Career and Finishing School or Cinderella Career College and Finishing School.[1]

The Stephen Corporation (Stephen or "the school") operates a finishing school under the trade style of "Cinderella Career and Finishing School" or "Cinderella Career College and Finishing School" in accordance with a franchise from Cinderella. The Stephen Corporation's controlling stockholder was the individual respondent Vincent Melzac.

School Services, Inc. is a corporation engaged in the purchase of

[1] Cinderella supplies its franchisees with advertising material, some of which is in issue in this proceeding, curricula, manuals, instructional devices and related materials. Its sole stockholder was the individual respondent, Vincent Melzac.

student tuition notes from schools such as the one operated by the Stephen Corporation.[2]

The Cinderella Career and Finishing School, operated by the Stephen Corporation, offers such courses of instruction as "Executive Secretarial, Professional Modeling, Retail Fashion Merchandising, Self Improvement, Finishing," etc. The school is operated like any other commercial undertaking—it advertises in various media and uses sales representatives in its efforts to sell its services for profit. Its students are primarily young women around 18 years of age and older, but there is no age limit for the purpose of enrolling for a particular course of study. The length, and correspondingly the cost, of the courses varies.

A girl who has decided to enroll in the school signs a noncancellable enrollment contract either subsequent to an interview with a counselor at respondents' place of business or after an interview with one of respondents' sales representatives.

The school's curriculum is divided into "career courses" and "finishing courses." "Finishing" courses consist of instruction in how to improve a student's looks, speech, bearing, manner and poise—in short, how to improve a student's overall appearance. "Career" courses are designed to teach the students a specific skill such as secretarial, fashion merchandising, professional modeling, etc. All career courses contain a certain amount—and to a considerable extent are built upon the basic concepts—of finishing courses. However, only students completing a career course graduate and receive certificates of completion in the form of a diploma. In addition, the school offers a cooperative fashion merchandising course which entails three days a week of classroom work and three days a week practical work in a department store, for which the student is paid by the department store. Once a year the school operates a beauty contest to determine the Miss Cinderella of the year. It is not necessary, however, to be a student to enter this contest.

Hearings were held before an examiner, who filed his initial decision on January 26, 1968, dismissing all the allegations of the complaint as to all respondents. On May 28, 1968, the case was heard before the Commission upon complaint counsel's appeal from the examiner's initial decision and respondents' answer in opposition thereto.

[2] These tuition notes result when students are unable to pay for a school's courses of instruction in cash and instead enter into an enrollment contract and sign a negotiable promissory note. The contract provides that payment is to be made in specified monthly installments over a predetermined period of time. Payments are made directly to School Services, Inc., the holder of the note. The individual respondent, Vincent Melzac, was the president of School Services, Inc. and owned all of the Class A voting stock and one-third of the Class B nonvoting stock.

The Commission, on the basis of its findings of fact, on October 10, 1968, in part sustained and in part reversed the examiner's initial decision and issued its order accordingly. An appeal was taken and the case was remanded to the Commission for further consideration.

I

Two issues were considered by the court: (1) Whether the action of the Commission in reversing the hearing examiner comported with standards of due process—more specifically, "whether the full Commission in reviewing an initial decision, may consider the advertisements *de novo*, disregarding entirely the evidence adduced at a lengthy hearing, and arrive at independent findings of fact and conclusions of law, or whether the Commission is bound by its own rules and regulations, as well as concepts of due process, to review the conclusions of the hearing examiner in light of the evidence." The court held that the Commission must follow the latter course and remand the case, with instructions that if the examiner's conclusions are set aside the Commission must so state and give its reason for so doing. (2) Whether then Chairman Paul Rand Dixon should have recused himself from participating in the review of the initial decision due to public statement he had previously made, which allegedly indicated prejudgment of the case on his part. The court held that then Chairman Paul Rand Dixon should have so recused himself and instructed the Commission to consider the record and evidence in reviewing the initial decision without the participation of Commissioner Dixon. Accordingly, this case is being decided without Commissioner Dixon's participation.

Pursuant to the court's instruction, the Commission has again reviewed the record of this proceeding in its entirety, along with the contentions of counsel. In this connection it should be noted that the findings and conclusions made by the Commission are based upon this review and after the Commission has carefully considered and weighed all of the evidence involved. Moreover, the Commission in doing this has also carefully considered the findings and conclusions made by the hearing examiner in his initial decision in light of its obligations as set forth in the court's opinion.

The remand is concerned with the following allegations: That respondents represent that they grant educational loans to students when in fact the student signs a negotiable installment contract; that respondents represent, contrary to fact, that their school or the courses it offers have been officially approved by a government nonprofit organization; that respondents misrepresent that the school offers courses of instruction which will qualify students to become airline

stewardesses or buyers for retail stores; and that respondents misrepresent that in almost all cases they will find jobs for their students through their job placement service. The examiner, in his initial decision of January 25, 1968, dismissed these charges for failure of proof. We will examine each allegation in turn.

The complaint charges that contrary to fact respondents represent that they make educational loans to students who register for the courses offered at Cinderella Career and Finishing Schools. This allegation is occasioned by a legend appearing in respondents' advertisements, which reads, "Approved by School Services, Inc., Washington, D.C. to extend education loans".

Respondents readily admit that they do not make either educational loans or any other type of loans in the traditional sense of that word, and this fact is not in dispute. Respondents contend, however, that this statement conveys no more than that it is not necessary to pay cash for a course of instruction but that a procedure is available whereby a student can purchase a course and pay for it on an installment basis.

The examiner dismissed this charge of the complaint on the theory that a distinction between a budget plan and a loan is one without a difference (I.D., p. 33) [74 F.T.C. at 953]. We believe the examiner's conclusion to be in error for the following reasons: The examiner's theory that the distinction between a budget plan and a loan is one without a difference is an oversimplified view of the issue involved. It is of no importance that the net effect is the same—to permit a student to pay for her tuition on an installment basis. The issue is: Does the statement have the capacity to deceive a prospective student? Or, more responsive to the specific facts—would a prospective student have answered the advertisement had she known the true facts?

There is evidence in the record that the term "education loans" might lead students to misunderstand the terms under which they might finance their enrollment in respondents' course.

Mr. Lester Jack Wilson, one of complaint counsel's expert witnesses, a counselor for at least eight years at Washington and Lee High School in Arlington, Virginia, testified as follows:

> Q. Now, I read you at the bottom of the Commission's Exhibit 11 the statement "approved by School Services, Inc., Washington, D.C. to extend education loans."
>
> What would that mean to the student, Mr. Wilson?
>
> A. At the present time there are so many Government and Federal loans, aids to help students to seek worthwhile training and better themselves, that our students feel that this is, well they attach Federal loans to this is what they do.
>
> Whether this is meant to do this or not, they do attach the idea that "well, I can get one of these Government loans." It doesn't say you can and it doesn't say you can't, but this is the way they interpret this in many cases. (Tr. 332–333.)

James G. Busick, the Superintendent of Schools in Dorchester County, Cambridge, Maryland for over 14 years, testified as follows:

A. Well, it sounds very much like it might be considered a part of the Higher Education Act where they could find loans, most any possibility. The one that is used in our section works through the banks. It is the united effort by banks and the Federal Government pays the interest up until the tenth month the child graduates from school and then they start paying back on the loan. It sounds very much like it comes under the Higher Education Act of 1965. That is the way that I would interpret it.

Q. How would these girls interpret it?

A. It sounds like they can get a loan very easily by the last statement.

Q. From whom?

A. Well, I would assume that the first places I would see something like this written I would think that it would come under the federal program of trying to add money for guaranteed loans under the Higher Education Act. (Tr. 686–687.)

Julia Fickling, one-time guidance counsel for the District of Columbia public schools and Acting Supervising Director at the time of her testimony, testified as follows:

A. Well, I am afraid that most students would assume, when they see the School Services they would assume that this meant the public school, and that they would be able to borrow money in order to take this training. (Tr. 442.)

In addition to this expert testimony which interprets respondents' advertisements as misleading, it is our belief that the capacity of these ads to deceive is apparent on their face.

We have no doubt that there is a substantial distinction between the terms "education loans" and the terms "credit terms" or "installment contracts." The distinction is evidence of a consumer preference for educational loans rather than installment contracts, of which preference respondents sought to take advantage by misrepresenting the true nature of the service offered.

Unquestionably the consumer reacts with less alertness to the term "education loans" than he would to "installment contracts" or a similar description, and he is thus lulled into a false sense of security, particularly when we consider that educational loans are frequently underwritten by some governmental body and are thus removed from the arms-length, hard-sell type of commercial transaction. In this case, the "glorification" may induce a prospective student to answer an advertisement which she might not have answered had it stated, "budget plans available" or words of similar import.

Accordingly, we disagree with the examiner's conclusion that these ads are not deceptive or misleading. In view of our divergent opinions, it is apparent that the terms of respondents' advertisements are susceptible to two interpretations, and it is, therefore, equally apparent

that the ads have the capacity to mislead the public. As such, they are false within the meaning of Section 5, and we so conclude.

The complaint also alleges that the same representation—"Approved by School Services, Inc., Washington, D.C. to extend education loans"—implies that School Services, Inc. is a government agency, or public, nonprofit organization that has officially approved Cinderella Career and Finishing School or the courses offered by such school.

The consumer testimony adduced in support of this allegation is inconclusive, although one consumer—Bernice Bowles—testified that it was her impression that the Cinderella advertisements represented that School Services' financing was "approved by the Board of Education to extend any type of loans concerning the school" (Tr. 546). The examiner did not consider this testimony persuasive or probative because, in his words, Mrs. Bowles was "obviously angry" at the Cinderella School "not for anything it had done or failed to do, but because her husband had berated her for aspiring to be a professional model" (I.D., p. 35) [74 F.T.C. 954].

The testimony of Lester Jack Wilson, one of the expert witnesses, the examiner did not consider probative because "the best evidence of a high school senior's understanding of any Cinderella advertisement would be the testimony of such high school senior * * *" (I.D., p. 36) [74 F.T.C. 955]. The ruling that a "best" or "better" witness is required to be called is a misapplication of the best evidence rule, which, as is generally recognized, applies to documents and not witnesses.[3] Moreover, the ruling implies the need for consumer testimony to support a complaint allegation of deception or capacity to deceive. It is well established, however, that consumer testimony is not essential to support a finding of deception or capacity to deceive. Nor would the introduction of such witnesses assure testimony typical and representative of the group of consumers at which the advertisements are aimed.

James G. Busick testified:

> * * * It sound very much like it comes under the Higher Education Act of 1965 that is the way I would interpret it. (Tr. 687.)
>
> Well, I would assume that the first place I would see something like this written I would think that it would come under the Federal program of trying to add money for guaranteed loans under the Higher Education Act. (Tr. 687.)

This testimony the examiner dismissed with the statement that "if it proves anything, merely proves what the advertisement means to him—not to his high school seniors" (I.D., p. 36) [74 F.T.C. 955]. Busick's testimony was specifically prefaced, however, as relating to his students' understanding of these advertisements and not necessarily his own (Tr. 685).

---

[3] Wigmore, *Evidence*, Sec. 1174 (3d ed. 1940); McCormick *Evidence*, Sec. 195 (1954).

Julia Fickling testified that "most students would assume, when they see the School Services * * * that this meant the public school, and that they would be able to borrow money in order to take this training" (Tr. 442). The examiner dismissed Mrs. Fickling's testimony with the statement that "it will not support any finding that any of the Cinderella school advertisements would deceive any female high school senior reading them" (I.D., p. 37) [74 F.T.C. 956]. The examiner concluded that the "Cinderella school advertisements which include the language 'Approved by School Services, Inc., Washington, D.C.' are not false, misleading and deceptive within the purview of Section 5 of the Federal Trade Commission Act" (I.D., p. 37) [74 F.T.C. 956]. We are unable to agree. Our own review of the record and analysis of the advertisements in issue convinces us now, as it did previously, that the use of the phrase "Approved by School Services, Inc., Washington, D.C." has the capacity to deceive the reader that the Cinderella school has been approved by some governmental or similar body.

The next issue concerns the allegation in the complaint that respondents misrepresent that they offer a course of instruction which qualifies students to be airline stewardesses. It is admitted that respondents do not offer such a course and the sole issue is whether respondents' advertisements represent that such a course is offered. The two advertisements reproduced below [4] are among those giving rise to this allegation.

Respondents also distribute a pamphlet (CX 41) entitled "Wonderful things happen to a Cinderella Girl!" which, immediately below the heading "miracles after sundown," boasts that "Drab little typist becomes lovely airline stewardess!" The pertinent part of the pamphlet is reproduced below.[5]

In addition, many other advertisements provide a prospective student with a checklist of subjects of interest to her, one of which is "Airline," "Airlines Prep." or "Airline Preparatory." The expert witnesses introduced by complaint counsel testified on what they thought

---

[4] One appeared in the "Educational Directory" of *The Washington Post* on Sunday, September 10, 1967, under the heading "Air Career," and reads:

"Cinderella Career College

1219 C St. N.W. 628–1950

"Air Career Training is now available at Cinderella Career School, 1219 C Street. Prepare for a Stewardess or Reservationist position. Call 628–1950 for a career analysis." (CX 155.)

The second advertisement (CX 154) depicts a smiling young lady in what appears to be a stweardess uniform and states: "free brochure on an airline career." The instructions which follow invite the reader to clip, complete and mail a brief questionnaire listing the applicant's name, address and age.

[5] "Miracles after sundown—Drab little typist becomes lovely airline stewardess! Overweight order clerk now a fashion counselor! 'No-date' steno becomes belle of the office! High school graduate wins success in television! Middle-age widow looks ten years younger—gets exciting new job! Shy librarian gets three raises and a beau! Factory worker becomes studio receptionist!"

the various statements meant to high school graduates. James G. Busick testified:

A. Well, it would mean probably romance, it would mean attraction to move into something which would turn her into a very charming personality, that would appeal to her fancy and appeal to her romantic inclinations, I would assume.

Q. Reading further, "Training for exciting careers in executive secretarial, professional modeling, fashion and retailing, airlines." What would that mean to these girls?

A. Well, it would mean that they would have strong possibilities of being accepted into these four statements [sic: fields] and have a career in these fields, that would be my feeling. (Tr. 686)

William Henry Brown, a guidance counselor at McKinley High School in the District of Columbia, testified:

Q. Now, a statement here "training for exciting careers in executive secretarial, fashion and retailing, professional modeling and airlines," what would this mean to those students that you counsel?

A. Well, I would say here that the student would assume again that if she completed this particular course that she could expect to receive a high paying job that required quite a bit of training and it would be on a par of a profession, what she would do would amount to a professional type of work. (Tr. 459–460.)

Julia Fickling testified:

Q. What does this statement here "training for exciting careers in executive secretarial, fashion and retailing, professional modeling and airlines," what would that mean to high school graduating girls?

A. That once they had finished this course or this training that they would be eligible to get jobs in these areas, with airlines or as executive secretaries or as fashion models. (Tr. 441.)

Lester Jack Wilson testified:

Q. I see. Referring again to Commission's Exhibit 11 what does the statement "training for exciting careers in executive secretarial, fashion and retailing, professional modeling and airlines," what would this mean to these students?

A. To the student this implies that when she completes the school she can go into a top executive secretarial job. I don't believe many students could do this from any school, whether it be Cinderella or any business school or what have you. This implies "the top is there if you take our training," I suppose. Professional modeling, it implies the top of the top jobs is what the students—how they react to this. On the airlines, my knowledge is that the airlines will take people without this. Airline people have told me that they prefer they not have this type training, so, therefore, I don't see really what the airline training has to do to train a person to be an airline stewardess and if they have to take the airline training anyway after this. (Tr. 331–332.)

The examiner felt that these "statements are, in fact, hearsay, and their probative value, if any, is minimal" (I.D., p. 43) [74 F.T.C. 961]. That ruling misconceives the hearsay rule and the function of expert witnesses. Expert witnesses are called upon to testify on the

basis of their accumulated knowledge in a particular subject and their testimony does not come within the hearsay rule whereby out-of-court assertions offered testimonially, which have not been in some way subjected to the test of cross-examination, are rejected. Complaint counsel's expert witnesses testified on what, in their opinion, based on their experience, these advertisements in issue conveyed to high school seniors. Their testimony did not purport to relate to actual interpretations of these advertisements by particular high school seniors. In dismissing this charge of the complaint, the examiner was apparently guided by the testimony of respondents' expert witness, Addah Jane Hurst, a teacher at Washington and Lee High School, Arlington, Virginia. Mrs. Hurst testified that the representations concerning a career with an airline "certainly doesn't mean that they are going to go out and become a stewardess" (Tr. 1280). Her testimony on this question is as follows:

THE WITNESS: All right, this is exactly the same. Well, again, I must say that it seems to me that it simply is a matter of a training ground for—he asked specifically airline preparatory. Now, it certainly doesn't mean that they are going to go out and become a stewardess, but it simply means that this is a—how do I want to say—

HEARING EXAMINER GROSS: Mrs. Hurst, what does that ad feature? Look at the ad. What overall impression do you get from the ad?

THE WITNESS: Well, it seems to me it features, really it features the personal aspect of it, doesn't it seem to you? (Tr. 1282.)

In this context we again note, as we did in our first opinion, the examiner's inconsistent and contradictory treatment of the different witnesses' testimony. For example, the testimony of James G. Busick, one of complaint counsel's expert witnesses, the examiner considered without probative value because it "merely proves what the advertisement means to [Busick]—not to his high school seniors" (I.D., p. 36) [74 F.T.C. 955]. Yet, the examiner considered Mrs. Hurst's testimony dispositive of the issue even though the record contains contrary testimony and even though it seems to be her opinion and not that of high school girls.

Next, we again consider respondents' advertisements. The smiling young lady in the stewardess uniform which invites the reader to request a free brochure on an airline career, we interpret as follows: sign up for respondents' course and become a stewardess. Similarly, the miracle after sundown in which the drab little typist becomes a lovely airline stewardess, conveys the same impression. Our own review of the record convinces us that the examiner erred in dismissing this charge of the complaint. The examiner also erred by improperly applying the hearsay rule to exclude the testimony of a number of witnesses and by failing to consider the advertisements themselves, as

well as the stipulation with respect thereto. We conclude that respondents do in fact represent that they offer a course of instruction which qualifies students to be airline stewardesses, whereas respondents admit that their courses do not so qualify their students.

Finally, the complaint alleges that respondents represent contrary to fact, that they offer a course of instruction which qualifies students for jobs as buyers for retail stores. This allegation is occasioned by the advertisements and other statements by respondents concerning their course of instruction in retail fashion merchandising, some of which are reproduced below.[6]

---

[6] "Comprehensive training in the many facets of fashion careers. Includes retailing, buying, sales promotion, advertising, display and practical field trips. FASHION IS A YOUNG PEOPLES FIELD. In no other area can a woman assume executive status at such an early age. Fashion is a stable field, the third largest in the U.S. High School Diploma or equivalent is required. SEND FOR BROCHURE. NO OBLIGATION." (CX 16–b through CX 21 ; CX 155.)

"TRAINING FOR EXCITING CAREERS IN Executive Secretarial—Professional Modeling—Fashion & Retailing—Airlines," (CX 11 ; CX 12 ; CX 13 ; CX 14.)

"CAREERS ! The Cinderella Career and Finishing School offers * * * careers in EXECUTIVE SECRETARIAL, PROFESSIONAL MODELING, FASHION MERCHANDISING, RETAIL BUYING." (CX 6 ; CX 22 ; CX 26.)

"WE'VE GOT THE CINDERELLA SECRET—Come in and find out what it is. Our world famous Cinderella Finishing Training can make you poised, lovely, confident ! Career Training for : EXECUTIVE SECRETARIAL—PROFESSIONAL MODELING—RETAIL FASHION MERCHANDISING—AIRLINES PREP." (CX 7 ; CX 8 ; CX 9.)

"Let's take a look at some of the things we offer : FASHION BUYER : The position of a buyer is both responsible and rewarding. For buyers of womens' apparel, this consists of a whirlwind tour of showrooms to view the new seasons' offering in New York, Chicago, and San Francisco. Some buyers are selected to make trips to foreign markets such as Paris, Rome or London. Earnings of buyers range from $5,000 to over $20,000 depending upon the size and type of department." (CX 43.)

"FASHION CAREERS

"All our lives are touched by fashion, for fashion is everywhere. There are fashions not only in clothing but in cars, furniture, interiors, and foods. Fashion is a fast moving world that needs people in administrative capacities who are alert, and welcome the excitement of change.

"The Fashion Career Course at Cinderella's is a varied program touching upon many facets of fashion careers, because we feel many young people are not exactly sure of what they wish to do. Some may have a latent talent for organization—some have an undiscovered knack for fashion 'know-how'—some, perhaps, a flair for writing.

"The curriculum and our faculty (all university graduates with retail experience) is selected to bring out these hidden talents and help you find your niche in the remunerative field of fashion—where advancement is quite rapid.

"Our students observe and analyze the activities of the 'F' Street stores. They prepare assignments from window displays, sales promotion campaigns, advertising and business activities. Thus they gain from the actual experience of others already in the field. In addition to preparing reports, they conduct meetings and learn the importance of getting along with people. Fashion is a young people's field. In no other area can a woman assume executive status at such an early age. And, of course, along with executive status comes financial reward. Fashion is a stable field ! It is the third largest industry in the United States, following only steel and food.

"Opportunity in retailing, just one segment of fashion, is unlimited. With the exploding population and resultant opening of Branch Stores across the country, new jobs are constantly being created. One half of retailing's top executives are under 35 years of age. Forty percent of retailing executives are women. The average buyer earns between $10,000 and $20,000, some earn more." (CX 44.)

The testimony concerning this allegation is fully explored by the examiner in his initial decision and falls into three categories: that which supports complaint counsel's position, that which supports respondents' position and that which is inconclusive. The testimony is given by expert witnesses called by complaint counsel, expert witnesses called by respondents and consumer witnesses, respectively. The testimony of the expert witnesses called by complaint counsel the examiner considered as follows:

> This, of course, is the rankest kind of hearsay evidence, and not probative. It is yet not clear to the hearing examiner why complaint counsel did not place upon the witness stand witnesses who had read the Cinderella advertisements and interpreted them in the manner asserted in the complaint. The hearing examiner must conclude that complaint counsel did not have any such witnesses—and that the failure to produce them is attributable to the fact that the advertisements were and are not in fact deceptive in the manner asserted in the complaint. (I.D., p. 49 [74 F.T.C. 965].)

This conclusion by the examiner is erroneous. Complaint counsel did introduce, by way of expert witnesses, witnesses which did interpret respondents' advertisements in the manner asserted in the complaint. The examiner chose to characterize this testimony as hearsay and of no probative value, which, as discussed above, constitutes an erroneous evidentiary ruling. The examiner also implies that complaint counsel should have introduced consumer witnesses to testify on the interpretation of these advertisements. Such is clearly not necessary. However, we have reviewed this testimony in its entirety and give it little weight. Our own examination of the advertisements and the related material persuades us that the challenged representations have the capacity to deceive a sufficient number of people into believing that respondents offer a course of instruction which qualifies students for jobs as buyers for retail stores to warrant entry of a cease and desist order.

The plain import of respondents' message is "take this course and qualify as a buyer." Respondents claim to offer "comprehensive training in buying," "careers in retail buying," "fashion buyer" and in vivid terms describe the glamorous activities of buyers and their remuneration. These are not subtle innuendoes but direct representations which promise the prospective student that upon taking this course she will qualify as a buyer, which simply is not true. We fail to see how these representations can be interpreted any other way. The promise of the whirlwind tour, the promise of New York, Chicago, and San Francisco, the promise of Paris, Rome or London is false. Respondents have stipulated that completion of a course of instruction would not qualify a student for a position as buyer in a retail establishment. The

representation is therefore false and deceptive and should be enjoined.

We do not believe it necessary to elaborate on the testimony relating to the allegation of the complaint that respondents misrepresent that in almost all cases they will find jobs for their students through their job placement service. The record contains a stipulation that none of respondents' students would, merely because they had completed a course of instruction in the Cinderella school, qualify for a job as an airline stewardess or retail buyer. Since respondents' students are not qualified to fill these positions, a job placement service with respect to such positions does not exist. Hence, a representation that it does is false and misleading.

We have also again reviewed the testimony of the expert witnesses called by respondents, as, for example, Yolanda Costello, Suzette Kettle and Peter Gough, insofar as it applies to the foregoing allegations. The testimony, while supportive of respondents' position, does not overcome the plain meaning of the advertisements in issue.

A review of the entire record in the light of the court's instructions convinces us that the hearing examiner was in error in his interpretation of respondents' representations. Our further review of the entire record convinces us that respondents made the representations alleged in the complaint and that these were false in violation of Section 5 of the F.T.C. Act.

II

Next we turn to those allegations of the complaint arising out of other representations and conduct as distinguished from the various advertisements. Paragraph Seven of the complaint includes a charge that respondents, during the course of an interview with a prospective student, frequently misrepresent that completion of one of respondents' courses of instruction will enable the applicant, in most cases, to obtain a better job through respondents' many contacts in the business world. The examiner summarily dismissed this complaint charge.

Allied to this alleged misrepresentation is respondents' practice of placing from time to time what appear to be help-wanted type advertisements in the local newspapers. One such advertisement reads:

> Model-Type woman wanted, exp. not necessary, training avail. Call 628-1950, Cinderella Career College. Ask for Miss North. (CX 34.)

One of the consumer witnesses—Miss Penny Alexander, who responded to a similar advertisement stating "Model-Type Girl Wanted"—testified that she expected to be interviewed for a job but instead was enrolled in the school. The record demonstrates that the placing of this type of advertisement is a blatant ruse on the part of

respondents to lure young women onto their premises under the guise of having available a position solely for the purpose of enrolling the applicant in the school. The record is clear that no specific job is available nor do respondents intend to fill a position when these advertisements are placed. Clearly, central to respondents' mode of operation is the promise of the availability of jobs and the holding out of nonexistent jobs to prospective students for the sole purpose of enrolling them in the school.

Fourteen other consumer witnesses testified as to the better job allegation. The testimony of five of these was specifically rejected by the examiner, who questioned the credibility of these witnesses. This ruling, as it involves the issue of credibility, will not be disturbed.

The testimony of the remaining nine consumer witnesses was reviewed in summary and incomplete fashion without comment by the examiner. It can only be assumed that in deciding to dismiss this complaint charge the examiner did not give this testimony any weight, although from the record it does not appear he questioned the veracity of these witnesses or disbelieved their testimony. He did not, however, articulate his reasons for failing to take this testimony into account and his findings pertaining to this allegation are thus incomplete. Section 8(b) of the Administrative Procedure Act provides that

> * * * All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record * * *.[7]

The absence of a specific conclusion and the basis therefor with respect to this testimony necessitates a comprehensive review thereof.

Mrs. Sandra Roth, who had some previous experience as a photographic model, testified that she enrolled in the school upon the assurance that she would have no problem getting jobs as a model. In addition, she was told that she would get jobs during her schooling, resulting in possible sufficient remuneration to help her make the monthly tuition payments. During cross-examination Mrs. Roth testified that before her interview at Cinderella Career and Finishing School she had an interview at the John Robert Powers School.

> Well, this is sort of different because John Robert Powers is strictly a finishing school. They don't give jobs, you know. They don't put you out as a model. They just give you finishing courses instead of a modeling course. (Tr. 623)

While attending school Mrs. Roth obtained three jobs through the school. Two of these jobs paid $31.50 after payroll deductions, for ap-

[7] 60 Stat. 237 (1946); 5 U.S.C. 551.

proximately eight hours each. The other job "paid" a wig for four days of modeling, from 10 a.m. to 7 p.m., or a total of 36 hours.

After her graduation Mrs. Roth regularly called the school for a period of three to four months concerning the availability of jobs, but without success, with the exception of teaching one Saturday class at Cinderella for $3.50 an hour. She finally accepted a full-time position at the front desk of the Sheraton Park Hotel in Washington, D.C., and never did receive a position through Cinderella Career and Finishing School in her chosen field—professional modeling.

Mrs. Vera White, after being interviewed at the school with her oldest daughter, Janis, enrolled her four daughters in the school in May 1966, for a total contract price of $1,387.05 ($1,040 of which was for Janis). In response to the question whether anything was said during the interview about Janis getting jobs, Mrs. White testified:

> The lady, Mrs.. I don't know her name, the light-haired lady told, she said after September she [Janis] would be making her own money, she would be out modeling, and I figured she would be modeling at some of the stores, you know, local stores, I didn't think she would be on TV and all of that, and she said—I told her that the course is rather high. She said "oh, don't worry about that." She would be making her own money and this would help pay for her course, and I said good. This is the thing that caused me to go ahead with it, you know, because I figured she would be modeling and making her own money locally. (Tr. 650–51.)

Janis received one student group assignment—modeling hats on the street—for which she did not get paid.

Sometime during September Mrs. White was invited to come to the school, ostensibly for the purpose of receiving a progress report on Janis. While there, however, an effort was made to sell her additional courses of instruction for Janis at a time when Janis had not even completed one-fourth of her original course and had not even received one paying modeling assignment.

Shortly thereafter, being discouraged about not getting any jobs, Janis discontinued her course. On this point Mrs. White testified on cross-examination:

> She [Janis] got discouraged because she wasn't getting paid for it and that was the reason she took it. (Tr. 677.)

With respect to the testimony of the consumer witness Robin North, the examiner held that it was not substantial, probative evidence, apparently because she did not sign an enrollment contract. This testimony is clearly substantial, probative evidence, however, insofar as it pertains to what transpired during the course of the interview and what was said in order to induce prospective students to enroll in the school.

With respect to the better job allegation, Mrs. North testified:

* * * So, and he [one of respondents' sales representatives] said that the average model would make from $10 to $15,000 a year, but he didn't come right out and say that I would be the average model, but he left the impression, he talked as if I would be a hit, I would make it. I didn't have any word, I just thought I would make it and get it and wouldn't have to worry.

By Mr. Freer:

Q. Did he mention any Cinderella graduate who made the big amounts?

A. He showed us a newspaper article with several models on the top, fashion models, and one was from the Cinderella School of modeling in Chicago and that was Wilhelmina and she was a top model.

HEARING EXAMINER GROSS: Is that right, Robin?

THE WITNESS: I guess. She made approximately $85,000 a year. (Tr. 743.)

Miss Gloria Lancaster was accompanied on her interview at the Cinderella Career and Finishing School by her aunt, Mrs. A. Donelson. Miss Lancaster, who subsequently enrolled in a professional modeling course and attended eight months, gave the following testimony:

A. Yes. She told us that during the time we were in the school Capitol Fur Salon—I don't know whether it was a contract or what, but she mentioned us modeling furs in Capitol Fur Salon, but nothing ever came of it. (Tr. 752.)

Miss Lancaster never obtained any kind of a position through Cinderella Career and Finishing School. Miss Lancaster did not complete her course of instruction and withdrew from Cinderella Career and Finishing School.

Mrs. Anne Donelson, Miss Lancaster's aunt who accompanied her on her interview and who signed her contract with Cinderella Career and Finishing School, corroborated this testimony. Mrs. Donelson stated that during the interview they were told that modeling jobs would be assigned to these students.

During cross-examination and in response to the question as to her understanding whether students would get paid for any modeling assignments Mrs. Donelson testified:

A. Well, it was my understanding that they would be, although I can't recall now whether the subject of salary or payment came up in the course of the conversation. She did say, however, that they would be going out, as I said, on these particular assignments, and that they would be used as they got along in advanced training, and then, of course, they would place them for jobs when they had finished the course. So I assumed that naturally they would be salaried assignments. (Tr. 769–70.)

Mr. Andrew M. Egnot enrolled his daughter Michelle for the minimum 25 hour finishing course, which she completed. In answer to the question whether any mention was made during the interview of the school obtaining jobs for its students, he testified:

There was some mention, I think, of experience and then some part-time. But this was one thing that I did try to find out about, just how many jobs were

available, and whether they were part-time or full-time. I was told that as you went along, depending upon, of course, your potential, and depending upon yourself, these jobs would come along. (Tr. 779.)

Mr. Egnot's questions as to the availability of jobs were never answered specifically; however, he was left with the definite impression that jobs would be forthcoming. His daughter never did obtain a position or an assignment through Cinderella Career and Finishing School.

Mrs. Ruth A. Kahkonen was interested in professional modeling and enrolled in the school. She testified that the promise of jobs during the interview influenced her to enter the contract—"The money sounded very good." Mrs. Kahkonen got two jobs while attending the school, neither one of which had anything to do with professional modeling. One of these jobs consisted of handing out litter bags at the stadium, for which she received $13. Mrs. Kahkonen did not finish her course because she was not getting the jobs which had been promised to her and due to personal problems.

Miss Opal S. Boyd, who was interested in professional modeling, testified that during the interview she was told that a job would be obtained for her while she was attending the school and that after she had taken 50 hours of modeling she would be prepared for a part-time modeling job. Miss Boyd completed her course but never obtained a job while attending classes or thereafter through Cinderella Career and Finishing School.

Miss Charissa Craig testified that while attending a teen fashion show she was approached by a representative of the Cinderella Career and Finishing School to see if she would be interested in taking a course there because she would make $60 an hour modeling. As a result, Miss Craig, accompanied by her mother, went to the school for an interview, during which it was again represented to her that she would start at $60 an hour while she was still attending classes. Not entirely convinced that she should do so, Miss Craig's mother was persuaded to sign the enrollment contract upon the oral representation that it could be cancelled should she change her mind. The Craigs subsequently managed, though not without some difficulties, to have their contract cancelled and lost only a $5 deposit.

The testimony of these witnesses is uncontested. Although a number of respondents' employees testified in a general way to the effect that they do not promise or guarantee jobs to prospective students, this in no way contradicts or vitiates the specific and concrete testimony of these consumer witnesses. In the light of this testimony we are at a complete loss to understand how the examiner reached the conclusion

to summarily dismiss the better job allegation of the complaint. Only studious avoidance of the plain import of this testimony could have brought about this result.

The direct and straightforward testimony of these consumer witnesses unequivocally demonstrates that respondents, for the purpose of inducing prospective students to enroll in the school, promised better jobs to these students—a promise which respondents are unwilling or unable to fulfill. A number of witnesses also testified that this particular representation was instrumental in persuading them to embark upon what they considered a very costly undertaking. To overcome this objection respondents, in a number of instances, went so far as to suggest that the jobs their students would obtain would result in sufficient pay to partly defray, if not pay in its entirety, the cost of the course. Of those witnesses who did attend the school not one obtained a job during that time through Cinderella Career and Finishing Schools which resulted in sufficient compensation to help defray even a minor part of the total cost of the course, much less pay for it in its entirety. Not even those witnesses who graduated from their prescribed courses of instruction were successful in obtaining employment through the Cinderella Career and Finishing Schools.[8] By these representations respondents seek to take unfair advantage of those who, for economic or other reasons, are unable to attend an institution of higher learning but nevertheless manifest a sincere desire to improve themselves, although for many—as amply demonstrated by the record—the cost of one of respondents' courses of instruction constituted a considerable economic sacrifice.

In this context it should be recalled that the dominant theme of respondents' advertising is a "career" in various fields of endeavors and the promise to provide young women with the requisite qualifications for material advancement. Similarly, a young woman attracted to the school is interested in self-improvement—not for its own sake, but in order to enhance her advancement possibilities. By the time the prospective student is interviewed at the school, she has been conditioned to believe that enrolling for a course of instruction will qualify her for a better position.

We must conclude that these representations constitute an unfair or deceptive act and practice and an appropriate order will be entered.

[8] Whatever success respondents may have had in finding positions for their students in retailing and secretarial, they do not appear to have been very successful in professional modeling, the field in which these witnesses were interested.

III

The complaint also contains an allegation that respondents have misrepresented that Dianna Batts, "Miss U.S.A. 1965," and Carol Ness, "Miss Cinderella 1965," were graduates of Cinderella Career and Finishing Schools and owe their success to the courses taken there.

The advertising in question can be found in the appended Findings of Fact. [PP. 576–77 herein.]

The examiner dismissed this charge because the statements concerning Miss Batts and Miss Ness are true and correct representations of fact.

The advertisement does not specifically state that Miss Batts and Miss Ness are graduates of the school. It states that they are "Cinderella girls" which, by virtue of having attended the school, they presumably are. We are unable to agree with complaint counsel that this implies they are graduates. While there can be little doubt that a good deal of their success is due to their natural aptitudes, it would serve no useful purpose to attempt to delineate which part of their success is due to their natural aptitudes and which part resulted from their association with the school.

Accordingly, this allegation of the complaint will be dismissed.

The complaint further charges that respondents misrepresent that graduates of various of respondents' courses of instruction are thereby qualified to assume executive positions in the fields for which they have been trained by respondents.

The examiner found that "it is entirely plausible for a reader of the Cinderella ads to believe that upon graduation from the secretarial course she could become an executive secretary (Tr. 332), and that graduates of the fashion merchandising course would be qualified to assume 'executive' positions in that field." (I.D., p. 62 [74 F.T.C. 975].) However, the examiner dismissed this allegation, partially on the theory that the record does not contain sufficient evidence upon which to determine the meaning of the word "executive." [9] While ordinarily the Commission would be entitled to rely on its own expertise in arriving at a conclusion as to the general meaning and import of a particular word, it does not appear that reversal of the examiner on this point in the instant matter is warranted. From the record it appears that at least in one field of endeavor with respect to which this representation is made—retailing—the status of executive is far more readily

[9] It is interesting to note that the individual respondent, Vincent Melzac, testified that graduates of the school are not qualified to assume executive positions in the various fields tought by the school.

acquired than it would be in other fields of endeavor.[10] Accordingly, this allegation of the complaint will be dismissed.

Also alleged in the complaint is that respondents have misrepresented that the Cinderella Career and Finishing School is the official Washington, D.C. headquarters for the Miss Universe Beauty Pageant.

Based on the testimony of Mr. Sidney Sussman, the owner of the Miss Universe franchise for Maryland, Virginia and the District of Columbia, to the effect that he had designated the Cinderella school as the official headquarters for the Miss Universe Pageant, the examiner dismissed this charge.

It should be pointed out, however, that Mr. Sussman also testified that the Cinderella school was not the only official headquarters and that any establishment so designated by him would be entitled to call itself the official Miss Universe Pageant headquarters. In fact, Mr. Sussman has designated a number of establishments "official headquarters."

To the extent that "the official headquarters" connotes "the one and only" or "the exclusive" official headquarters, as distinguished from "an" official headquarters, the designation is incorrect. However, we do not believe that a finding of deception upon such a technicality is warranted in the instant proceeding. The representation is ancillary to the main issues involved and of doubtful materiality in the context in which it appears and accordingly will be dismissed.

The last allegation of Paragraph Six of the complaint charges that respondents have misrepresented that Cinderella Career College and Finishing School is a college. We agree with the examiner in dismissing this particular charge.

In our opinion, the fact that the word "Career" precedes the word "College" in the school's trade name sufficiently modifies the word "College" so as to render highly unlikely the possibility of anyone mistaking respondents' school for an institution of higher learning.

Paragraph Seven of the complaint, among others, charges that when a potential student first visits the school she is frequently led to believe that contrary to fact she is qualified to compete in various beauty contests if only she would sign up for courses given by the school, which will bring out the best in her. This, the complaint alleges, constitutes an unfair or deceptive act and practice.

The examiner dismissed this charge for failure of proof.

The qualifications to enter the Miss D.C. Beauty Pageant are set out in the official entry blank, which requires that

[10] For example, the record contains testimony that a trainee bridal consultant or an assistant buyer is an executive or junior executive position.

[c]ontestant must be of good character and possess poise, personality, intelligence, charm and beauty of face and figure. (CX 36.)

It would indeed be the cruelest of hoaxes to lead a prospective student who is obviously unqualified to enter a beauty contest to believe she is so qualified solely for the purpose of inducing her to enroll in the school, which allegedly will bring out the best in her. Such action would be tantamount to fraud. However, the record does not contain any evidence to the effect that this representation was made to prospective students obviously unqualified to enter such beauty contests.

Paragraph Seven, subparagraph 2 of the complaint alleges that respondents, in the course of making the various representations and others similar thereto which are challenged in the complaint, subject the potential student to constant pressure to get the student started right away on various of respondents' courses of study and present various documents, including a negotiable enrollment agreement for said potential student's signature, without revealing the negotiable and noncancellable nature thereof or allowing sufficient opportunity to permit the reading or careful consideration thereof, and in many instances respondents are thereby successful in securing the student's commitment to such courses. This, according to the complaint, constitutes unfair or deceptive acts and practices.

The examiner summarily and without elaboration dismissed this complaint charge.

A careful review of the record indicates that the evidence and testimony contained therein is insufficient to support this charge. The enrollment contract with which a prospective student is presented states that the combined registration-tuition fee is not refundable. In addition, above the signature line, in larger than normal print, it states "Non-cancellable" and appended to the contract is a promissory note which also states in larger than normal print "Negotiable Promissory Note." We must presume that a prospective student is capable of reading this very short contract. It may well be that a prospective student does not grasp the full import of the provisions contained therein; based on this record, however, we are not prepared to rule that respondents have a greater burden of explaining these provisions than is customary. The significant contract provisions appear to be adequately disclosed and in the absence of oral representations to the contrary do not warrant further consideration.[11] Nor does the record contain sufficient evidence with respect to the "constant pressure" al-

[11] One consumer witness testified that she only entered the contract upon the express oral representation that it could be cancelled should she change her mind. She did, however, upon changing her mind, manage, though not without some difficulties, to have the contract cancelled.

legation. While there is some testimony from which support for this allegation may be inferred, it is insufficient for the purposes of sustaining an order to cease and desist. Accordingly, this charge of the complaint will be dismissed.

IV

During the course of this proceeding the issue arose which of the various respondents, should violations of Section 5 be found, are responsible therefor. Before considering the merits of this proceeding the examiner dismissed the complaint against School Services, Inc., Cinderella Career and Finishing Schools, Inc., and the individual, Vincent Melzac. We are unable to agree with this conclusion.

At the head of this "ball of wax" stood Vincent Melzac as owner or controlling owner of the three corporate respondents. In 1958, at a time when School Services, Inc. was in need of money and full-time management, Vincent Melzac provided both. He became president and owned all of the Class A voting stock, as well as one-third of the Class B nonvoting stock. Until it was sold, Vincent Melzac was the chief operating officer of School Services. The business of School Services consists of purchasing student tuition notes from various schools in accordance with the terms of a contract it has with such schools.

A wholly-owned subsidiary of School Services is Patricia Stevens Career College and Finishing School of Chicago, Illinois, to the operation of which Vincent Melzac devoted part of his business efforts.

Cinderella Career and Finishing Schools, Inc. was owned by Vincent Melzac. It is a corporation which franchises, for a fee, a system of operating and developing finishing and career schools. It supplies its franchises with advertising material, including some of the material in issue in this proceeding, curricula, manuals, instructional devices and related materials. Vincent Melzac was its sole and controlling stockholder, who formulated, directed and controlled its acts (answer of respondent Cinderella Career and Finishing Schools, Inc., p. 8).

The Stephen Corporation operates the Cinderella Career College and Finishing School pursuant to a franchise from Cinderella Career and Finishing Schools, Inc. Vincent Melzac was its controlling stockholder. He formulated, directed and controlled its policies (answer of respondent Stephen Corporation, p. 8). Much of the questioned advertising material used and distributed by the Stephen Corporation is received from Cinderella (answer of respondent Cinderella Career and Finishing Schools, Inc., p. 8). It is against this background that the examiner concluded that any violation of Section 5 could only be charged against Stephen. Complaint counsel maintain that any

violation of Section 5, if any is found, must be attributed to all respondents and particularly Vincent Melzac, "the dominant force of the entire spectrum of operation" (A.B., p. 5).

A review of the record persuades us that as to the corporate respondent School Services, Inc., the complaint should be dismissed. School Services is engaged in the purchase of student tuition notes and ancillary thereto supplies its clients with tuition and enrollment forms. The record does not demonstrate any connection, other than being part and parcel of the same general operation owned by Vincent Melzac, between the conduct of School Services and the practices challenged by the complaint. In the absence of any reliable evidence that School Services has engaged in any of the challenged practices, the complaint against it must be dismissed.

We cannot, however, agree with the examiner's conclusion to dismiss the complaint against Cinderella. The record is clear that the advertising material which is the subject of this proceeding either originates with, has been supplied by, or has been reviewed by Cinderella (finding 14). Furthermore, Vincent Melzac testified that Cinderella and Stephen share some of the costs incurred in promoting the school. These facts by themselves would be sufficient to hold Cinderella responsible for the deception created by these advertisements.[12] In addition, however, the franchise agreement (CX 74–a) requires that Stephen submit all advertisements promoting the school to Cinderella (finding 14). We fail to see how Cinderella can avoid responsibility for a violation of Section 5 resulting from an advertisement deceptive on its face or one which is deceptive because Stephen did not perform as promised by the advertisement.[13] For this reason, as well as those already mentioned, Cinderella has been found to be responsible for the deception created by the questioned advertisements. Furthermore, it should be recalled that the individual, Vincent Melzac, was the sole owner of both Stephen and Cinderella and formulated the policies of both corporations.

There is no dispute as to the liability of the corporate respondent Stephen for any violations of Section 5.

---

[12] As the court stated in *Regina Corp.* v. *Federal Trade Commission,* 322 F. 2d 765, 768 (3d Cir. 1963):

To the extent that petitioner contributed towards the cost of misleading advertisements, it was equally responsible with its retailers for the deceptive character of the representations that appear therein.

It is equally well settled that "[o]ne who places in the hands of another a means of consummating a fraud or competing unfairly in violation of the Federal Trade Commission Act is himself guilty of a violation of the Act [citations omitted]." *C. Howard Hunt Pen Co.* v. *Federal Trade Commission,* 197 F. 2d 273, 281 (3d Cir. 1952).

[13] Under the franchise agreement Stephen is required to obtain written consent for any departures from the prescribed curriculum.

Also erroneous must be considered the examiner's conclusion to dismiss the complaint against the individual, Vincent Melzac. Vincent Melzac was the sole owner of both Stephen and Cinderella. Although he was not an officer of either corporation, respondents have admitted that he formulated, directed and controlled the acts and policies of both corporations (answer of respondent Cinderella, p. 8; answer of Stephen, p. 8). Based on the record, the examiner found that with respect to Cinderella Vincent Melzac assisted in formulating the policies and overseeing its operation (finding 27). In the face of this finding and the answers of respondents Cinderella and Stephen, the examiner's conclusion, made without record support, that Vincent Melzac has not personally or individually engaged in any allegedly deceptive acts and practices (finding 51) is clearly erroneous. In addition, the record amply demonstrates that the successful operation of both corporations very much depended upon the personal background and experience of Vincent Melzac. This fact alone would justify including Vincent Melzac as one of the respondents. We also do not agree with counsel for respondents' contention that because Vincent Melzac did not concern himself with the day-to-day activities of the corporations the complaint against him should be dismissed. The determining criterion in this case is that Vincent Melzac formulated, directed and controlled the acts and policies of the corporate respondents and not whether he participated in their day-to-day activities.

It should also be noted that prior to the issuance of the complaint, when an attorney of the Federal Trade Commission questioned a representation in the advertising material of the respondent Stephen, this attorney conferred with Vincent Melzac. It was Vincent Melzac who agreed to make the suggested change and it was he who issued the necessary instructions to effectuate the change. Accordingly, Vincent Melzac must be retained as an individual respondent.

V

Respondents, in their answering brief to the Commission, request that in case the Commission reverses the examiner's determination they be granted leave to submit a supplemental brief dealing with a number of issues. This request will be denied.

During the course of this proceeding respondents requested permission to file interlocutory appeals, wherein respondents asserted that the Commission had no basis to believe that respondents have violated the Federal Trade Commission Act. This issue, aside from having been fully considered and dealt with in the order (issued June 16) denying respondents' request for taking deposition and production of docu-

ments,[14] has been rendered moot by a finding of violations of the Federal Trade Commission Act. Also fully considered previously (orders of June 16, 1967 [71 F.T.C. 1703] and September 12, 1967 [72 F.T.C. 1003]) has been respondents' contention that this proceeding is not in the public interest or in the alternative, if there is any public interest it is obviously *de minimis*. Since that time respondents have not introduced nor alleged the existence of additional facts which would warrant granting respondents' present request for leave to file a supplemental brief.

Respondents' contention that the Commission is incapable of rendering a fair and impartial decision refers to, we assume, the also previously considered Commission practice of issuing press releases and the contacts by a Commission attorney with members of the press. In order to furnish support for this contention respondents requested and were granted the appearance of two Commission employees during the course of this proceeding. Respondents do not allege, nor does a review of the record indicate, that the testimony elicited from these witnesses supports respondents' contention.

Respondents further allege that new issues arose as a result of the appearance of a Commission attorney on a television program broadcast while the hearings were in progress and on which also appeared witnesses involved in this proceeding. Respondents do not state what these issues are. This precludes a determination of the merits of whatever allegations respondents may put forth. Respondents also failed to take advantage of their opportunity to fully brief and argue any and all issues which allegedly arose as a result of this television program at the time this case was heard before the Commission on May 28, 1968, and again on February 9, 1971. Such vague contentions of the existence of unresolved issues do not warrant an extension of the appeals procedure or an exception to its well defined principles. Accordingly, respondents' request for leave to submit a supplemental brief will be denied.

Pursuant to the court's instructions, Commissioner Dixon recused himself from participating in this case.

Findings of Fact, Conclusions, and Final Order

The Federal Trade Commission issued its complaint in this matter on February 13, 1967, charging respondents with false and misleading

[14] This matter was again considered by the Commission in its order issued September 12, 1967 [72 F.T.C. 1003], denying respondents' request to file an interlocutory appeal and ruling on respondents' application for the production of documents and the appearance of Commission employees.

advertising and unfair or deceptive acts and practices in violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Sec. 45(a)(1)). Hearings were held before an examiner, and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed January 26, 1968 [74 F.T.C. 920], the examiner dismissed the complaint as to all respondents, on the ground of failure of proof.

The Commission, having considered the appeal of counsel supporting the complaint and respondents' answer in opposition thereto and the entire record, and having determined that the initial decision is inappropriate and should be vacated and set aside, now makes this (as supplemented by the accompanying opinion) its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of those contained in the initial decision.

FINDINGS OF FACT

1. Corporate respondent School Services, Inc. (SS), incorporated on December 13, 1955, under the District of Columbia Business Corporation Act (stipulation June 21, 1967; CX 1; CX 3), has been engaged continuously since its incorporation in 1955 in the purchase and discount of installment notes and other commercial paper, including installment notes given in payment of tuition by students who enroll in various schools licensed by Cinderella Career and Finishing Schools, Inc. SS is engaged in "commerce" as that term is defined under the Federal Trade Commission Act.

2. Individual respondent Vincent Melzac owns and controls all of the Class A voting stock issued by corporate respondent School Services, Inc. Melzac and 31 other persons own the Class B nonvoting stock of SS (Tr. 126).

3. Corporate respondent Stephen Corporation was incorporated on May 11, 1965, under the District of Columbia Business Corporation Act (stipulation June 21, 1967; CX 2; CX 4). It conducts the Cinderella Career College and Finishing School at 1219 G Street NW., Washington, D.C., and seeks to enroll students from states outside the District of Columbia. Stephen is engaged in "commerce" as that term is defined under the Federal Trade Commission Act.

4. Corporate respondent Cinderella Career and Finishing Schools, Inc., 1219 G Street NW., Washington, D.C. (the licensing corporation), incorporated on December 3, 1963 in the District of Columbia, under the District of Columbia Business Corporation Act (stipulation June 21, 1967; CX 4–A), has, since the date of its incorporation, been engaged in "commerce" as that term is defined in the Federal Trade

Commission Act. It has also done business at and used the address, 1221 G Street NW., Washington, D.C.

5. Students completing courses of instruction at the Cinderella Career College and Finishing School operated by Stephen Corporation are not awarded any academic degrees.

6. None of the corporate respondents has the power or authority to confer degrees or admit persons to degrees (stipulation June 21, 1967).

7. Respondent SS, a corporation organized under the laws of the District of Columbia, with its principal office located at 1100 Vermont Avenue NW., Washington, D.C., contracts with schools (such as the Cinderella school) to purchase their student tuition notes (Tr. 68). SS conducts its own credit and financial probe of the companies before entering into a business relationship with such companies (Tr. 99, 103). If SS determines that a school, such as the Cinderella school, is financially sound, an agreement is entered into (Tr. 69, 99, 137), which provides that SS will purchase all of the company's installment paper which exceeds $100 per unit when not less than 10 percent of the total price of the course for which the note is taken has been received by the school (CX 75; Tr. 97). When the first payment is received from a student, SS transmits 50 percent of the face value of the note to the school (Tr. 97). As SS collects the monthly payments, it applies the proceeds toward the advances it has made to the school. When the final payment is received, SS remits the remaining 40 percent that has, up to that time, been retained by it in a contingent account (Tr. 98). As the collections are made SS deducts a 10 percent service charge as its fee (Tr. 98). Financial management consultation is the only other service available to a school from SS. This additional service is rendered for an additional fee (CX 75; Tr. 165).

8. SS, incorporated on December 13, 1955 as a capital stock company, is not connected with any government agency or public nonprofit organization. SS's board of directors, which initially consisted of Frank K. Smith, president, Wendell B. Maroshek, vice president, Alan Y. Cole and Marion Bardes (who was elected in March 1956), met on the average of five to six times per year to establish the policies for and participate in the operations of the corporation (Tr. 1144, 1147, 1168; CX 1–E). As SS expanded it needed more money and full-time management (Tr. 139, 1166–67). Respondent Melzac provided both the additional capital and full-time management and became associated with SS in May or June of 1958 (Tr. 224–25). At that time Melzac received all of the Class A voting stock of SS (Tr. 139, 197), became chairman of the board of directors, and replaced Frank K. Smith as president (Tr. 137–38). The other shareholders of SS re-

ceived Class B nonvoting stock. These other stockholders did not disassociate themselves from SS's activities after Melzac became the chief operating officer (Tr. 137).

9. Other than the replacement of Frank K. Smith with Vincent Melzac as president and the addition of Stephen Hartwell and Emory Klineman (who became stockholders in SS after Melzac took over the presidency) to the board of directors, there has been no change in the continuity of management or composition of the board of directors of SS for the past six to eight years (Tr. 137–38, 197, 1168). The policies of SS were always established by its board of directors. This practice did not change after Melzac became president (Tr. 1147, 1168).

10. SS does not become involved in the procedures or operating practices of the schools whose installment paper it purchases (Tr. 163–64, 1147, 1150, 1168, 1180, 1193–94, 1230–31). SS does not involve itself with any of the schools' management or credit policies, internal curricula or their advertising. SS does not pay any of the cost of a school's advertising and never participates in any school's advertising campaign. SS never advertises on its own account (Tr. 190). No members of the board of directors of SS, with the exception of Melzac, operate a school (Tr. 197).

11. On June 1, 1965, SS entered into a contract with the Stephen Corporation (CX 75), which is identical to that which SS has with the other schools throughout the United States from which it purchases installment paper (Tr. 69, 165–66). SS's total volume of business with the Stephen Corporation in 1967 is estimated between $200,000 and $300,000 (Tr. 1693). SS's estimated volume for 1967 with all its schools is between three and three and one-half million dollars in notes receivable (Tr. 141–42, 1695–96).

12. No contractual relationship exists between SS and respondent Cinderella Career and Finishing Schools, Inc., the licensing corporation (Tr. 166).

13. There is no evidence in this record that SS disseminates advertising for or on behalf of respondent Stephen Corporation or respondent Cinderella Career and Finishing Schools, Inc. Barbara Solid, the sales manager for the Cinderella Career College and Finishing School of Washington, D.C., operated by the Stephen Corporation, is responsible for selecting and placing the Cinderella school's advertising (Tr. 229, 262–64).

14. Respondent Cinderella Career and Finishing Schools, Inc., a corporation doing business under the laws of the District of Columbia, at 1100 Vermont Avenue, N.W., Washington, D.C., franchises for a fee a system of operating and developing self-improvement, finishing, mod-

eling and business career schools (Tr. 157–58). It supplies its franchisees with advertising material, curricula, manuals, instructional devices and related materials necessary to operate such a school (Tr. 43; CX 74). The franchising corporation may authorize a licensed school to use the name "Cinderella" in the name under which it does business. The franchising corporation may furnish consulting and other services to its franchisees (Tr. 43; CX 74). Some of the allegedly deceptive advertisements in evidence in this proceeding were made available by the franchising corporation to the Cinderella school operated by the Stephen Corporation. In addition, the franchising agreement (CX 74–a) provides that the franchisee shall not substantially depart from the substance of the curricular material furnished by the franchisor and that the franchisee shall provide the franchisor with copies of all advertising used by the franchisee in connection with the promotion of the school.

15. Vincent Melzac owns all of the stock of the franchising corporation but he is neither an officer nor a director of the franchising corporation. Melzac has assisted in formulating the policies of and overseeing the operations of the franchising corporation since its incorporation on December 3, 1963 (Tr. 43; answer of respondent Cinderella, p. 8).

16. Respondent Stephen Corporation, doing business under the laws of the District of Columbia, at 1100 Vermont Avenue, N.W., Washington, D.C., operates the Cinderella Career College and Finishing School at 1219 G Street, N.W., Washington, D.C. The Cinderella school was franchised by the franchising corporation on June 1, 1965 (Tr. 44; CX 74). This school had previously been owned and operated by Strom-Wash, Inc., but the franchising corporation terminated the Strom-Wash, Inc. franchise on March 22, 1965 (Tr. 81–82, 85).

17. In the course and conduct of its school the Cinderella school operated by Stephen disseminated advertisements concerning the education which it offers. The advertisements appear and have appeared in newspapers of general interstate circulation. They and mailers and brochures have also been sent by direct mail to persons in the several states and in the District of Columbia. Specimens of such advertising, flyers and brochures as are being challenged in this proceeding are in evidence as CXs 5–48, inclusive, CX 53 and CX 73.

18. Respondent Melzac has owned all of the Stephen Corporation stock since it was incorporated in May 1965. He formulates, directs and controls its policies (answer of respondent Stephen Corporation, p. 8).

19. The following chart graphically depicts the relationship of the various respondents to each other.

Docket 8729

Vincent Melzac

School Services, Inc.	Cinderella Career & Finishing Schools, Inc.	Stephen Corporation
Mr. Melzac owns all of the voting stock and is president.	Mr. Melzac owns all of the stock.	Mr. Melzac owns all of the stock.
Purchases installment paper from various schools, including Stephen's.	Mr. Melzac assists in and formulates the policies of and oversees the operations of Cinderella.	Mr. Melzac formulates, directs and controls its policies.
	Cinderella franchises the operation of a number of schools throughout the country.	Operates, pursuant to a franchise from Cinderella Career & Finishing Schools, Inc., the Cinderella Career College and Finishing School.
	Cinderella makes advertising and other material available to its franchisees.	Uses and distributes the questioned advertising material, much of it made available by Cinderella.

20. The Cinderella school offers courses of instruction in finishing, fashion merchandising, secretarial, professional modeling, IBM and air career. Fashion merchandising, secretarial, professional modeling, IBM and air career are career courses designed to teach a student (in almost all cases a high school graduate) a particular skill or trade that is in great demand by industry, in a relatively short period of time, and to teach such student how to improve her looks, speech, bearing, manner, poise and appearance as part of her overall qualifications for a job. They are designed to meet the demands of the economy for skilled and attractive labor (Tr. 53–54, 65, 71, 244).

21. "Finishing" is not a "career" course. Essentially, it endeavors to train the pupil in self-improvement (Tr. 240). In the finishing courses the Cinderella school teaches visual poise, makeup, hair care and design, voice and drama, personality, social graces, ballroom dancing, wardrobe, figure coordination and fashion show (CX 79). Finishing courses are structured for students of all ages, regardless of their career interests, vocation, educational or social status (Tr. 73). The "finishing" curriculum is such that a student, with proper counseling, may enroll for as many or as few hours of schooling as her

personal desires or needs dictate (Tr. 175–76). The "finishing" courses which are part of the "career" courses are designed to meet the specific demands of the industry involved, *i.e.*, persons interested in airline or merchandising careers need personal attractiveness as one of their qualifications.

22. Cinderella's course in fashion merchandising costs $1,790. It is a full daytime program, taught Mondays through Fridays from 9:30 a.m. to 4:30 p.m. for nine months. There is, in addition, a cooperative fashion merchandising course which contemplates that the student will attend school for three days per week and work three days a week as a sales girl in a department store. This course requires 18 months to complete. In addition, there is such a course which is taught in the evenings only—for two years. A Cinderella student may, for $975, register for a six months' course which consists of seven subjects instead of the full curriculum (Tr. 261, 272, 941). As of July 2, 1967, Cinderella had six full-time day students, thirteen cooperative students, and nine night students (Tr. 944–45).

23. The Cinderella school offers a student a choice between a regular or an executive secretarial program (Tr. 1001–02). The regular secretarial program costs $990 and is taught five days per week, from 9:30 a.m. to 4:30 p.m. for six months (Tr. 1018). The executive secretarial program costs $1,490 and requires nine months' full-time schooling (Tr. 1019).

24. Cinderella's professional modeling course offers teaching in the finishing curriculum outlined on the back side of CX 79 (Tr. 112–13). A professional modeling student must be able to perfect what the finishing student learns on an elementary basis. In addition to concentrating on "makeup," "posture," "wardrobe" and "figure control," the professional modeling student may select advanced courses in specific areas, such as TV modeling, photographic modeling and advanced fashion modeling (Tr. 274–75; CX 41; CX 79). A student interested in professional modeling may enroll for such courses ranging from 75 to 325 hours (Tr. 258).

25. The "air-preparatory" curriculum consists of the finishing subjects heretofore enumerated, and is structured by the Cinderella school for students interested in careers in the airline industry (Tr. 59–60, 178–79). In June 1967 the air preparatory program was enlarged into what is now the "air career" program (Tr. 59). The curriculum of the air career program provides training in many facets of the airline industry. Among other things, it is designed to increase a student's chance to be selected for a position with the airline of her choice (Tr. 1475, 1668–69). In addition to the "finishing training," students in

the air career program are taught the theory of flight, airline terminology, basic theory, Federal Aviation Regulations, the functions of the Civil Aeronautics Board and stewardess and reservationist procedures (Tr. 1474–75, 1698).

26. An applicant for enrollment in a career curriculum at the Cinderella school is usually required to be a high school graduate or have a high school equivalency certificate (Tr. 71, 244). Students successfully completing "career courses" receive Cinderella's certificate or diploma at graduation (Tr. 918).

27. The Cinderella school's courses are sold by field representatives who solicit prospective students in their homes (Tr. 49) and by Cinderella counsellors who visit high schools (Tr. 231). Cinderella obtains its leads through the direct mailings and the newspaper advertising heretofore referred to. It also uses television and radio to a limited extent (Tr. 50–51). Cinderella representatives lecture to high school students at their schools. Interested students are encouraged to mail cards in to the school, indicating their vocational and other interests.

28. Barbara Solid, the sales manager for Cinderella, is responsible for hiring, training and firing sales personnel; for advertising in newspapers and other media; and for obtaining students for the Cinderella school, screening them, seeing that they are properly counselled as to the curriculum best suited to their needs and for actually enrolling them (Tr. 229, 255, 262–64). Nine women, one man, and one high school lecturer are on Cinderella's sales staff (Tr. 231). The sales personnel have backgrounds in sales plus some experience in one of the career fields (Tr. 230).

29. Obtaining jobs for Cinderella students and graduates is the joint responsibility of Eugene Byron, a Cinderella employee who runs the modeling agency, and the directors of the various career programs heretofore named (Tr. 88, 921, 998).

30. The advertisements distributed by respondents are primarily directed to female high school seniors or those who have recently graduated from high school, roughly, girls about eighteen years old and older. Some of the Cinderella advertising does attract females younger than eighteen and older than recent high school graduates. These are persons chiefly interested in professional modeling as a career. Some of those attracted by the Cinderella advertisements are interested in its self-improvement courses.

31. Few of the females who respond to the Cinderella ads appear to have had any formalized, institutionalized education beyond the high school level, and the deceptiveness, if any, of the Cinderella ad-

vertisements must be judged, therefore, by the impression they create on female high school seniors and young post-high school females.

32. During the course and conduct of their business respondents disseminate advertisements which contain the statement "Approved by School Services Inc., Washington, D.C., to extend education loans." It is undisputed that respondents do not make educational loans in the traditional sense of that word (Tr. 69). Rather, as a result of the agreement between the Stephen Corporation and School Services, Inc., it is possible for a student to pay for her tuition on an installment basis by entering into an installment contract (Tr. 67). The record is clear, however, that at no time do respondents make educational loans to students as represented by the above statement.

33. In December of 1965 and early 1966 Vincent Melzac met a number of times with Jean F. Green, an investigator for the Federal Trade Commission, to discuss the advertising and business practices of respondents (Tr. 1656). Mrs. Green suggested that the legend "Approved by School Services Inc., Washington, D.C., to extend educational loans" be changed to "Approved by School Services Inc., Washington, D.C., to extend budget plans" (Tr. 182). Vincent Melzac complied with this suggestion, although at the time he thought, and still thinks, that there is no distinguishable semantic connotation between the two phrases (Tr. 66, 182). Subsequent to the time that this change had been effectuated, however, a number of advertisements still appeared containing the old legend (Tr. 1459).

34. The statement "Approved by School Services Inc., Washington, D.C., to extend education loans" or "Approved by School Services Inc., Washington, D.C., to extend budget plans," which appears in most of respondents' advertisements with the implied consent of School Services, Inc., also represents that School Services, Inc. is a government agency or nonprofit organization that has officially approved Cinderella Career and Finishing School or the courses offered by such school. The record is clear, however, that School Services, Inc. is not a government agency or public, nonprofit organization.

35. Also disseminated by respondents is the following advertisement:

WHAT IS THE CINDERELLA SECRET?

[Photograph of Miss Batts]
Dianna Batts
Miss U.S.A. of the Miss World Contest A Cinderella girl

[Photograph of Miss Ness]
Carol Ness
Miss Cinderella 1965 Winner of all-expense trip to Paris, France

YOU TOO CAN BE A CINDERELLA GIRL!

Our unique world-famous Finishing Training can transform your dreams into reality, can make you charming, lovely, poised, confident, at ease wherever you go, whatever you do.

TRAINING FOR EXCITING CAREERS IN

Executive Secretarial

Professional Modeling

Fashion & Retailing

Airlines

BE THAT SPECIAL GIRL The girl looked at and admired by all * * * The girl who gets ahead in Business! Send for our FREE "Magic Door" brochure. Mail by tomorrow and we'll include Free our fascinating booklet '101 Ways To Be More Attractive.'

Official Washington Headquarters for the Miss Universe Beauty Pageant

JOB PLACEMENT SERVICE DAY AND EVENING CLASSES

New Classes Forming—Enroll Now!

CINDERELLA CAREER AND FINISHING SCHOOL
1221 G St., N.W., Wash., D.C. Phone 628–1950

Please send me your Free brochures. I have checked my interest below.
☐ Secretarial ☐ Pro. Modeling ☐ Fashion & Retail Buying ☐ Airlines
Preparatory ☐ Finishing ☐ Self Improvement ☐ Miss Universe Entry Blank.
Name _____ Age_____
Address _____
City _____ State_____ Phone_____

Approved by School Services, Inc., Washington, D.C. to extend education loans.

This advertisement does not state that Miss Batts and Miss Ness are graduates of the school. It merely states that they are "Cinderella girls," which, by virtue of having attended the school, they are. The record does not delineate precisely which part of their success is due to their natural aptitudes and which part resulted from their association with the school. The representations made with respect to Miss Batts and Miss Ness in the various advertising and promotional material of respondents are in fact true.

36. The following are illustrative examples of the various advertisements, disseminated by respondents, which offer careers in the airlines industry.

An advertisement in the "Educational Directory" of *The Washington Post* on Sunday, September 10, 1967, under the heading "Air Career," reads:

CINDERELLA CAREER COLLEGE
1219 C St. N.W. 628–1950

Air Career Training is now available at Cinderella Career School, 1219 C Street. Prepare for a Stewardess or Reservationist position. Call 628–1950 for a career analysis. (CX 155.)

The second advertisement (CX 154) depicts a smiling young lady in what appears to be a stewardess uniform, and states:

free brochure on an airline career call 628–1950 or clip and mail today
Corp. 1967 Cinderella C. & F. School, Inc.

Cinderella
Career and Finishing School
1219 C St. N.W.

Please send me the free brochure on Airline Preparatory Career training. I am a high school graduate ☐ I will graduate High School year_____
Name _____
Address _____
City _____ State_____
Zip _____ Age_____
Phone _____
Approved by School Services Inc. To Extend Budget Plans

Respondents also distribute a pamphlet (CX 41) entitled "Wonderful things happen to a Cinderella Girl!" which, among others, contains the following paragraph:

Miracles after sundown—Drab little typist becomes lovely airline stewardess! Overweight order clerk now a fashion counselor! "No-date" steno becomes belle of the office! High school graduate wins success in television! Middle-age widow looks ten years younger—gets exciting new job! Shy librarian gets three raises and a beau! Factory worker becomes studio receptionist!

In addition, many other advertisements provide a prospective student with a check list of subjects of interest to her, one of which is "Airline," "Airlines Prep." or "Airline Preparatory."

By these various statements respondents represent that their course of instruction in "Airline" will qualify a graduate thereof to assume the position of airline stewardess or other positions in the airlines industry.

It has been stipulated (stipulation June 29, 1967) that the "airlines maintain their own schools in which they train applicants for employment as airline stewardesses and said companies require that such applicants attend the school operated by or under the control of such airline in order to qualify for a job as an airline stewardess; that none of the students of Cinderella Career College and Finishing School would, merely because they had completed a course of instruction in,

Cinderella Career College and Finishing School, qualify for a job as an airline stewardess."

37. Respondents further disseminate a variety of advertisements and pamphlets which offer a career in retail buying. For example, respondents offer:

Comprehensive training in the many facets of fashion careers. Includes retailing, buying, sales promotion, advertising, display and practical field trips. FASHION IS A YOUNG PEOPLES FIELD. In no other area can a woman assume executive status at such an early age. Fashion is a stable field, the third largest in the U.S. High School Diploma or equivalent is required. SEND FOR BROCHURE. NO OBLIGATION. (CX 16-b through CX 21; CX 155.)

TRAINING FOR EXCITING CAREERS IN Executive Secretarial—Professional Modeling—Fashion & Retailing—Airlines. (CX 11; CX 12; CX 13; CX 14.)

CAREERS! The Cinderella Career and Finishing School offers * * * careers in EXECUTIVE SECRETARIAL, PROFESSIONAL MODELING, FASHION MERCHANDISING, RETAIL BUYING. (CX 6; CX 22; CX 26.)

WE'VE GOT THE CINDERELLA SECRET Come in and find out what it is. Our world famous Cinderella Finishing Training can make you poised. lovely, confident! Career Training for: EXECUTIVE SECRETARIAL—PROFESSIONAL MODELING—RETAIL FASHION MERCHANDISING—AIRLINES PREP. (CX 7; CX 8; CX 9.)

Let's take a look at some of the things we offer: *FASHION BUYER:* The position of a buyer is both responsible and rewarding. For buyers of womens' apparel, this consists of a whirlwind tour of showrooms to view the new seasons' offering in New York, Chicago, and San Francisco. Some buyers are selected to make trips to foreign markets such as Paris, Rome or London. Earnings of buyers range from $5,000 to over $20,000 depending upon the size and type of department. (CX 43.)

FASHION CAREERS

All our lives are touched by fashion, for fashion is everywhere. There are fashions not only in clothing but in cars, furniture, interiors, and foods. Fashion is a fast moving world that needs people in administrative capacities who are alert, and welcome the excitement of change.

The Fashion Career Course at Cinderella's is a varied program touching upon many facets of fashion careers, because we feel many young people are not exactly sure of what they wish to do. Some may have a latent talent for organization—some have an undiscovered knack for fashion "know-how"—some, perhaps, a flair for writing.

The curriculum and our faculty (all university graduates with retail experience) is selected to bring out these hidden talents and help you find your niche in the remunerative field of fashion—where advancement is quite rapid.

Our students observe and analyze the activities of the "F" Street stores. They prepare assignments from window displays, sales promotion campaigns, advertising and business activities. Thus they gain from the actual experience of others already in the field. In addition to preparing reports, they conduct meetings and learn the importance of getting along with people. Fashion is a young people's field. In no other area can a woman assume executive status at such an early age. And, of course, along with executive status comes financial reward. Fashion

is a stable field! It is the third largest industry in the United States, following only steel and food.

Opportunity in retailing, just one segment of fashion, is unlimited. With the exploding population and resultant opening of Branch Stores across the country, new jobs are constantly being created. One half of retailing's top executives are under 35 years of age. Forty percent of retailing executives are women. The average buyer earns between $10,000 and $20,000, some earn more. (CX 44.)

By these statements respondents represent that completion of its fashion merchandising course or fashion career course will qualify the student to assume the position of buyer at a retail establishment. It has been stipulated (stipulation June 29, 1967) that completion of a course of instruction at the Cinderella Career and Finishing School will not qualify a student for a position as buyer in a retail establishment.

38. Following are some illustrative examples of statements contained in respondents' advertisements and promotional material dealing with the availability of a job placement service for students and graduates of the school.

JOB PLACEMENT SERVICE (CX 47-a.)

FREE JOB PLACEMENT (CX 53.)

Employment placement service! Assistance in finding part-time employment while attending school. Jobs are obtainable by most qualified graduates through our Job Placement Service * * *. (CX 35; CX 38.)

* * * Assistance in finding part-time employment while attending school. Jobs are obtainable by most qualified graduates through our Employment Placement Service * * *. (CX 42.)

Your contract with Cinderella Career College doesn't end at graduation. Graduates are always welcome for assistance in change of employment, or for consultation regarding progress.

Because recognition and advancement are rapid in retailing, new job opportunities and promotions present themselves constantly. (CX 44.)

JOBS ARE OBTAINABLE BY MOST QUALIFIED GRADUATES THROUGH OUR EMPLOYMENT PLACEMENT SERVICE * * *. (CX 72.)

By these statements respondents represent that they find jobs for their students in almost all cases. The Cinderella school has placed in jobs four out of the five students graduating in 1967 from the fashion merchandising course (Tr. 919–24). Of the thirteen fashion merchandising cooperative students, ten obtained employment through the school and three chose to remain in the jobs in which they already were (Tr. 959). Three 1966 graduates from Cinderella's fashion merchandising course obtained jobs through Cinderella (CX 107). Two graduates of Cinderella's secretarial program in 1967 were placed in jobs (Tr. 996–98). Respondents are unable to assist students in finding positions as airline stewardesses or retail buyers since none of respondents' students or graduates qualify for these positions.

39. The complaint alleges that respondents have misrepresented that the graduates of various of respondents' courses of instruction are thereby qualified to assume executive positions in the fields for which they have been trained by respondents. There is no evidence in the record from which a definition of the word "executive" could be fashioned. However, it appears that in the field of fashion merchandising, wherein a majority of the placements have resulted, the status of "executive" is attained more readily than it might be in other fields of endeavor. (Tr. 994–98.) The position of trainee bridal consultant with The Hecht Company in Washington, D.C. and the position of assistant buyer are characterized as junior executive or executive positions. (Tr. 973–75, 994.)

40. Various of respondents' advertisements and promotional material represent that Cinderella Career and Finishing School is the official Washington, D.C. headquarters for the Miss Universe Beauty Pageant. Mr. Sidney Sussman, president of Miss District of Columbia, Inc., a beauty pageant promotion organization, owns the Miss Universe franchise for Maryland, the District of Columbia, and Virginia. Mr. Sussman testified:

> [T]he word "headquarters" is a complicated word. Technically any place, any sponsor who is involved with me could be a headquarters. But in my own specific terminology my official headquarters is where I do physical things, and the only place that I do physical things, and I will get into what physical things in a minute is at Cinderella. Physical things are, I have meetings there. I show documentary movies there. I use their, some of their, staff in a secretarial capacity. I have training there. We sometimes have preliminary rounds there. In other words, that is where the action is. That is why I, and I alone, have designated it as my official Washington headquarters. There isn't anybody else in the whole world who can designate my franchise as headquarters except me because I own it. Now I can say that every one of McDonald's 35 locations is a headquarters, which is true. You can, when they were a sponsor, you could go to any of those places and pick up an entry blank. That is a kind of headquarters. You could have gone to any one of Vincent et Vincent's 73 locations and also picked up an entry blank. That is a kind of headquarters. And you could have gone to any of the other places that are in that printed entry blank that you have there that have given prizes, and also picked up an entry blank. But picking up an entry blank and having a lot of physical operation are two different things. And, therefore, because Cinderella's operation is a big operation, and they advertise heavily, and this is essential to finding good contestants, these winners don't come out of the blue, I designated Cinderella my headquarters for those reasons, and it seems to me that I own the property, I can designate who I want to be my headquarters. They have been it since 1964 and as far as I know they will be until they don't want to be it any more. So long as they keep renewing their contract with me. (Tr. 510–11.)

To the extent that other locations are designated as official headquarters the Cinderella Career and Finishing School is not the one and only official headquarters for the Miss Universe pageant.

41. Respondents also operate under the trade style "Cinderella Career College and Finishing School," thereby representing that the school is a college. To the extent that the word "college" means a post-high school institution of higher education which either confers degrees or offers course work which would be transferable to other institutions in varying degrees, the Cinderella Career College and Finishing School is not a college (stipulation June 21, 1967). It has also been stipulated that students completing courses of instruction at the Cinderella Career and Finishing School operated by the Stephen Corporation are not awarded any academic degrees and that none of the corporate respondents have the power or authority to confer degrees or admit persons to degrees (stipulation June 21, 1967).

42. Respondents also operate a variety of beauty contests. These various contests are open to anyone and it is not necessary to be a student at the Cinderella school in order to enter (Tr. 738). The qualifications to enter the Miss D.C. Beauty Pageant are set out in the official entry blank, which states that "Contestant must be of good character and possess poise, personality, intelligence, charm and beauty of face and figure" (CX 36). There is insufficient evidence in the record upon which to base a finding that when a prospective student first visits the school she is frequently led to believe that she is qualified to compete in, and has a strong possibility of winning, such contests if only she would sign up for the courses given by respondents which will bring out the best in her.

43. A prospective student with whom an interview has been arranged in advance completes an application given to her by the receptionist when she first arrives at the school (Tr. 266). The prospective student is then escorted into a counsellor's office and following a general discussion is taken on a tour of the school (Tr. 270). Thereafter the prospective student is given a beauty analysis by the counsellor (Tr. 233). This consists of good grooming pointers. The prospective student is then told about the courses of instruction available (Tr. 233). Interviews for prospective students interested in taking a "finishing course" take approximately 45 minutes. "Career course" interviews take approximately 1½ hours (Tr. 233–34).

44. Mrs. Sandra Roth, who had some previous experience as a photographic model, testified (Tr. 609–43) that she enrolled in the school upon the assurance that she would have no problem getting jobs as a model. In addition, she was told that she would get jobs during

her schooling, resulting in possibly sufficient remuneration to help her make the monthly payments. During cross-examination Mrs. Roth testified that before her interview at Cinderella Career and Finishing School she had an interview at the John Robert Powers school:

> Well, this is sort of different because John Robert Powers is strictly a finishing school. They don't give jobs, you know. They don't put you out as a model. They just give you finishing courses instead of a modeling course. (Tr. 623.)

While attending school Mrs. Roth obtained three jobs through the school. Two of these jobs paid $31.50, after payroll deductions, for approximately 8 hours each. The other job "paid" a wig for 4 days of modeling, from 10 a.m. to 7 p.m., or a total of 36 hours.

After her graduation Mrs. Roth regularly called the school for a period of three to four months concerning the availability of jobs, but without success, with the exception of teaching one Saturday class at Cinderella for $3.50 an hour. She finally accepted a full-time position at the front desk of the Sheraton Park Hotel in Washington, D.C., and never did receive a position through Cinderella Career and Finishing School in her chosen field—professional modeling.

Mrs. Roth was once called by the school for an interview at an hour's notice, which she could not accept. Having accepted the position with the Sheraton Park Hotel she also informed the school that she would need at least two days' notice for any assignments. Mrs. Roth subsequently became pregnant and informed the school that she would be unavailable for any assignment.

45. Mrs. Vera White (Tr. 643–81) and her daughter Janis, 16 years old at the time, were interviewed at the school on May 7, 1966. Janis was interested in professional modeling. The Cinderella counsellor discussed the field of modeling and the courses which Cinderella offered. Mrs. Vera White enrolled her four daughters in the school for a total contract price of $1387.05, $1040 of which was for Janis (CX 88–A; CX 89; CX 90–A). In response to the question whether anything was said during the interview about Janis getting jobs Mrs. White testified:

> The lady, Mrs., I don't know her name, the light-haired lady told, she said after September she [Janis] would be making her own money, she would be out modeling, and I figured she would be modeling at some of the stores, you know, local stores, I didn't think she would be on TV and all of that, and she said—I told her that the course is rather high. She said "oh, don't worry about that." She would be making her own money and this would help pay for her course, and I said good. This is the thing that caused me to go ahead with it, you know, because I figured she would be modeling and making her own money locally. (Tr. 650–51.)

Janis received one student group assignment—modeling hats on the street—for which she did not get paid.

Sometime during September Mrs. White was invited to come to the school, ostensibly for a progress report on Janis. While there, however, an effort was made to sell her additional courses of instruction for Janis at a time when Janis had not even completed one-fourth of her original course and had not even received one paying modeling assignment.

Shortly thereafter, being discouraged about not getting any jobs, Janis discontinued her course. On this point Mrs. White testified on cross-examination:

> She [Janis] got discouraged because she wasn't getting paid for it and that was the reason she took it. (Tr. 677.)

46. Mrs. Robin North testified (Tr. 739–746) the following:

> * * * So, and he [one of respondents' sales representatives] said that the average model would make from $10 to $15,000 a year, but he didn't come right out and say that I would be the average model, but he left the impression, he talked as if I would be a hit, I would make it. I didn't have any word, I just thought I would make it and get it and wouldn't have to worry.
>
> By Mr. Freer:
>
> Q. Did he mention any Cinderella graduate who made the big amounts?
>
> A. He showed us a newspaper article with several models on the top, fashion models, and one was from the Cinderella School of modeling in Chicago and that was Wilhelmina and she was a top model.
>
> HEARING EXAMINER GROSS: Is that right, Robin?
>
> THE WITNESS: I guess. She made approximately $85,000 a year. (Tr. 743.)

47. Miss Gloria Lancaster (Tr. 748–63) was accompanied on her interview at the Cinderella Career and Finishing School by her aunt, Mrs. A. Donelson. Miss Lancaster, who subsequently enrolled in a professional modeling course and attended eight months, gave the following testimony:

> A. Yes. She told us that during the time we were in the school Capitol Fur Salon—I don't know whether it was a contract or what, but she mentioned us modeling furs in Capitol Fur Salon, but nothing ever came of it. (Tr. 752.)

Miss Lancaster never obtained any kind of a position through Cinderella Career and Finishing School. Miss Lancaster did not complete her course of instruction and withdrew from Cinderella Career and Finishing School.

48. Mrs. Anne Donelson, Miss Lancaster's aunt who accompanied her on her interview and who signed her contract with Cinderella Career and Finishing School, corroborated this testimony (Tr. 763–74). Mrs. Donelson stated that during the interview they were told that modeling jobs would be assigned to these students.

In response to the question as to her understanding whether students would get paid for any modeling assignments, Mrs. Donelson testified:

A. Well, it was my understanding that they would be, although I can't recall now whether the subject of salary or payment came up in the course of the conversation. She did say, however, that they would be going out, as I said, on these particular assignments, and that they would be used as they got along in advanced training, and then, of course, they would place them for jobs when they had finished the course. So I assumed that naturally they would be salaried assignments. (Tr. 769–70.)

49. Mr. Andrew M. Egnot (Tr. 775–80) enrolled his daughter Michelle for the minimum 25-hour finishing course, which she completed. In answer to the question whether any mention was made during the interview of the school obtaining jobs for its students, he testified:

A. There was some mention, I think, of experience and then some part-time. But this was one thing that I did try to find out about, just how many jobs were available, and whether they were part-time or full-time. I was told that as you went along, depending upon, of course, your potential, and depending upon yourself, these jobs would come along. (Tr. 779.)

Mr. Egnot's questions as to the availability of jobs were never answered specifically; however, he was left with the definite impression that jobs would be forthcoming. His daughter never did obtain a position or an assignment through Cinderella Career and Finishing School.

50. Miss Penny Alexander (Tr. 785–826) went to Cinderella Career and Finishing School in response to an advertisement stating "Model-type girl wanted," expecting to be interviewed for a job. She never got a job but instead was enrolled in the school. She went to only one class and did not make any payments on her contract because she felt she had been tricked into entering the contract.

THE WITNESS: I had come down there looking for a job, and I got something else instead. (Tr. 816.)

51. Mrs. Ruth A. Kahkonen (Tr. 830–853) was interested in professional modeling and enrolled in the school. She testified that the promise of jobs during the interview influenced her to enter the contract—"The money sounded very good" (Tr. 833). Mrs. Kahkonen got two jobs while attending the school, neither one of which had anything to do with professional modeling. One of these jobs consisted of handing out litter bags at a stadium, for which she received $13. Mrs. Kahkonen did not finish her course because she was not getting the jobs which had been promised to her and due to personal problems.

52. Miss Opal S. Boyd (Tr. 854–63), who was interested in professional modeling, testified that during the interview she was told that

a job would be obtained for her while she was attending the school and that after she had taken 50 hours of modeling she would be prepared for a part-time modeling job. Miss Boyd completed her course but never obtained a job while attending classes or thereafter through Cinderella Career and Finishing School.

53. Miss Charissa Craig testified (Tr. 866–88) that while attending a teen fashion show she was approached by a representative of the Cinderella Career and Finishing School to see if she would be interested in taking a course there because she would make $60 an hour modeling. As a result, Miss Craig, accompanied by her mother, went to the school for an interview, during which it was again represented to her that she would start at $60 an hour while she was still attending classes.

Not entirely convinced that she should do so, Miss Craig's mother was persuaded to sign the enrollment contract upon the oral representation that it could be cancelled should she change her mind. The Craigs did change their minds and subsequently managed (not without some difficulties) to have their contract cancelled and lost only a $5 deposit.

By these statements respondents represent that completion of one of their courses will enable the applicant in most cases to obtain a better job through respondents' many contacts in the business world, which representation, according to the testimony contained in the record, is false.

54. The enrollment contract of the Cinderella Career and Finishing School states that the combined registration-tuition fee for any of its courses is not refundable. Above the signature line the contract states in larger than normal print "Non-cancellable." The record in this particular proceeding is insufficient for a finding whether prospective students were or were not given sufficient opportunity to read and understand the various contractual provisions.

According to the testimony in the record, prospective students were at times exposed to a succession of up to four of respondents' representatives during the course of an interview. One witness testified (Tr. 873) that the interview lasted three hours and culminated only upon the signing of the enrollment contract. Respondents' sales offices are equipped with listening devices which permit the monitoring of the interview in another office. Frequently the sales interview with a prospective student is in fact monitored by a person in another office.

The evidence and testimony contained in the record, however, is insufficient for a finding that respondents during the course of an interview subject the potential student to constant pressure to get the applicant started right away on one of respondents' courses of study

and present various documents, including a negotiable promissory note, for said potential student's signature without revealing the negotiable and noncancellable nature thereof or allowing sufficient opportunity to permit the reading or careful consideration thereof.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein.

2. This proceeding is in the public interest.

3. Through the use of the aforementioned advertisements and the statements and representations therein contained respondents have represented, directly or by implication, contrary to fact, that Cinderella Career and Finishing Schools grant educational loans, that Cinderella Career and Finishing Schools or the courses it offers have been officially approved by a government or nonprofit organization, that respondents offer a course of instruction that will qualify students to be airline stewardesses or for positions as buyers for retail stores, and that respondents find jobs for their students in almost all cases through their job placement service.

4. In addition, respondents have frequently falsely represented, through their agents, representatives and employees, for the purpose of inducing prospective students to enroll for one or more of the courses of instruction offered by the school, that the student, in most cases, either while attending the school or upon graduation, will obtain a better job through Cinderella Career and Finishing Schools.

5. The dissemination of the aforementioned false and misleading advertisements and the use of other representations constitute unfair and deceptive acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, and violates Section 5 of said Act.

6. In the light of finding 34 the Commission concludes that the practice of respondent School Services, Inc., in permitting its name to be used in the manner indicated is highly questionable. However, it is further concluded that an order prohibiting the practice may not be necessary and therefore, in order to provide respondent School Services, Inc. an opportunity to voluntarily correct this practice, a cease and desist order will not be entered directed to this respondent at this time.

ORDER

It is ordered, That respondents Cinderella Career and Finishing Schools, Inc., a corporation, and Stephen Corporation, a corporation trading as Cinderella Career College and Finishing School, or under

any other name, and their officers, and Vincent Melzac, individually and as an officer or controlling stockholder of the aforesaid corporations, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of courses of instruction or any other service or product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that they or any of them extend loans to students when in fact only credit is extended to an enrollee through an installment contract.

2. Representing, through the use of the name School Services, Inc., Washington, D.C., or any other name or names similar thereto, or otherwise, that any of respondents are in any way connected with a governmental or nonprofit organization, or that any of respondents' schools or any course offered by any such schools have been approved by any government agency or nonprofit organization.

3. Representing, directly or by implication, that respondents or any of them offer courses of instruction which qualify students to be airline stewardesses, and misrepresenting, directly or by implication, that respondents or any of them offer courses of instruction which qualify students to be buyers for retail stores.

4. Representing, directly or by implication, that respondents or any of them find jobs for almost all of their students or graduates, or otherwise misrepresenting the availability of jobs through any job placement service, or through respondents' contacts in the business world.

5. Using any false inducements or representations to obtain enrollees for any of respondents' courses or to obtain the signature of any such enrollee on documents which obligate any such enrollee to expend or pay any money.

6. Entering into any agreement or arrangement with any franchisee or establishing any franchise unless such franchisee is furnished with a copy of the order herein and instructed in writing that a condition of his franchise is the refraining from engaging in any of the acts prohibited by the within order.

It is further ordered, That the complaint against School Services, Inc., a corporation, be, and it hereby is, dismissed.

It is further ordered, That the allegations contained in Paragraph Five, subparagraphs 3, 7, 8 and 9, and Paragraph Seven, subparagraph 2 of the complaint be, and they hereby are, dismissed.

It is further ordered, That respondents' request to file a supplemental brief be, and it hereby is, denied.

It is further ordered, That respondent Vincent Melzac's motion to dismiss the complaint be, and it hereby is, denied.

It is further ordered, That respondents' Cinderella Career and Finishing Schools, Inc., a corporation, and Stephen Corporation, a corporation trading as Cinderella Career College and Finishing School, and Vincent Melzac shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist set forth herein.

Commissioner Dixon not participating.

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

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

Docket C-2059. Complaint, Oct. 8, 1971—Decision, Oct. 8, 1971

Order requiring a major merchandiser of soaps and detergents headquartered in Cincinnati, Ohio to cease failing to disclose the exact number and nature of the prizes in its contest, the numerical odds of winning a prize, failing to award all the prizes, and failing to disclose the names of the major winners; in announcing the contests the respondent is required to disclose the number and nature of the prizes, the odds of winning each prize, and the geographic area involved; respondent is also required to maintain adequate records and furnish the Federal Trade Commission upon request the names and addresses of all the winners and other details of the contests.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Procter & Gamble Company, and Reuben H. Donnelley Corporation, corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent the Procter & Gamble Company is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Ohio, with its office and principal place of business located at 301 East 6th Street, Cincinnati, Ohio.

Respondent Reuben H. Donnelley Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Third Avenue, New York, New York.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondent the Procter & Gamble Company is now and for some time past has been engaged in the manufacture, advertising, offering for sale, sale and distribution of food products, toilet goods, household paper products and cleaners, soaps, detergents, and other products to the public.

Respondent Reuben H. Donnelley Corporation is now and for some time past has been engaged in the preparation, participation in and operation of contests games, "sweepstakes" and other sales promotional devices including, but not limited to, the type of sales promotional devices hereinafter set forth.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause and for some time past have caused their said products and services to be sold, shipped, and distributed from their respective places of business or from the state of manufacture to purchasers thereof located in various States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the products of respondent Procter & Gamble Company, respondents have engaged in the solicitation of prospective customers through the United States mails, in advertisements in magazines having an interstate circulation, and in promotional materials distributed through retail grocery outlets throughout the United States. Many of said solicitations utilized a promotional device commonly known as a "sweepstakes." These "sweepstakes," which respondents have employed since at least 1962, were conducted in a similar manner.

Millions of copies of advertisements or promotional materials were printed and distributed to the public. Each contained a ticket on which a number was printed, or an invitation to the recipient to choose one

of a stated range of numbers. Before distribution to the public, some of the numbers were designated as winning numbers and others were designated as losing numbers. Recipients were directed to check their numbers against a list of winning numbers posted in retail grocery outlets or otherwise made available, or to return the ticket or other form bearing their number to respondents or their agents where it would be checked against a list of winning numbers. If the number held or chosen by the recipient matched a number contained on a list of winning numbers, the recipient was entitled to a specified prize. If a recipient of a ticket or form which contained a winning number failed to return the ticket or form to respondents or their agents, the prize to which he would have been entitled if he had done so was not awarded. Similarly, if persons invited to choose winning numbers chose fewer winning numbers than available prizes, all available prizes were not awarded.

Such "sweepstakes" were conducted by respondents on numerous occasions between January 1, 1968, and May 31, 1969, including but not limited to the following promotions:

(a) Procter & Gamble "Write Your Own Ticket" Sweepstakes
(b) Procter & Gamble "Cinderella Magic Gift" Sweepstakes
(c) Procter & Gamble "Summer Funstakes" Sweepstakes
(d) Procter & Gamble "Join the Jet Set" Sweepstakes

PAR. 5. In the course and conduct of its business, respondent has engaged in the above-described "sweepstakes" and other promotions of a similar nature for the purpose of inducing the purchase of its products. Respondent has made and is now making in its advertising and promotional material statements and representations concerning its products and "sweepstakes."

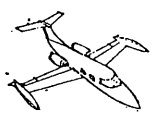
Typical and illustrative of the statements and representations made in said advertising and promotional material, but not all inclusive thereof, are the following:

"JOIN THE JET SET"

SINGING PRIZES

2 BIG SWEEPSTAKES • 2 CHANCES TO WIN

Check the Jet Set number on the reverse side against the winning numbers on the "Join the Jet Set" display at your favorite store.



Spin the dial at your dealer's display to win

A BEIGE CASHMERE SWEATER WITH A PETER PAN RANCH MINK COLLAR
NO LIMIT TO THE NUMBER OF WINNERS!
All entrants selecting the correct number will win!

See rules on reverse side

...You and five friends can jet anywhere in North & South America including Hawaii (up to 15,000 miles round trip) with a private jet for your exclusive use 10 weeks plus $5,000 spending money—or $25,000 cash.

...A one week all expense paid trip for two to romantic Hawaii or $2,000.

...Airplane tickets for two to glamorous Las Vegas or $600 cash.

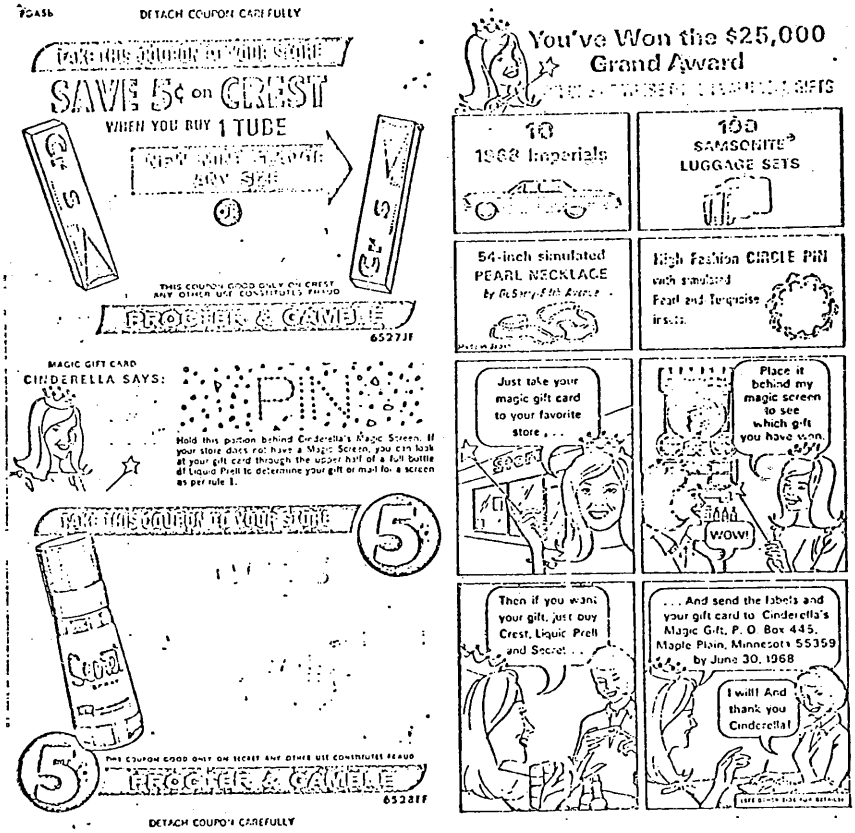
50,000—THIRD PRIZES
A collectors' item of a U.S. Silver Dollar.

P. O. BOX 403, NEVADA, IOWA 50201
ADDRESS CORRECTION REQUESTED

YOU'VE WON A VACATION IN YOUR OWN PRIVATE JET

BLK. RT.
U.S. POSTAGE
PAID
NEVADA, IOWA
PERMIT No. 115

VALUABLE PROCTER & GAMBLE COUPONS ENCLOSED



PAR. 6. By and through the use of the above-quoted statements and representations, and others of a similar import and meaning not expressly set out herein, respondents represented, directly or by implication, that:

(a) One grand prize of $10,000 plus airplane tickets for two anywhere in the world, 10 first prizes of $1,000 plus airplane tickets for two anywhere in the world, 100 second prizes of airplane tickets for two anywhere in the world, and over 100,000 third prizes of Rand McNally World Atlases were to be awarded to individuals who held winning tickets in respondents' "Write Your Own Ticket" Sweepstakes.

(b) Prizes including one first prize of $25,000 cash, 10 second prizes of Chrysler Imperial automobiles, and 100 third prizes of 3-piece luggage sets were to be awarded to individuals who held winning tickets in respondents' "Cinderella Magic Gift" Sweepstakes.

(c) One first prize of a Plymouth automobile or $5,000 cash, 1 second prize of a swimming pool or $3,000 cash, 100 third prizes of barbecue grills, and 130,898 fourth prizes of transistor radios were to be awarded to individuals who held winning tickets in respondents' "Summer Funstakes" Sweepstakes.

(d) 50,026 prizes worth approximately $92,000 at retail, and consisting of one grand prize of the use of a six passenger jet plane for 15,000 miles anywhere in North and South America for two (2) weeks plus $5,000 in cash, or an alternative award of $20,000 cash, 5 first prizes of a one-week all expense paid trip for two to Hawaii, or alternative awards of $2,000 cash, 20 second prizes of airline tickets for two persons to Las Vegas, or alternative awards of $600 cash, and 50,000 third prizes of U.S. Silver Dollars were to be awarded to individuals who held winning tickets in respondents' "Join the Jet Set" Sweepstakes.

(e) Individuals entered or participating in respondents' "sweepstakes" were afforded a reasonable opportunity to win the represented prizes.

(f) All of the represented prizes for individuals who held winning tickets in respondents' "sweepstakes" had been purchased before or during the time the "sweepstakes" were in progress.

(g) Individuals who participate in respondents' "sweepstakes" will receive a gift having significant retail value.

PAR. 7. In truth and in fact:

(a) One grand prize of $10,000 plus airplane tickets for two anywhere in the world, 10 first prizes of $1,000 plus airplane tickets for two anywhere in the world, 100 second prizes of airplane tickets for two anywhere in the world, and over 100,000 third prizes of Rand McNally World Atlases were not awarded to individuals who participated in the "sweepstakes." No awards were made of the grand prize or the first prizes. Approximately 6 airplane tickets for two anywhere in the world and 249 Rand McNally World Atlases were in fact awarded.

(b) Prizes including one first prize of $25,000 cash, 10 second prizes of Chrysler Imperial automobiles, and 100 third prizes of 3-piece luggage sets were not awarded to individuals who participated in the "sweepstakes." No awards were made of the first or second prizes. Approximately seven 3-piece luggage sets were in fact awarded.

(c) One first prize of a Plymouth automobile or $5,000 cash, 1 second prize of a swimming pool or $3,000 cash, 100 third prizes of barbecue grills, and 130,898 fourth prizes of transistor radios were not awarded to individuals who participated in the "sweepstakes." No

awards were made of the first or second prizes. Approximately 20 barbecue grills and 211 transistor radios were in fact awarded.

(d) 50,026 prizes worth approximately $92,000.00 at retail were not awarded to individuals who participated in the "sweepstakes." No awards were made of the grand prize or of the first or second class prizes. Approximately 559 third prizes worth approximately $559 were in fact awarded.

(e) Individuals entered or participating in respondents' "sweepstakes" were not afforded a reasonable opportunity to win the represented prizes. For example, in the "Join the Jet Set" sweepstakes, referred to in Paragraphs 6(d) and 7(d) herein, respondents distributed approximately 30,000,000 coupons to the public. Winning numbers were printed on 50,026 of the coupons. All other coupons contained a non-winning number. Of the 50,026 coupons, one was a grand prize-winning coupon, five were first prize-winning coupons, 20 were second prize-winning coupons, and 50,000 were third prize-winning coupons. As a result of such a distribution of winning coupons, individuals entered or participating in respondents' "Join the Jet Set" sweepstakes had one chance in approximately 30 million to win a grand prize, one chance in approximately six million to win a first prize, one chance in approximately 1.5 million to win a second prize, and one chance in approximately 600 to win a third prize.

(f) Most of the enumerated prizes were not purchased by respondents either before or during the time said "sweepstakes" were in progress. Most of the prizes were purchased only after the termination of the "sweepstakes."

(g) Individuals who participate in respondents' "sweepstakes" do not receive a gift having significant retail value. Said individuals often receive a costume jewelry pin or similar trinket.

PAR. 8. In the course and conduct of their businesses and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of their respective products and services.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the mistaken belief that said statements and representations were and are true, and has induced members of the public to participate in respondents' sweepstakes and into the purchase of substantial quantities of respondent, the Procter & Gamble Company's products, by virtue of said mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and

of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission thereby issues its complaint, makes the following jurisdictional findings, and enters the following order.

1. Respondent the Procter & Gamble Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 301 East 6th Street, Cincinnati, Ohio.

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

ORDER

It is ordered, That the Procter & Gamble Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the preparation, advertising, sale, distribution or use of any "sweepstakes"

contest, game or any similar promotional device involving chance in commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. (1) Failing to disclose clearly and conspicuously the exact number of prizes which will be awarded, the exact nature of the prizes, and the approximate retail value of each prize offered.

(2) Failing to disclose clearly and conspicuously the approximate numerical odds of winning each prize which will be awarded; *Provided*, That if such approximate numerical odds are not reasonably capable of calculation, the respondent will disclose clearly and conspicuously the approximate number of recipients to whom the offer is directed if such facts may reasonably be determined.

(3) Failing to award and distribute all prizes of the type and value represented.

(4) Representing directly or by implication that prizes other than cash prizes have been purchased unless they have in fact been purchased at the time that the representation is made.

(5) Failing to furnish upon request to any individual a complete list of the names and states of residence of winners of major prizes, identifying the prize won by each.

(6) Misrepresenting in any manner by any means any element, feature, or aspect of any "sweepstakes," contest, game or any similar promotional device involving chance.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contest, game, or similar promotional device involving chance, unless the following are disclosed clearly and conspicuously in all advertising and promotional material concerning said devices:

(1) The total number of prizes to be awarded;

(2) The exact nature of the prizes, their approximate retail value, and the number of each;

(3) The approximate numerical odds of winning each prize which will be awarded; *Provided*, That if such approximate numerical odds are not reasonably capable of calculation, the respondent will disclose clearly and conspicuously the approximate number of recipients to whom the offer is directed if such facts may reasonably be determined;

(4) The geographic area or states in which any such device is used; and

(5) The date the device is initiated and the date the device is to end.

It is further ordered, That respondent Procter & Gamble Company shall;

(1) File with the Commission, within sixty (60) days after service upon it of this order, a report in writing setting forth in detail the manner and form in which it has complied with the provisions of this order;

(2) Maintain adequate records:

(a) which disclose the facts upon which any of the representations of the type described in the preceding paragraphs of this order are based, and

(b) from which the validity of the representations of the type described in the preceding paragraphs of this order can be determined;

(3) Furnish upon the request of the Federal Trade Commission:

(a) a complete list of the names and addresses of the winners of each prize, and an exact description of the prize, including its retail value;

(b) a list of the winning numbers or symbols, if utilized, for each prize;

(c) the total number of coupons or other entries distributed;

(d) the total number of participants in the promotion;

(e) the total number of prizes in each category or denomination which were made available; and

(f) the total number of prizes in each category or denomination which were awarded.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate form such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance with this order.