

IN THE MATTER OF
**CHARLES D. BROWN, TRADING AS MICHIGAN MERCHAN-
DISING COMPANY**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4217. Complaint, Aug. 5, 1940—Decision, Oct. 1, 1940

Where an individual engaged in sale and distribution of small electric water heaters to purchasers in various other States, and maintaining course of trade therein in commerce between the various States and in District of Columbia—

- (a) Made such representations, in the "Help Wanted" columns of newspapers, as "Man to look after deliveries. \$25 salary and share in profits. References required. Give phone if possible. Must have \$100 cash to pay for first consignment of goods. Box—";
- (b) Represented, through persons employed by him to contact prospective distributors responding to such advertisements, and to induce them to sign contracts for purchase of heaters, that services required of distributors were only to make deliveries of and collections for such products, and that no selling was required of them, and that he would establish, directly or through such representatives, required number of dealers to handle heaters on consignment basis without any sales effort on part of distributor;
- (c) Represented that said initial payment of \$100 required of each distributor was in nature, or in lieu, of a temporary bond and would be refunded to distributor as soon as list of dealers had been secured and approved by him or his representatives, and that such procurement and approval was merely routine procedure requiring not more than 10 days, and that he would pay to distributor weekly salary of \$25, commencing on day he signed contract, plus commission of 50 cents per heater for every one over two sold each week by each established dealer in distributor's territory;

Facts being contracts were so drawn as to make impossible of fulfillment conditions upon which refunds of initial payments were to be made by him, and no refund had ever been made, no salary or commission was ever paid by him to any so-called distributor, and no quota of dealers had ever been established by him or his representatives which met number required to be established to enable distributor to be entitled to refund of money paid and eligible to salary and commissions, aforesaid initial payment of \$100 was not in nature, or in lieu, of temporary bond, but applied by him as payment for 48 of said heaters, and his various representations were all false and fraudulent, and business conducted by him was fraudulent scheme to extract money from persons in need of employment through false representation as above indicated, and under which so-called distributor became mere purchaser of said heaters, without any adequate outlets for disposal thereof or established dealers to handle same; and

- (d) Sold and distributed said product through such fraudulent and deceptive sales methods with label bearing legend reading "Wonder Electric Water Heater—Introductory Price \$5.95—Guaranteed Forever. Manufactured and guaranteed by the Jenner Mfg. Co., Pontiac, Mich.";

1036

Complaint

Facts being said heater was not manufactured by such company or guaranteed forever, had never been sold at price of \$5.95, which was not introductory price, but wholly fictitious and greatly in excess of regular retail price of \$2.25, and customer was required to pay 60 cents for repairs to or replacement of parts for such heaters;

With intent and effect of inducing many members of purchasing public to sign contracts for purchase of large numbers of such heaters and of inducing payment therefor by so-called distributors, and with result that members of public, as consequence of such false and misleading representations, plans, and methods, and believing in and relying on truth of such representations, were induced to and did buy large numbers of such heaters under erroneous and mistaken belief that they were to become distributors and not purchasers thereof, and were to receive salary plus commission on sales by dealers secured by him:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Merle P. Lyon for the Commission.

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 Charles D. Brown, an individual, trading as Michigan Merchandising Co., 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. The respondent, Charles D. Brown, is an individual trading under the firm name and style of Michigan Merchandising Co., with his principal place of business at 31 Allison Street, Pontiac, Mich. He is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a small electric water heater, called "Wonder Electric Water Heater," alleged to be useful in heating small quantities of water and other liquids.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said heaters, when sold, to be transported from his place of business in the State of Michigan to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said heaters in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of said heaters, respondent has

Complaint

31 F. T. C.

inserted advertisements in the "Help Wanted" sections of newspapers. The following advertisement is typical of those so used:

Man to look after deliveries.

\$25 salary and share in profits.

References required. Give phone if possible. Must have \$100 cash to pay for first consignment of goods. Box —.

Said advertisements are false, misleading, and deceptive to members of the public seeking the employment mentioned in said advertisements. The business as conducted by respondent was, and is, a fraudulent scheme to extract money from persons in need of employment by falsely representing to them the character of the work to be performed, the purpose of an initial payment of \$100 by the applicant for work, the terms of employment, the salary to be paid, the price for which said heater is regularly sold, the extent and nature of the guaranty on said heaters, and other matters in connection with the sale of said heaters, as hereinafter alleged.

The respondent employs representatives to contact prospective distributors who respond to the newspaper advertisements as hereinbefore set out. Said representatives, with the cooperation of the respondent, have made numerous misrepresentations to prospective distributors to induce them to sign contracts for the purchase of heaters. Among and typical of such misrepresentations are the following:

1. That the services required of the distributors are only to make deliveries of and collections for said heaters, and that no selling is required of said distributors.

2. That respondent will establish directly or through such representatives the required number of dealers to handle respondent's heaters on a consignment basis without any sales effort on the part of the distributor.

3. That the initial payment of \$100 required of each distributor is in the nature of or in lieu of a temporary bond and will be refunded to the distributor as soon as the list of dealers has been secured and approved by respondent or his representative, and that the procurement and approval of such dealers is merely a routine procedure requiring not more than 10 days.

4. That respondent will pay to the distributor a weekly salary of \$25, commencing on the day he signs the contract, plus a commission of 50 cents per heater for every heater over two sold each week by each established dealer in the distributor's territory.

PAR. 4. In truth and in fact, all of the representations hereinbefore set out are false and fraudulent, and are designed and intended to, and do, induce many members of the purchasing public to sign con-

tracts for the purchase of large numbers of respondent's heaters and to induce payment therefor by the so-called "distributor." Said contracts are so drawn as to make impossible of fulfillment the conditions upon which refunds of initial payments are to be made by the respondent, and in fact no refunds have ever been made by respondent. No salary or commission has ever been paid by respondent to any so-called "distributor." No quota of dealers has ever been established by respondent or his representatives which met the number to be established to enable the so-called "distributor" to be entitled to the refund of the money paid and eligible to salary and commissions. The initial payment of \$100 was not in the nature of or in lieu of a temporary bond, but is applied by respondent as payment for 48 of said electric water heaters. Under the scheme as operated by respondent and his representatives, the so-called "distributor" becomes a mere purchaser of said heaters without any adequate outlets for disposal of the same or established dealers to handle them.

PAR. 5. The electric water heater sold and distributed by respondent through the fraudulent and deceptive sales methods hereinbefore set out bears a label reading as follows:

Wonder Electric Water Heater—

Introductory Price \$5.95—Guaranteed Forever. Manufactured and guaranteed by the Jenner Mfg. Co., Pontiac, Mich.

In truth and in fact, said heater is not manufactured or guaranteed by the Jenner Manufacturing Co. It is not guaranteed forever, and has never been sold at a price of \$5.95. The price of \$5.95 is not an introductory price, but a wholly fictitious one, greatly in excess of the regular retail price of \$2.25. The customer is required to pay 60 cents for repairs to, or replacement of parts for, said heaters.

PAR. 6. As a result of respondent's false and misleading representations, plans, and methods, as above set out, members of the public, believing and relying upon the truth of said representations, have been induced to buy, and have bought, large numbers of respondent's said heaters.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 5, 1940, issued and subsequently served its complaint in this proceeding upon respondent,

Findings

31 F. T. C.

Charles D. Brown, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 7, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Charles D. Brown, is an individual trading under the firm name and style of Michigan Merchandising Co., with his principal place of business at 31 Allison Street, Pontiac, Mich. He is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a small electric water heater, called "Wonder Electric Water Heater." Respondent claims that this heater is useful in heating small quantities of water and other liquids.

PAR. 2. Respondent causes said heaters, when sold, to be transported from his place of business in the State of Michigan to purchasers thereof located in various other States of the United States. Respondent maintains a course of trade in said heaters in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of said heaters, respondent has inserted advertisements in the "Help Wanted" sections of newspapers. The following advertisement is typical of those so used:

Man to look after deliveries.

\$25 salary and share in profits.

References required. Give phone if possible. Must have \$100 cash to pay for first consignment of goods. Box —.

Said advertisements are false, misleading, and deceptive to members of the public seeking the employment mentioned in said advertisements. The business as conducted by respondent was, and is, a fraudulent scheme to extract money from persons in need of employment by falsely representing to them the character of the work to be performed, the purpose of an initial payment of \$100 by the applicant for work, the terms of employment, the salary to be paid, the price for which said heater is regularly sold, the extent and

nature of the guaranty on said heaters, and other matters in connection with the sale of said heaters, as hereinafter set out.

The respondent employs representatives to contact prospective distributors who respond to the newspaper advertisements as hereinbefore set out. Said representatives, with the cooperation of the respondent, have made numerous misrepresentations to prospective distributors to induce them to sign contracts for the purchase of heaters. Among and typical of such misrepresentations are the following:

1. That the services required of the distributors are only to make deliveries of and collection for said heaters, and that no selling is required of said distributors;

2. That respondent will establish directly or through such representatives the required number of dealers to handle respondent's heaters on a consignment basis without any sales effort on the part of the distributor;

3. That the initial payment of \$100 required of each distributor is in the nature of or in lieu of a temporary bond and will be refunded to the distributor as soon as the list of dealers has been secured and approved by respondent or his representative, and that the procurement and approval of such dealers is merely a routine procedure requiring not more than 10 days;

4. That respondent will pay to the distributor a weekly salary of \$25, commencing on the day he signs the contract, plus a commission of 50 cents per heater for every heater over two sold each week by each established dealer in the distributor's territory.

PAR. 4. In truth and in fact, all of the representations hereinbefore set out are false and fraudulent, and are designed and intended to, and do, induce many members of the purchasing public to sign contracts for the purchase of large numbers of respondent's heaters and to induce payment therefor by the so-called "distributor." Said contracts are so drawn as to make impossible of fulfillment the conditions upon which refunds of initial payments are to be made by the respondent, and in fact no refunds have ever been made by respondent. No salary or commission has ever been paid by respondent to any so-called "distributor." No quota of dealers has ever been established by respondent or his representatives which met the number required to be established to enable the so-called "distributor" to be entitled to the refund of the money paid and eligible to salary and commissions. The initial payment of \$100 is not in the nature of or in lieu of a temporary bond, but is applied by respondent as payment for 48 of said electric water heaters. Under the scheme as operated by respondent and his representatives,

Order

31 F. T. C.

the so-called "distributor" becomes a mere purchaser of said heaters without any adequate outlets for disposal of the same or established dealers to handle them.

PAR. 5. The electric water heater sold and distributed by respondent through the fraudulent and deceptive sales methods hereinbefore set out bears a label reading as follows:

Wonder Electric Water Heater—

Introductory Price \$5.95—Guaranteed Forever. Manufactured and guaranteed by the Jenner Mfg. Co., Pontiac, Mich.

In truth and in fact, said heater is not manufactured or guaranteed by the Jenner Manufacturing Co. It is not guaranteed forever, and has never been sold at a price of \$5.95. The price of \$5.95 is not an introductory price, but a wholly fictitious one, greatly in excess of the regular retail price of \$2.25. The customer is required to pay 60 cents for repairs to, or replacement of parts for, said heaters.

PAR. 6. As a result of respondent's false and misleading representations, plans, and methods, as above set out, members of the public, believing and relying upon the truth of said representations, have been induced to buy, and have bought, large numbers of respondent's said heaters under the erroneous and mistaken belief that they were to become distributors and not purchasers of said heaters and were to receive a salary plus a commission on sales by dealers secured by the respondent.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charles D. Brown, his agents, representatives, and employees, directly or through any corporate or

1036

Order

other device in connection with the offering for sale, sale and distribution of electric water heaters in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That the only services required of distributors are to make deliveries of, and collections for, said electric water heaters or that no selling is required of said distributors.

2. That dealers in any number have been or will be established by the respondent or by his field agents in any city or territory, when no such dealers have been established, and the establishment of such dealers is not contemplated.

3. That the initial payment required of each distributor is in the nature of, or in lieu of, a temporary bond, and that it will be refunded.

4. That the initial payment required of distributors represents anything other than the payment for a certain number of respondent's heaters.

5. That respondent will pay to the distributor a weekly salary of \$25 or any other amount either with or without commissions.

6. That respondent's heater is manufactured and guaranteed by the Jenner Manufacturing Co. or that it is guaranteed forever.

7. That the price at which respondent's heater is customarily offered for sale is an introductory price, or a special price, or is anything other than the regular retail price at which said heater is sold.

It is further ordered, That the respondent shall, within 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
ADOLPH KASTOR & BROS., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3466. Complaint, June 21, 1938—Decision, Oct. 3, 1940

Where a partnership and its corporate successor, representing substantially same ownership and operation, long engaged in manufacture of various articles of cutlery and in sale thereof, including knives below described, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of pocket knives and outdoor knives in commerce as aforesaid, and including many, over long period of years involved, who have not been and are not entitled to mark, advertise, or otherwise represent their knives as approved or sponsored by the Boy Scouts of America and do not thus mark, etc., their said products, and others engaged in similar sale and distribution of such articles who have been and are entitled thus to mark, etc., their said knives as having been thus approved, and have truthfully marked, advertised, and represented them as such—

Marked, on handle of said knives sold by it as aforesaid, words "Scout Knife," and on sheath knives "Sportsman's Knife," and prepared and packed for sale said products in paper box on which appeared words "Scouting Set," together with picture of boys in the familiar Boy Scout uniform, tent, outdoor fire, and designs similar to the trefoil or fleur-de-lis emblem of said organization or movement, and marked and advertised for many years knives made and sold by it, which simulated knives adopted and approved by Boy Scout executives, with and through use of words "Boy Scout," "Boy Scouts of America," "Scouts," "Scouting," "Standard Scout," with or without, as case might be, emblems, or simulation thereof, of aforesaid organization, and pictures of boys in Scout uniforms and scenes of outdoor activity suggesting Boy Scouts and their activities, and thereby represented, directly and through implication, to members of purchasing public, that its said products were standard equipment authorized and approved by Boy Scouts of America;

Notwithstanding fact applications by it to organization in question for right to manufacture approved knife thereof and identified as such, considered on their merits, had been rejected, its said products were inferior to those of other manufacturers given approval over the course of the years as possessing the requisite qualities with respect to suitability, safety, and others deemed important and essential, after receipt of suggestions and submission of models and holding of conferences, and notwithstanding repeated protests by organization in question over its practice, as above indicated, in selling its said knives under such words and emblems and at lower prices than the genuine, more useful and superior, duly approved organization products, and notwithstanding repeated promises, not observed, to cease and desist such practices;

With result that, through such marketing and advertising, it enabled and caused retailers to represent and sell its said product as a part of the equipment