

Complaint

IN THE MATTER OF

WORTHMORE SALES PROMOTION SERVICE, INC.

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

Docket 4430. Complaint, Dec. 20, 1940—Decision, Feb. 27, 1941

Where a corporation engaged in manufacture of its Rap-A-Pak device or novelty holder for cigarette packages, and in competitive interstate sale and distribution thereof—

Falsely represented in advertisements in various magazines and other periodicals of interstate circulation and through circulars and letters sent to prospective or potential representatives, that "A man should make \$75 to \$100 commission weekly" and "Earn \$75 to \$100 commission weekly" selling its device, when in fact it was impossible for such persons thus to earn in usual or normal course of business any amount approximating either of such figures, and average earnings of its said representatives were but a small percentage of those so represented;

With effect of misleading and deceiving a substantial number of prospective agents and salesmen into mistaken and erroneous belief that earnings to be achieved through sale of its device were far in excess of those possible in fact, and with result that substantial number of such persons were induced to accept employment from him rather than his competitors, many of whom do not falsely represent amounts which representatives thereof may thus earn:

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

Mr. Randolph W. Branch 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 Worthmore Sales Promotion Service, Inc., a corporation, 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 is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its principal office and place of business at 221 East Twentieth Street, Chicago, Ill. Respondent for more than 1 year last past has

Complaint

32 F. T. C.

been engaged in the manufacture and sale of a device called "Rap-A-Pak," which is a novelty holder for cigarette packages.

In the course and conduct of its business respondent causes said device, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of articles of merchandise intended for the same purpose as that for which respondent's product is intended.

PAR. 3. For the purpose of inducing persons to agree to represent respondent in the sale of its product throughout the various States, and thus to further the sale of its product, the respondent advertises in various magazines and other periodicals having an interstate circulation, and respondent has also forwarded to prospective or potential representatives of the respondent throughout the various States of the United States and in the District of Columbia circulars and letters. Among and typical of the statements and representations contained in the aforesaid advertisements, circulars, and letters are the following:

A man should make \$75 to \$100 commission weekly.

Earn \$75 to \$100 commission weekly.

Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented that agents and salesmen selling respondent's device customarily earn from \$75 to \$100 per week in the usual and normal course of business.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, it is impossible for agents and salesmen selling respondent's device to earn in the usual and normal course of business \$75 to \$100 per week or any amount approximating either of such figures. The average earnings of the agents and salesmen representing the respondent in the sale of its device have been and are but a small percentage of the aforesaid earnings represented by the respondent.

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial number of prospective agents and salesmen into the mistaken and erroneous belief that the earnings to be achieved through the sale of respondent's device are far in excess of the earnings which are in fact possible for such agents and salesmen to achieve. As a result of such erroneous and mistaken belief, a substantial number of agents and salesmen have been induced to accept employment from respondent rather than from respondent's competitors, many of whom do not falsely represent the amounts to be earned from the sale of their products. In consequence substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 December 20, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Worthmore Sales Promotion Service, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 23, 1941, the respondent filed its answer, in which answer it 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 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

PARAGRAPHS 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its principal office and place of business at 221 East Twentieth

Findings

32 F. T. C.

Street, Chicago, Ill. Respondent for more than 1 year last past has been engaged in the manufacture and sale of a device called "Rap-A-Pak," which is a novelty holder for cigarette packages.

In the course and conduct of its business respondent causes said device, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said device in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals and firms engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of articles of merchandise intended for the same purpose as that for which respondent's product is intended.

PAR. 3. For the purpose of inducing persons to agree to represent respondent in the sale of its product throughout the various States, and thus to further the sale of its product, the respondent advertises in various magazines and other periodicals having an interstate circulation, and respondent has also forwarded to prospective or potential representatives of the respondent throughout the various States of the United States and in the District of Columbia circulars and letters. Among and typical of the statements and representations contained in the aforesaid advertisements, circulars and letters are the following:

A man should make \$75 to \$100 commission weekly.

Earn \$75 to \$100 commission weekly.

Through the use of the foregoing statements and representations and others of similar import not specifically set-out herein, the respondent represents and has represented that agents and salesmen selling respondent's device customarily earn from \$75 to \$100 per week in the usual and normal course of business.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, it is impossible for agents and salesmen selling respondent's device to earn in the usual and normal course of business \$75 to \$100 per week or any amount approximating either of such figures. The average earnings of the agents and salesmen representing the respondent in the sale of its device have been and are but a small percentage of the aforesaid earnings represented by the respondent.

783

Order

PAR. 5. The aforesaid acts and practices of the respondent have the tendency and capacity to and do mislead and deceive a substantial number of prospective agents and salesmen into the mistaken and erroneous belief that the earnings to be achieved through the sale of respondent's device are far in excess of the earnings which are in fact possible for such agents and salesmen to achieve. As a result of such erroneous and mistaken belief, a substantial number of agents and salesmen have been induced to accept employment from respondent rather than from respondent's competitors, many of whom do not falsely represent the amounts to be earned from the sale of their products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it 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, Worthmore Sales Promotion Service, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigarette package holders or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing as earnings or profits of agents, salesmen, or distributors selling respondent's products any amount in excess of the average net earnings or profits regularly and customarily made by respondent's agents, salesmen, or distributors in the normal and usual course of business.

It is further ordered, That the respondent shall, within 60 days after service upon it 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
RABHOR CORPORATION

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

Docket 3619. Complaint, Oct. 3, 1938—Decision, Feb. 28, 1941

Where a corporation engaged in manufacture of men's robes, jackets, lounge suits, and other wearing apparel, and in competitive interstate sale and distribution thereof; in advertisements which it furnished retailers for insertion in newspapers and other publications of interstate circulation, and through circulars with colored depictions of certain of its products which it furnished retailers for distribution to purchasers and prospective purchasers and on tags affixed to certain products—

- (a) Represented, directly and by inference, that its garments were made entirely of silk, product of the cocoon of the silkworm, through use of words "silk" and "satin," and through such typical statements as " * * * silk lined jacket" (or robe), "Silk warp brocade. Satin lined," and " * * * made from Suskana silk. Pure silk lined";

Notwithstanding fact that garments were not made entirely of the esteemed and preferred product of cocoon of silkworm, as long understood by consuming and purchasing public from words "silk" and "satin," but were composed of various combinations and mixtures of cotton, rayon, silk, and other fibers, and, as to certain of products in question, were made from material composed of 70 percent cotton and 30 percent silk; and

- (b) Failed to disclose such content of rayon, which, with appearance and feel of silk, is by the purchasing public practically indistinguishable therefrom, with result of concealing fact that garments concerned were made in whole or in part of chemical fiber or fabric aforesaid;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and of placing in the hands of uninformed and unscrupulous retailers means and instrumentality whereby they might, and did, mislead and deceive such public into erroneous belief that said garments were made wholly of silk, and of thereby diverting trade unfairly to it from competitors who truthfully advertised their respective merchandise:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort and *Mr. Robert Mathis, Jr.*, for the Commission.

Mr. Erwin Feldman, of New York City, for respondent.

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