

Complaint

IN THE MATTER OF
 INTER-COMMUNICATION SYSTEM OF AMERICA, INC.,
 ET AL.

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

Docket 5540. Complaint, May 10, 1948—Decision, Dec. 1, 1948

Where a corporation and its three officers who managed and controlled it, engaged in the interstate sale and distribution of intercommunication devices which they designated "Flash-A-Call"; through advertisements in newspapers, pamphlets, circulars, letters, magazines, and other media—

- (a) Represented and implied that they gave to each of their salesmen or agents one of their said devices "free" or without charge or performance of service therefor;

Notwithstanding the fact that a specified deposit and sale of ten devices were required under one plan, and sale of a designated number under another, before the agent became entitled to receive the so-called "free" device;

- (b) Falsely represented that said device was a new invention, and that there were no products sold on the market in competition therewith; that sale thereof required no capital and no sales effort or ability; and that 99 out of every 100 prospective customers purchased the same;

- (c) Represented that the average usual weekly net earnings or profits consistently made in the ordinary course of business and under normal conditions by their salesmen, representatives or agents were from \$221.90 to \$442.40; when in fact such figures represented unusual, exceptional weekly earnings or profits not consistently made under normal conditions;

- (d) Falsely represented that conversations transmitted over their said devices were strictly private or confidential; when in fact the devices were not such as to enable the users of them to converse privately; and

- (e) Misleadingly and deceptively represented or implied through the use of the statement "fully guaranteed", without disclosing the nature and extent of their guarantee and the manner of performance undertaken by the guarantor, that their devices were guaranteed in every respect;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and to induce many members of the public to purchase substantial numbers of their said device:

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. D. C. Daniel for the Commission.

Mr. Eugene Bernstein, of Chicago, Ill., for respondents.

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

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Trade Commission, having reason to believe that Inter-Communication System of America, Inc., a corporation, and Milton Meyer, Joseph Meyer, and Nathan Meyer, individually and as officers 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Inter-Communication System of America, Inc., is a corporation organized, existing, 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 2433 South Indiana Avenue, Chicago, Ill. Respondents Milton Meyer, Joseph Meyer, and Nathan Meyer are president, vice president, and secretary-treasurer, respectively, of the corporate respondent, and control the management, policies, and operation thereof, particularly in respect to the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and for more than 5 years last past have been engaged in the sale and distribution of intercommunication devices (hereinafter referred to as devices) designated by respondents by the name "Flash-A-Call," in commerce between and among the various States of the United States and in the District of Columbia. Respondents have caused said devices, when sold, to be transported from their aforesaid place of business in the State of Illinois to purchasers thereof located in the other States of the United States and in the District of Columbia. There is now and has been at all times mentioned herein a constant course of trade in said devices sold by respondents between and among the various States of the United States and of the District of Columbia. Respondents' volume of business in said devices in such commerce is and has been substantial.

PAR. 3. In the course and conduct of the business as aforesaid and for the purpose of inducing the purchase of said devices, subsequent to March 21, 1938, the respondents have made and have placed in the hands of others the means whereby have been made many statements and representations by means of advertisements in newspapers, pamphlets, circulars, letters, magazines, and other media circulated and distributed through the United States mails and otherwise. Among the typical, but not all-inclusive, of said representations so made and published are the following:

Free! Demonstrator Offer.
Flash-A-Call Demonstrator Yours Free.

FREE DEMONSTRATION OFFER! Everything is Yours without cost in our Free Demonstrator Offer, including a complete Flash-A-Call System.

Revolutionary Product.

IT'S NEWER THAN TELEVISION. IT'S HERE—New Invention—The Mysterious Broadcaster.

Utterly New Product with Irresistible Novelty Appeal.

Non-Competitive.

No selling required—your customers decide themselves after using the equipment for ten days whether or not they buy! Could we possibly make such offers if 99 out of 100 didn't buy?

No capital required—no experience necessary.

No experience or technical knowledge required.

Exclusive Territory Available.

\$221.90 IN ONE WEEK—UNUSUAL? Not At All! Just look at one week's earnings of these representatives.

SWB_--\$247. 84	JRS_--\$252. 80
HMT_--\$242. 75	HGC_--\$252. 93
HET_--\$319. 38	OGP_--\$442. 40.

Men are earning as high as \$300.00 week.

Men earning high as \$250.00 weekly.

ABSOLUTELY CONFIDENTIAL! Flash-A-Call is Absolutely confidential since conversation is strictly private.

Our records disclose that three additional sub-stations are sold with every complete Flash-A-Call Outfit.

ALL CONVERSATION STRICTLY PRIVATE. This System offers the utmost in maximum privacy.

We spend thousands of dollars yearly for extensive advertising.

PAR. 4. By means of the aforesaid statements and representations, respondents have represented and implied that respondents give to each of their salesmen, representatives or agents one of said devices "free" or without charge or without the performance of any service therefor; that said device is a new invention; that there are no competitive products sold; that no sales effort or ability is required; that 99 out of every 100 prospects purchase said devices; that no capital, experience or technical knowledge is required; that respondents give their salesmen, representatives or agents exclusive territories in which to sell said devices; that the average, usual weekly net earnings or profits consistently made in the ordinary course of business and under normal conditions and circumstances by respondents' salesmen, representatives or agents are as hereinabove indicated; that conversations transmitted over said devices are strictly private or confidential; that three additional substations are sold with every complete Flash-A-Call outfit; and that respondents spend thousands of dollars each year for extensive advertising of their said devices.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact respondents' said device is

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not given away "free" or without charge. On the contrary, under one of respondents' sales plans a person desiring to procure one of the so-called "free" devices is required to pay a designated sum of money therefor. If said person thereafter sells 10 of said devices and submits the orders therefor to respondents, the respondents will refund the aforesaid sum of money. Moreover, if such person does not submit said orders, they may return said device to respondents, and respondents will refund the sum of money paid therefor. Under another of said sales plans said person is required to sell a designated number of said devices before he is entitled to receive the so-called "free" device. Respondents' device is not a new invention, nor is it noncompetitive. The sale thereof requires capital, sales effort and ability, experience and technical knowledge on the part of said salesmen. Ninety-nine out of every 100 prospective customers do not purchase said device. Respondents do not grant exclusive territories to their salesmen. The aforementioned earnings of the salesmen do not represent the usual average weekly earnings of said salesmen, but represent unusual, exceptional weekly earnings or profits not consistently made in the ordinary course of business and under normal conditions and circumstances by said salesmen. Said device does not enable the users thereof to converse privately or confidentially. Respondents' salesmen have not averaged selling three additional substations with every complete Flash-A-Call outfit sold by them. Respondents do not spend thousands of dollars yearly for the extensive advertising of their said devices.

PAR. 6. In the course and conduct of their aforesaid business in the offering for sale, sale and distribution of their said products in commerce, respondents, by means of the aforesaid advertising matter have made the following statement or representation: "Fully Guaranteed."

Through the use of said statement or representation respondents have represented or implied that said device was guaranteed in every respect.

The aforesaid statement or representation is misleading and deceptive for the reason that the nature and extent of such guarantee with respect to the condition to which the guarantee applies and to the manner in which the guarantor will perform thereunder are not disclosed in the aforesaid advertising matter.

PAR. 7. The aforesaid false, misleading, and deceptive statements and representations so made by respondents, as above alleged, have had the tendency and capacity to and do mislead and deceive a substantial part of the purchasing public into the false and erroneous belief that said statements and representations are true and induce a

substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said devices.

PAR. 8. The methods, acts and practices of respondents, as hereinabove alleged, are all to the prejudice 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 May 10, 1948, issued and subsequently served on the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of said complaint a written stipulation was entered into by and between the respondents and Daniel J. Murphy, Chief of the Commission's Trial Division, and in this stipulation it was provided that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of all evidence, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding, without the presentation of argument or the filing of briefs. In said stipulation the respondents also expressly waived the filing of a recommended decision by a trial examiner.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the stipulation, said stipulation having been approved, accepted and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. Respondent Inter-Communication System of America, Inc., is a corporation organized, existing 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 2433 South Indiana Avenue, Chicago, Ill. Respondents Milton Meyer, Joseph Meyer, and

Nathan Meyer are, respectively, president, vice president, and secretary-treasurer, of the corporate respondent, and they control the management, policies, and operation of said corporate respondent, particularly in respect to the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of intercommunication devices (hereinafter sometimes referred to as devices) designated by respondents by the name "Flash-A-Call." Respondents have caused said devices, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in the other States of the United States and in the District of Columbia. There is now, and at all times mentioned herein there has been, a constant course of trade in said devices sold by respondents between and among the various States of the United States and in the District of Columbia. Respondents' volume of business in said devices in such commerce is and has been substantial.

PAR. 3. In the course and conduct of the business as aforesaid and for the purpose of inducing the purchase of their intercommunication devices, the respondents, subsequent to March 21, 1938, have made and have placed in the hands of others the means whereby have been made many statements and representations concerning said devices. Such statements and representations have been made by means of advertisements in newspapers, pamphlets, circulars, letters, magazines, and other media circulated and distributed through the United States mails and otherwise. Among and typical, but not all inclusive, of the statements and representations so made and published have been the following:

Free! Demonstrator Offer.

Flash-A-Call Demonstrator Yours Free.

FREE DEMONSTRATION OFFER! Everything is Yours without cost in our Free Demonstration Offer, including a complete Flash-A-Call System.

Revolutionary Product.

IT'S NEWER THAN TELEVISION. IT'S HERE—New Invention—The Mysterious Broadcaster.

Utterly New Product with Irresistible Novelty Appeal.

Non-Competitive.

No selling required * * * Could we possibly make such offers if 99 out of 100 didn't buy?

No capital required—

\$221.90 IN ONE WEEK—UNUSUAL? Not at all! Just look at one week's earnings of these representatives.

SWB-----\$247.84	JRS-----\$252.80
HMT-----\$242.75	HGC-----\$252.93
HET-----\$319.38	OGP-----\$442.40.

Men are earning as high as \$300.00 week.

Men earning high as \$250.00 weekly.

ABSOLUTELY CONFIDENTIAL! Flash-A-Call is Absolutely confidential since conversation is strictly private.

ALL CONVERSATION STRICTLY PRIVATE. This System offers the utmost in maximum privacy.

PAR. 4. By means of the aforesaid statements and representations, respondents have represented and implied that they give to each of their salesmen, representatives or agents one of their intercommunication devices "free" or without charge or without performance of any service therefor; that said device is a new invention; that there are no products on the market sold in competition therewith; that the sale of said devices requires no capital and no sales effort or ability; that 99 out of every 100 prospects purchase said devices; that the average, usual weekly net earnings or profits consistently made in the ordinary course of business and under normal conditions and circumstances by respondents' salesmen, representatives or agents are from \$221.90 to \$442.40; and that conversations transmitted over said devices are strictly private or confidential.

PAR. 5. In truth and in fact, respondents' intercommunication devices are not given away "free" or without charge. On the contrary, under one of respondents' sales plans a person desiring to procure one of the so-called "free" devices is required to make a deposit of a designated sum of money. If said person thereafter sells 10 of the devices and submits to respondents the orders therefor, the respondents will refund the aforesaid sum of money. Moreover, if such person does not submit said orders, he may return said device to respondents, and respondents will refund the aforesaid deposit. Under another of respondents' sales plans a person is required to sell a designated number of said devices before he is entitled to receive the so-called "free" device. Respondents' device is not a new invention, nor is it noncompetitive. Contrary to respondents' representations the sale of said devices does require capital, sales effort and ability on the part of salesmen. It is not true, as respondents have represented, that 99 out of every 100 prospective customers purchase said device. The figures mentioned in respondents' advertisements as earnings of salesmen of said devices

do not represent the usual average weekly earnings of said salesmen, but represent unusual, exceptional weekly earnings or profits not consistently made in the ordinary course of business and under normal conditions and circumstances by said salesmen. Respondents' devices are not such as to enable the users thereof to converse privately or confidentially.

PAR. 6. The Commission therefore finds that the respondents' statements and representations, as set forth in paragraph 3 hereof, are and have been false and deceptive.

PAR. 7. In the course and conduct of their business in the offering for sale, sale and distribution of their intercommunication devices in commerce, respondents, by means of the aforesaid advertising matter have made the following additional statement or representation: "Fully Guaranteed."

Through the use of said statement or representation respondents have represented or implied that their intercommunication devices were guaranteed in every respect.

PAR. 8. The aforesaid statement or representation is misleading and deceptive for the reason that the nature and extent of such guarantee with respect to the condition to which the guarantee applies and to the manner in which the guarantor will perform thereunder are not disclosed in the advertising matter.

PAR. 9. The use by the respondents of the false and misleading statements and representations above referred to has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has the tendency and capacity to induce many members of the public to purchase substantial numbers of respondents' intercommunication devices.

CONCLUSION

The acts and practices of the respondents 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 a stipulation as to the facts entered into by and between the respondents and Daniel J. Murphy, Chief of the Commission's Trial Division, in which it was

provided, among other things, that, subject to the approval of the Commission, the statement of facts contained in said stipulation may be taken as the facts in this proceeding in lieu of all evidence, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding, without the presentation of argument or the filing of briefs, the filing of a recommended decision by a trial examiner having been expressly waived; and the Commission having approved said stipulation and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of section 5 of the Federal Trade Commission Act;

It is ordered, That the respondent Inter-Communication System of America, Inc., a corporation, and its officers, and the respondents Milton Meyer, Joseph Meyer, and Nathan Meyer, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their intercommunication devices, do forthwith cease and desist from:

1. Using the terms "free," "free demonstration offer," "yours without cost," or any other term or terms of similar import or meaning, in advertising, to designate or describe merchandise which is not in truth and in fact a gift or gratuity or is not given to the recipient thereof without requiring the purchase of other merchandise or the performance of some service inuring directly or indirectly to the benefit of the respondents.

2. Representing, directly or by implication, that their intercommunication devices are new inventions, or that there are no products on the market sold in competition with said devices.

3. Representing, directly or by implication, that the sale of said devices requires no capital, sales effort or ability on the part of salesmen.

4. Representing, directly or by implication, that conversations or other communications may be transmitted over said devices privately or confidentially.

5. Representing, directly or by implication, that 99 out of every 100 prospects purchase said devices.

6. Representing as possible earnings or profits of salesmen of such devices for any stated period of time any specified sum of money which is not a true representation of the net earnings or profits which

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have been made by a substantial number of the respondents' active salesmen in the ordinary course of business under normal conditions and circumstances.

7. Representing, directly or by implication, that their devices are "guaranteed" or "fully guaranteed," unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the respondent shall, within 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

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IN THE MATTER OF

BOB ARMSTRONG TRADING AS R. K. ARMSTRONG

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

Docket 5507. Complaint, Aug. 5, 1947—Decision, Dec. 10, 1948

Where an individual engaged in the interstate sale and distribution of his "Bob Armstrong's Distemper Remedy" capsules, ingredients of which included arsenic trioxide, and which were contained in boxes conspicuously labeled "poison"; through statements in advertisements in newspapers, periodicals, pamphlets, circulars, and other advertising literature, including reproductions or purported reproductions of testimonials—

(a) Represented thereby and also through the use of the word "remedy" in the name of his preparation, directly or by implication, that the same was a cure or remedy for distemper in dogs;

When in fact it had no therapeutic value in the treatment of said condition except insofar as it might act as a palliative by affording a measure of relief from the symptoms of the disease; and

(b) Failed in said advertisements to reveal the arsenic trioxide content of the preparation and that said ingredient was a poison;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his said product, and to cause it thereby to purchase substantial quantities thereof:

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

Before *Mr. William L. Pack*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. H. G. Rawls, of Albany, Ga., 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 Trade Commission, having reason to believe that Bob Armstrong, an individual trading as R. K. Armstrong, 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, Bob Armstrong, is an individual trading as R. K. Armstrong, with his principal place of business located in the town of Fitzgerald, State of Georgia.