

Complaint

52 F. T. C.

IN THE MATTER OF

WM. H. WISE CO., INC.; THE CHARMING WOMAN, INC.;
ET AL.

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

Docket 6288. Complaint, Jan. 17, 1955—Decision, Aug. 19, 1955

Consent order requiring sellers in New York City of a correspondence course in beauty culture, to cease use of a misleading "introductory offer" which, following acceptance by a customer, they treated as a contract for the entire course, and to cease continuing to mail lessons and demand additional payment after being advised of the customer's wish to discontinue the lessons.

A third charge of using a fictitious trade name for the purpose of collecting amounts alleged to be delinquent remained for decision in due course.¹

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. William R. Tincher for the Commission.

Mr. Thomas Barrett Scott, of Washington, D. C., 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 Trade Commission, having reason to believe that Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and John J. Crawley, individually and as an officer of said corporations, hereinafter called 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. Wm. H. Wise Co., Inc., is a corporation duly organized, existing and doing business under the laws of the State of New York, with its principal office and place of business at 50 West 47th Street, in the city and State of New York. The Charming Woman, Inc., is a corporation duly organized, existing and doing business under the laws of the State of New York and a wholly owned subsidiary of said Wm. H. Wise Co., Inc., with its principal office and place of business at 37 West 47th Street, in the city and State of New York. John J. Crawley is an individual and President of said cor-

¹ This charge of representing that respondents' "Publishers Protective Service" was an independent and separate organization employed to collect accounts in arrears, was settled by an order to cease and desist entered Nov. 1, 1956, 53 F. T. C. —.

porations and this individual formulates, controls and manages all of the policies of said corporations. His principal office and place of business is the same as that of Wm. H. Wise Co., Inc.

PAR. 2. For more than two years last past respondent, The Charming Woman, Inc., has been engaged in the sale and distribution of a course of instruction in beauty care which said course was pursued by correspondence through the United States mails. Said respondent, in the conduct of said business, caused said course to be transported from its said place of business in the State of New York to purchasers thereof located in States other than the State of New York. There has been at all times mentioned herein a substantial course of trade in said course of instruction so sold and distributed by said respondent in commerce.

PAR. 3. In connection with the sale of said course respondent, The Charming Woman, Inc., has made use of printed advertising material which was distributed to members of the purchasing public throughout the United States by means of the United States mails, in and by which numerous statements have been made with respect to the terms and conditions of purchase of said course of instruction. Such prospective purchasers received an envelope containing a printed form letter, a circular and a "Charter Enrollment Card." Said card is as follows:

CHARTER ENROLLMENT CARD
MAIL TODAY IN REPLY ENVELOPE THAT NEEDS NO STAMP
MAIL NOW! WITH ONLY 25¢ FOR YOUR FIRST 10 DAILY
LESSONS

THE CHARMING WOMAN, Inc.
37 West 47th Street, New York 19, N. Y.

For the enclosed Special Introductory Price of only 25¢, please send me prepaid the first Group of 10 Daily Illustrated Lessons containing the starting foundation for the Course in Beauty, Charm, and Successful Living for Women—and enroll me for 3 months.

You may send me further Groups of 10 Lessons every 10 days, giving me 30 Daily Lessons each month at the rate of only \$2 a month, until I give you notice to cancel my enrollment. For convenience in bookkeeping, you may bill me once a month for such lessons as I receive.

FREE: Personal Analysis Guide will be sent me **WITHOUT CHARGE**. It is understood that I may cancel at any time and pay only for Lesson-Groups actually received.

Miss _____	INSERT
Mrs. _____	25¢
(Please print in BLOCK LETTERS)	UNDER
Address _____	POINTS
City & _____	
Zone _____	
NO OBLIGATION TO CONTINUE—STOP WHEN YOU WISH!	

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Said form letter and circular, in addition to detailed information with respect to the merits of said course, contain various representations regarding the introductory offer of sale. Typical but not all inclusive of such representations are the following:

1. Only 25¢ to start—Cancel Whenever You Like * * * The special Introductory price of *only* 25¢ brings you your first 10 day group of fascinating daily lessons! * * *

2. Cancel Any Time Without Further Obligation.

5. Cost Slashed in Half! Every ten days you will receive another group of 10 daily picturized lessons, exciting, interesting, inspiring! * * * for convenience in bookkeeping you will be billed at the old low rate of only \$2.00 monthly—Slashing the cost to virtually Half that paid by over 50,000 delighted subscribers!

6. Stop Whenever You Like! Pay only for lesson groups you have received. There's never any obligation to continue.

Only 25¢ to Start—Stop Whenever You Like.

There's really no decision to make now. All you do now is send 25¢ for the wonderful group of 10 Trial Lessons by those famous specialists.

Then you can decide whether or not you want to continue.

Just imagine * * * Only 25¢ for first 10 thrilling daily lessons—Stop Whenever You Like!

If you are more than delighted with your immediate and continuous improvement, you may let the lesson-Groups continue to come to you three times a month, receiving 30 exciting Daily Lessons monthly, and completing the entire course in 3 short months. For convenience in bookkeeping you will be billed at the rate of \$2.00 monthly, only for those Lesson Groups you have received.

PAR. 4. By means of the foregoing statements and others similar thereto but not specifically set out herein, respondents have represented and implied that on payment of twenty-five cents, purchasers will receive ten trial lessons of a course in beauty, charm and successful living; that the invitation to mail 25¢ constitutes only a trial offer, the ten lessons being in the nature of a sample, and that the decision to enroll for said course rests entirely with the prospect and that such decision may be made at a later date; that in accepting said 25¢ trial offer, such purchasers incur no other obligations and need not continue with said course unless they specifically indicate a desire to do so; and that additional lessons in groups of ten lessons may be purchased at a monthly rate of two dollars and a total cost of six dollars.

PAR. 5. The foregoing representations and implications are grossly deceptive and misleading. In truth and in fact, persons who sign said Enrollment Card enter into an agreement with respondents to purchase the entire course of instruction for a total price of \$6.00 payable in three monthly installments of \$2.00 each, unless notice of cancellation is specifically given to said respondent.

Throughout said advertising literature respondents emphasize the fact that 10 sample lessons may be obtained by paying 25¢ and that

the decision of whether or not additional groups of lessons are to be purchased rests entirely with the purchaser.

PAR. 6. As a rule, members of the purchasing public do not read or analyze carefully any printed advertising material which is received by them through the mails; and there has been a substantial number of such members who on receipt of respondents' said advertising material mailed the sum of twenty-five cents to said respondent under the definite impression that said offer of ten lessons for twenty-five cents was in the nature of a sample or trial offer and that they would not be obligated for any further payments unless they expressly advised respondents to that effect. The fact that said agreement to purchase the full course is placed inconspicuously and in fine print on a card containing illustrations, advertising matter and testimonials and that the invitation to mail only 25¢ appears conspicuously and in bold type strengthened the belief in the minds of the purchasing public that said card merely offered an opportunity to buy a set of trial lessons for the nominal price of only 25¢. Said impression and belief are heightened and confirmed by the representations made in said form letter and circular as set forth in Paragraph Three hereof, which are also prominently displayed and reiterated, while the fact that persons sending in 25¢ to said respondent will be subsequently billed at the rate of \$2.00 a month for three months is set forth once, in small type and in an inconspicuous place in material containing many illustrations and detailed descriptions of the various phases of said course of instruction.

In some instances, said respondent had continued mailing said lessons after being notified by the person sending in the initial amount of 25¢ to discontinue sending additional lessons; and thereafter has demanded payment in full for said course, in spite of being again advised of such cancellation and contrary to the express representation that purchasers were under no obligation to continue said course.

PAR. 7. In the course and conduct of said business as aforesaid, respondents have adopted and use a fictitious trade name, to wit, Publishers Protective Service, for the purpose of collecting accounts alleged to be delinquent, thereby representing and implying that said Publishers Protective Service is an independent and separate organization employed to collect accounts which are in arrears.

In truth and in fact said fictitious collection agency is operated solely by respondent John J. Crawley and is used by respondents to coerce and intimidate purchasers of said course of instruction, as well as persons who have cancelled orders therefor, and compel them to pay for said course, though purchased as a result of the erroneous

and mistaken belief engendered by respondents' deceptive practices as herein alleged.

PAR. 8. The use by respondents of the statements and representations aforesaid has had and now has the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true and to induce them to purchase said course of instruction in said commerce on account thereof.

PAR. 9. The aforesaid acts and practices of respondents, 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.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on January 17, 1955, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents, charging them in certain particulars with having violated the provisions of said Act. The respondents were duly served with process and thereafter filed their answer.

On June 3, 1955, the respondents, however, stipulated in writing with counsel supporting the complaint for a partial consent settlement only, agreeing therein that a consent order against the respondents be entered herein in terms identical with those contained in the notice issued and served on respondents as a part of the complaint herein except that a provision is inserted at the end of paragraph 2 of the order which takes cognizance of a possible technical violation of the order which respondents desire to avoid, and which does not otherwise affect the obvious intent and meaning of said paragraph. The proposed order further omits paragraph 3 of the order as it appeared in the said notice because the stipulation reserves for decision after initial hearing in adversary proceedings all issues presented by Paragraph Seven of the complaint and the answer to the allegations of said paragraph contained in respondents' formal answer of record herein. Said written stipulation for partial consent settlement was approved in writing by the Director of the Commission's Bureau of Litigation.

By said stipulation for partial consent settlement, among other things, respondents have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; that the parties expressly waive a hearing

before the hearing examiner or the Commission only as to the matters agreed to by said partial consent settlement stipulation, and waive all further and other procedure relating thereto to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; and that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, the parties having waived specifically therein any and all right, power or privilege to challenge or contest the validity of said order. It was also stipulated and agreed therein that the complaint herein may be used in construing the terms of the order provided for in said stipulation which may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

It was specifically stipulated by the parties, however, that said stipulation is for settlement purposes only and does not constitute an admission by respondents that they have engaged in any method, act or practice violative of law.

With reference to Paragraph Seven of the complaint, it was further expressly provided in said stipulation that said paragraph is excluded from consideration in the proposed consent settlement and that the allegations made in said paragraph and the answer to said allegations in respondents' formal answer of record are not included in such stipulation for consent settlement and that the issues joined thereby shall remain for decision in regular course and shall not be affected, modified or altered by such stipulation.

The aforesaid stipulation for consent order for partial settlement as so approved was submitted on June 3, 1955, to the undersigned hearing examiner for his consideration in accordance with Rule V of the Commission's Rules of Practice. Since the drafting of said stipulation for consent order, the Commission's Rules with respect to such matters have been revised and the Commission's present Rule pertaining to consent orders is now Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, which became effective on May 21, 1955, and now govern this proceeding. The word "stipulation" as used by the parties thereto and referred to herein means "agreement" as stated in said present Rule and reference made in said stipulation to "the entire record herein" under the present rule is necessarily limited to the meaning of the temporary unofficial record before the hearing examiner, which will not become a part of the official record in this proceeding unless and until the Commission approves said stipulation and this order pursuant to said present rule, said Section 3.25.

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And upon due consideration of the allegations of the complaint, other than Paragraph Seven thereof and the answer thereto, and the said stipulation for consent order, which is hereby accepted and ordered filed as part of the record herein, it having been stipulated they shall be the entire record herein on which the hearing examiner may enter this order, the hearing examiner finds that the Commission has jurisdiction of the subject matter of this proceeding and of each of the parties respondent herein; that the allegations of the complaint, other than those contained in Paragraph Seven thereof, state a legal cause for complaint under the Federal Trade Commission Act against the respondents and each of them as to each of the particular matters alleged as violations of law therein but respondents do not admit the same; that this proceeding is in the interest of the public; that the said stipulation and the following order shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission and shall not become a final order until approved by the Commission; and that upon said conditions said order shall be and hereby is entered as follows:

ORDER

It is ordered, That respondents, Wm. H. Wise Co., Inc., a corporation, The Charming Woman, Inc., a corporation, and their officers, and John J. Crawley, individually and as an officer of said corporations, and the respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, in commerce as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction in beauty culture, or any similar courses of study and instruction, do forthwith cease and desist from:

1. Failing to disclose clearly and adequately on enrollment cards and in other advertising material that by signing and returning the enrollment card or any similar document, the purchaser or subscriber is, in fact, enrolling for the entire course and that if the purchaser or subscriber desires to discontinue said course he must give notice to respondents to cancel his enrollment.

2. Collecting, or attempting to collect, payment for lessons and other instruction material sent to persons after they have notified respondents to cancel their enrollment; provided, however, that upon a satisfactory showing by respondents that said collection or collection attempt results solely and exclusively from a normal and reasonable delay occasioned by the failure of the person cancelling his enrollment to include in his notice of cancellation the number assigned his account by respondents, this paragraph shall not be applicable.

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Order

It is further ordered, That the said stipulation and this order shall not become a part of the official record of this proceeding unless and until said stipulation and this order are approved by and become part of the decision of the Federal Trade Commission; and that the issues raised by Paragraph Seven of the complaint and respondents' answer thereto shall be unaffected by this order and are reserved for decision after initial hearing in adversary proceedings under the Rules of the Commission.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 19th day of August, 1955, become the decision of the Commission; and, accordingly:

It is 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 to cease and desist.

Commissioner Mason not participating.

IN THE MATTER OF
HAROLD SCHIFF AND MAX SCHIFF DOING BUSINESS AS
SUN VACUUM CLEANER COMPANY

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

Docket 6342. Complaint, May 5, 1955—Decision, Aug. 19, 1955

Consent order requiring operators of retail stores in Washington, D. C., and Baltimore, Md., to cease representing falsely in "bait" advertising in newspapers and by telephone calls that they were making bona fide offers to sell new and reconditioned vacuum cleaners at specified low prices, when actually the offers were made only to obtain leads to prospects; and to cease representing falsely that new vacuum cleaners offered for sale were of a well-known make and were unconditionally guaranteed.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Michael J. Vitale 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 Harold Schiff and Max Schiff, copartners trading and doing business as the Sun Vacuum Cleaner Company, hereinafter referred to as the 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. Respondents Harold Schiff and Max Schiff are copartners trading and doing business under the name of Sun Vacuum Cleaner Company. They operate retail stores located at 713 G Street N. W., Washington, D. C., and 1037 Light Street, Baltimore, Maryland. Their post office address is 1037 Light Street, Baltimore, Maryland. Said respondents cooperate and act together in performing the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of vacuum cleaners among other things. In the course and conduct of their said business