

Complaint

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IN THE MATTER OF
NATIONAL FIRE SAFETY COUNSELLORS ET AL.

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

Docket 6489. Complaint, Jan. 11, 1956—Decision, June 12, 1956

Consent order requiring sellers in Irvington, N. J., through house-to-house canvassers, of a fire alarm system for homes, to cease representing falsely that their salesmen were connected with the federal government or a civic organization, were only demonstrators, and desired to make fire prevention talks or demonstrations only; that prospects and their homes were specially selected for demonstration purposes; that the total cost of the system would be little more than the credit allowed for supplying names of other prospects, and that demonstrations in the homes of referred prospects were not necessary before such credit was given; that the contract or promissory note for the purchase price would not be discounted and that carrying charges would not be added to the total cost; and to cease utilizing such scare tactics as newspaper clippings or horror pictures of fire fatalities to induce the purchase of their products, among other things.

Before *Mr. Frank Hier*, hearing examiner.
Mr. William R. Tincher for the Commission.
Mr. Jerome L. Kessler, of Newark, N. J., 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 National Fire Safety Counsellors, a corporation, and Robert L. Berko and Howard Berko, 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Fire Safety Counsellors is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Respondents Robert L. Berko and Howard Berko are the president and vice president respectively of said corporate respondent and formulate, control and direct the policies and practices of said corporate respondent and are responsible for the operation and management thereof. Respondent Robert L. Berko also does business under the name of the National Fire Safety Council. The office and principal place of business of all

respondents is located at 1068 Clinton Avenue, Irvington, New Jersey.

PAR. 2. Respondents are now, and for more than one year 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 a fire detection or fire alarm system usually installed in purchasers' homes or dwellings. Respondents cause and have caused said fire detection or fire alarm systems when sold to be shipped from the State of New Jersey to purchasers thereof located in various other states of the United States and in the District of Columbia, where they are installed in the homes or dwellings of such purchasers. The volume of business of respondents in said systems in commerce is now and has been substantial.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents are now, and have been, in substantial competition with other corporations, firms and individuals engaged in the business of selling and distributing fire detection or fire alarm systems in commerce.

PAR. 4. Respondents employ salesmen or house-to-house canvassers to sell their products. Said salesmen are customarily given a course of instruction in selling, supplied with sales manuals, demonstration kits, newspaper clippings and pictures of fires and fire fatalities and injuries. When a sale is made, the salesman secures the signatures usually of both husband and wife to a contract and promissory note attached thereto supplied by respondents.

PAR. 5. In the course and conduct of their aforesaid business and for the purposes of selling their products, respondents directly or through their representatives, employ many unfair and deceptive practices. Among and typical, but not all inclusive, of such practices are the following:

(1) In the telephone solicitation of prospective purchasers, respondents' salesmen falsely represent that they desire to make a fire prevention talk or demonstration only.

(2) Respondents' salesmen falsely represent themselves to be connected with some department of the Federal Government or with a civic organization when making said fire prevention talk and demonstration.

(3) Respondents' salesmen employ "scare tactics" in exhibiting news clippings and horror pictures during their sales talks, calculated to arouse parents emotionally as to the need to protect themselves and their children from fire hazards.

(4) Respondents' salesmen falsely represent that they are demonstrators only and not salesmen.

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(5) Respondents' salesmen falsely represent that prospects have been especially selected or that their homes have been selected for demonstration purposes and that the call presents an exceptional opportunity for said prospects.

(6) Respondents' salesmen falsely represent the total cost of the fire detection or fire alarm system.

(7) Respondents' salesmen falsely represent that the entire cost of the system to prospective purchasers will be a few cents or dollars per month in excess of the credit that purchasers will receive from supplying names of other prospective purchasers to the respondents.

(8) Respondents' salesmen falsely represent to prospects that they will be given credit of \$5 or \$10 per name and address of other persons who might be interested in said system without disclosing that a demonstration in the homes of the referred persons is necessary before the credit will be given. Respondents' salesmen usually allow a specified number of names at time of the sale and thereafter represent that two or three names and addresses can be submitted monthly.

(9) Respondents' salesmen falsely represent that if any of the referred names culminate in a sale, an additional \$20 credit will be given to the person furnishing the lead.

(10) Respondents' salesmen falsely represent that the names of those who supply prospective customers will not be revealed to the latter. These names are almost universally disclosed to the referred prospect.

(11) Respondents' salesmen in many instances have induced prospects to sign contracts and promissory notes which are attached thereto, in blank upon the representation that the total cost would be only a few cents or few dollars per month over and above the credit for supplying names of additional prospective customers. Such contracts and notes are subsequently returned to the purchasers filled in with the total cost and the carrying charges which are contrary to the representations made.

(12) Respondents' salesmen fail to reveal or do not advise the prospective purchasers that the contract and note will be discounted. Respondents almost universally discount the contract and note with a finance company or bank which in turn notify buyers that they hold a contract and note and expect full payment in monthly installments, usually 36 months. In the absence of being so advised, prospective purchasers do not expect their contracts and notes to be handled in this manner. Knowledge that their contracts and notes were to be so handled would have the tendency and capacity to cause prospective purchasers to refrain from entering into said contracts.

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(13) Respondents' salesmen do not advise prospective purchasers that carrying charges will be added to the cost of the system. In the absence of being so advised, prospective purchasers do not expect respondents to add such carrying charges. Knowledge that carrying charges were to be added would have the tendency and capacity to cause prospective purchasers to refrain from entering into said contracts.

PAR. 6. The use by the respondents of the unfair and deceptive acts and practices, in connection with the conduct of their business has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public, to cause many prospective purchasers to become unduly alarmed in regard to fire and its consequences and to purchase respondents' fire detection or fire alarm system. As a result thereof trade has been unfairly diverted to the respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 7. The above and foregoing practices of the respondents are all to the prejudice and the injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices in commerce, and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 11, 1956, issued and subsequently served its complaint in this proceeding against respondents National Fire Safety Counsellors, a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, Robert L. Berko and Howard Berko, individually and as president and vice president, respectively, of said corporate respondent, who as such formulate, control, and direct the policies and practices of said corporate respondent and are responsible for the operation and management thereof. The office and principal place of business of respondents is at 1068 Clinton Avenue, Irvington, New Jersey.

On April 25, 1956, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; agree that the answer of respondents herein to the complaint shall be considered as having been withdrawn; waive any further procedural steps before the hearing examiner and the Com-

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mission; waive the making of findings of fact or conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents and when so entered it shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent, National Fire Safety Counsellors, is a corporation existing and doing business under the laws of New Jersey, with its office and principal place of business located at 1068 Clinton Avenue, Irvington, New Jersey. Respondents Robert L. Berko and Howard Berko are the president and vice president, respectively, of said corporation, with their office and principal place of business located at the same address as 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 the respondents National Fire Safety Counsellors, a corporation, its officers, agents, representatives and employees, and Robert L. Berko and Howard Berko, individually and as officers of said corporation, 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 fire detection or fire alarms systems, do forthwith cease and desist from representing, directly or by implication:

1. That respondents or any of their salesmen or employees are in any way connected with, or endorsed or approved by, the United States Government, any state Government, or any civic association;
2. That respondents' salesmen only desire to make fire prevention talks or demonstrations;
3. That respondents' representatives are not salesmen but are only demonstrators;
4. That prospective purchasers have been specially selected, or that their homes have been selected for demonstration purposes;
5. That the total cost or the cost per month of their fire detection device or fire alarm system is any less than the actual cost, without reference to credit for referrals;
6. That no demonstrations in the homes of referred prospective customers are necessary before credit is given to the supplier of said referrals;
7. That the identity of those supplying names of prospective purchasers will not be revealed to said prospective purchasers;
8. That the contract or promissory note for the purchase price of the system will not be discounted or failing to reveal that such will be discounted;
9. That carrying charges will not be added to the total cost of the system or failing to reveal that carrying charges will be added;
10. That newspaper clippings or horror pictures of fire fatalities represent what the prospective purchaser may expect in his home if he does not purchase respondents' products, or otherwise utilize such scare tactics to induce the purchase of respondents' products.

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 shall, on the 12th day of June, 1956, 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.

IN THE MATTER OF
FRUITVALE CANNING COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE
CLAYTON ACT

Docket 5989. Complaint, May 14, 1952—Decision, June 15, 1956

Order requiring a packer of canned fruits in Oakland, Calif., to cease discriminating in price in violation of Sec. 2 (a) of the Clayton Act as amended, through such practices as the consistent pattern it followed during 1949 and 1950 of charging chain stores in San Francisco, which purchased directly through their buyers, less for its products than it charged buyers who purchased through brokers, by variations in price per dozen cans ranging from 2½¢ to 55¢ during 1950, the majority of which were 5¢ or 10¢ per dozen.

Mr. Edward S. Ragsdale and Mr. Cecil G. Miles for the Commission.

Hadsell, Murman & Bishop, of San Francisco, Calif., and *Carretta & Counihan*, of Washington, D. C., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

On May 14, 1952, the Federal Trade Commission issued its complaint in this proceeding, alleging that the above-named respondent, while engaged in commerce among the several states of the United States in selling and distributing canned fruits, wherein it constitutes a substantial factor, has, since June 19, 1936, discriminated in price between purchasers of such canned fruits of like grade and quality, which respondent sells for use, consumption and resale within the several states of the United States. Such discrimination is alleged to vary from approximately 2½% to approximately 7½% of the price of the commodity sold. Respondent is alleged to use two separate and distinct sales methods, as follows: (1) by selling canned fruits to buyers, principally wholesale grocers and retail chain stores, through brokers; and (2) by selling canned fruits of like grade and quality directly, without the intervention of a broker, to other buyers, most of whom are large retail chain grocers who buy through their buying agencies located in San Francisco, California. Representative of such direct buyers, who are characterized as favored purchasers, are Safeway Stores, Inc.; The Great Atlantic & Pacific Tea Company; The Kroger Company; The American Stores Company; First National Stores; National Retailer Owned Grocers, Inc.; Consolidated Grocery Co., and Topco Associates, Inc.