

Decision

IN THE MATTER OF
BERNARD W. COATES DOING BUSINESS AS ASSOCIATED
MAIL MERCHANTISERS

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

Docket 6988. Complaint, Dec. 13, 1957—Decision, June 28, 1958

Consent order requiring an individual in Dorchester, Mass., engaged in the sale and distribution of merchandise and supplies for use in a mail order business, to cease representing falsely through the use of various trade names and advertising material mailed to prospective purchasers that he offered limited and exclusive membership in a cooperative association operated for the profit of its members, that said members were carefully selected and were assisted in the operation of their mail order enterprises by a large and experienced staff, that merchandise available for mail order sale by them had been selected after extensive research and trial tested for salability, and that members would earn large incomes; and to cease misleading use of the words "Association" or "Associated" in his trade names.

Mr. Terral A. Jordan for the Commission.

Mr. Harold J. Field, of Boston, Mass., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 13, 1957, issued and subsequently served its complaint in this proceeding against respondent Bernard W. Coates an individual trading and doing business as a sole proprietorship under the name of Associated Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Mass.

On May 7, 1958, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights he 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

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proceeding as to all parties; that the record on which this 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 respondent that he has violated the law in any respect 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 respondent, 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 Bernard W. Coates is an individual formerly trading and doing business as a sole proprietorship under the name of Associated Mail Merchandisers, and now doing business under the name of National Mail Merchandisers, with his office and principal place of business located at 35 Pleasant Street, Dorchester, Mass.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Bernard W. Coates, an individual formerly trading as Associated Mail Merchandisers, now trading as National Mail Merchandisers, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in the offering for sale, sale, or distribution of various articles of merchandise and various kinds of catalogs, order blanks, and other supplies and equipment used in the operation of a mail order merchandising business, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or indirectly that:

1. Purchasers of respondent's aforesaid products are offered, sold or provided with a membership or other kind of association in or with a cooperative or mutually beneficial mail order buying and selling

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association or group operated in whole or in part for the profit or gain of its members or in any other kind of association or group.

2. Purchasers of respondent's aforesaid products are offered, sold or provided with a limited or exclusive membership or association in or with a cooperative or mutually beneficial mail order buying and selling association or group operated in whole or in part for the profit or gain of its members or in any other kind of association or group.

3. Purchasers of respondent's aforesaid products are carefully or otherwise selected to be members or associates of a cooperative or mutually beneficial mail order buying and selling association or group operated in whole or in part for the benefit of its members or of any other kind of association or group.

4. Purchasers of respondent's aforesaid products will be assisted and served in the operation of their respective mail order merchandising enterprises by a staff of persons or organizations who are competent, specialized and experienced in the operation of a mail order business and who are employed by respondent or are under his personal direction or control.

5. Merchandise made available for mail order offerings and sales by purchasers of respondent's aforesaid products has been selected on the basis of extensive research and study, has been trial tested for acceptance and salability on the general public or has proved that it will sell and be purchased by members of the buying public, unless such is in fact true.

6. Purchasers of respondent's aforesaid products will receive any amount of profits from the operation of a mail order merchandising business distributing the products offered by the respondent in excess of those which such purchasers may reasonably expect to receive.

B. Using the words "Association" or "Associated" as a part of his trade name or in any other manner representing that his business is other than a private commercial enterprise operated for profit.

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 28th day of June 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (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 the order to cease and desist.

IN THE MATTER OF
TOPVAL CORP. ET AL.

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

Docket 7007. Complaint, Dec. 26, 1957—Decision, June 28, 1958

Consent order requiring two associated mail order sellers in Lindenhurst, N.Y., of electrical appliances, electric skillets, cooker fryers, and other merchandise, to cease representing falsely in advertising in nationally distributed magazines—frequently in the form of salesmen's opportunities intended to attract individuals desiring to go into their own mail order discount business—that fictitious and exaggerated amounts were their usual retail or wholesale prices, and that their merchandise had been advertised in *Life* magazine; and to cease representing falsely, by displaying the names "General Electric" and "Westinghouse," that certain of their products were made by those companies, and by displaying the seals of *Good House-keeping* magazine and the United Laboratories, that their products had passed quality and safety tests.

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. Michael J. Ryan, of Babylon, N.Y., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On December 26, 1957, the Federal Trade Commission issued its complaint against Topval Corp., a corporation, and Kendex Corp., a corporation, and Michael H. Kent, erroneously referred to in the complaint as Michael Kent, and Joseph H. Kent, erroneously referred to in the complaint as Joseph Kent, individually and as officers of said corporations, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act with reference to electric appliances, including electric skillets, cooker fryers and other merchandise. After the issuance of said complaint, no answer having been filed thereto, the initial hearing was held on March 20, 1958, in New York, N.Y., at which time, before testimony was taken, an agreement for consent order was entered into by and between respondents and counsel supporting the complaint, subject to approval by the Bureau of Litigation, in accordance with section 3.25 of the rules of practice and procedure of the Commission. This agreement was duly approved by the Bureau of Litigation and submitted to the hearing examiner on April 11, 1958, together with affidavit executed by Michael H. Kent and Joseph H. Kent which is attached to said agreement and made a part thereof.