

GOV-MART a/k/a GOVERNMENT EMPLOYEES'
MERCHANDISE MART, INC., ET AL.

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

Docket 7049. Complaint, Jan. 22, 1958—Decision, July 15, 1959

Consent order requiring two associated retailing concerns in Seattle, Wash., engaged in selling to Government workers memberships in a purported buying service, to cease representing falsely that they were engaged in a non-profit enterprise in the sale of merchandise, misrepresenting their margin of profit, and claiming falsely that their enterprise was owned and operated by its members.

Mr. John J. McNally for the Commission.

George Guttormsen, Esq., for *Guttormsen, Scholfield, Willits & Ager*, of Seattle, Wash., for Gov-Mart a/k/a Government Employees' Merchandise Mart, Inc., and trustees; and *Josef Diamond, Esq.*, for *Lycette, Diamond & Sylvester*, of Seattle, Wash., for Mission Supply Company and Charles E. Klock and Harry Mallen.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On May 15, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of March 31, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Gov-Mart a/k/a Government Employees' Merchandise Mart, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal offices and place of business located at 820 White-Henry-Stuart Building, Seattle, Washington. Its articles of incorporation state that such corporation is formed for educational, philanthropic and civic purposes. The former address of this respondent was 218 Wall Street, Seattle, Washington.

Respondents A. R. Early, Jack P. Scholfield, Clayton B. Willits, Thomas G. Hermans and Harold O. Willits are individuals and were the incorporators of respondent Gov-Mart a/k/a Government Employees' Merchandise Mart, Inc., and constitute its Board of Trustees. Respondent trustee A. R. Early resides at 2732 61st Street, S.E., Mercer Island, Washington. Respondent trustee Clayton B. Willits resides at 11538 Fremont, Seattle, Washington. Respondent trustee Thomas G. Hermans resides at 4540 20th N.E., Seattle, Washington. Respondent trustees Jack P. Scholfield and Harold O. Willits have their offices at 820 White-Henry-Stuart Building, Seattle, Washington.

Respondent Mission Supply Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington with its offices and principal place of business located at 218 Wall Street, Seattle, Washington.

Respondent Charles E. Klock is an individual and an officer of respondent Mission Supply Company and has his principal place of business at 218 Wall Street, Seattle, Washington.

Respondent Harry Mallen is an individual and was, until December, 1957, an officer of respondent Mission Supply Company. During January, 1958, respondent Harry Mallen severed all connection with and interest in respondent Mission Supply Company. His present address is 4127 Palisades Road, San Diego 16, California. The former address of this respondent was 218 Wall Street, Seattle, Washington. It is accordingly recommended that the complaint be dismissed as to the respondent as an officer of respondent Mission Supply Company.

2. Respondents admit all the jurisdictional facts alleged in the complaint, which was issued on January 22, 1958, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) 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.

5. 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.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Order

56 F.T.C.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

ORDER

It is ordered. That the respondents, Gov-Mart a/k/a Government Employees' Merchandise Mart, Inc., a corporation, and its officers and trustees, and A. R. Early, Jack P. Scholfield, Clayton B. Willits, Thomas G. Hermans, and Harold O. Willits, as trustees of said corporation; Mission Supply Company, a corporation, and its officers, and Charles E. Klock, as an individual and as an officer of respondent Mission Supply Company, and Harry Mallen, as an individual; and the said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any food, drugs, devices, or cosmetics, as "food," "drug," "device," and "cosmetic" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Disseminating, or causing to be disseminated, by means of the United States mails, or by any other means, in commerce as "commerce" is defined in the Federal Trade Commission Act, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics, which advertisement represents:

(a) That respondents, or any of them, are engaged in a non-profit enterprise in the sale of merchandise;

(b) That respondents, or any of them, sell to their customers at wholesale cost plus 5% or at any other purported margin of profit however expressed, where such is contrary to the fact;

(c) That any enterprise owned, controlled or operated for profit

is owned, controlled or operated by a non-profit organization or its members.

(2) Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph (1) above.

It is further ordered, That respondents and their officers, trustees, agents, representatives and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale or distribution of any merchandise, or of memberships in or subscriptions to a service or organization for the sale of any merchandise to members or subscribers therein in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from making, directly or indirectly, any of the representations prohibited by paragraph (1) above.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Harry Mallen as an officer of respondent Mission Supply Company.

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 15th day of July 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents, Gov-Mart a/k/a Government Employees' Merchandise Mart, Inc., a corporation, and A. R. Early, Jack P. Scholfield, Clayton B. Willits, Thomas G. Hermans, and Harold O. Willits, as trustees of said corporation, and Mission Supply Company, a corporation, and Charles E. Klock, individually and as an officer of said corporation, and Harry Mallen, as an individual, 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

NOBLE AND NOBLE, PUBLISHERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7424. Complaint, Feb. 26, 1959—Decision, July 15, 1959*

Consent order requiring publishers in New York City to cease selling home-study preparation books for United States Civil Service examinations without clearly disclosing when information contained in them was not up to date.

Mr. Charles S. Cox for the Commission.

Alexander & Green, of New York, N.Y., by *Mr. James D. Ewing*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violating the Federal Trade Commission Act by misrepresenting certain publications sold by them, the publications being designed for use by persons preparing for examinations for civil service positions in the United States Government. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agree-