

IN THE MATTER OF
NATIONAL SALES & MFG. CO., INC., ET AL.

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

Docket 7551. Complaint, July 23, 1959—Decision, Dec. 12, 1959

Consent order requiring Dallas, Tex., sellers of vending machines and vending machine supplies to cease making—in advertising and by their salesmen—false employment offers, exaggerated earnings claims, and other deceptions to sell their machines, including claims that money required of applicants was the working capital; that purchasers of machines earned from \$200 to \$386.40 per month; that they set up the business, secured profitable locations, installed vending machines, and supervised operation of the business; that they would repurchase machines after a year if the purchaser wished to sell; that they manufactured the machines they sold, etc.

Mr. Charles S. Cox supporting the complaint.

Mr. Barnett M. Goodstein, of Dallas, Tex., for respondents.

INITIAL DECISION BY JOHN B. POINDENTER, HEARING EXAMINER

On July 23, 1959, the Federal Trade Commission issued a complaint charging that the National Sales Mfg. Co., Inc., a corporation, Donald W. Williams and Ellery R. Swim, individually and as officers of said corporation, and Thomas J. Overholser, individually, had violated the provisions of the Federal Trade Commission Act as set forth in the complaint.

After issuance and service of the complaint, the above-named respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. By the terms of said agreement, it is stipulated that the individual respondent Ellery R. Swim is a former officer of the corporate respondent and the individual respondent Thomas J. Overholser is a former employee of the corporate respondent.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement 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; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respond-

Order

ents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said 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 undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent National Sales & Mfg. Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 3508 Greenville Avenue, Dallas, Texas.

2. Respondent Donald W. Williams is an individual and officer of said corporate respondent. Respondent Ellery R. Swim is an individual and former officer of said corporate respondent. The respondent Thomas J. Overholser is an individual and former employee of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

3. 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 respondent National Sales & Mfg. Co., Inc., a corporation, and its officers, and Donald W. Williams individually and as an officer of said corporation, and Ellery R. Swim, individually and as a former officer of said corporation, and Thomas J. Overholser, individually and as a former employee of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, vending machine supplies, or similar kinds of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:
 - (a) Employment is offered either generally or to selected persons.
 - (b) Respondents have established routes with vending machines

Order

56 F.T.C.

on location for which they are offering employment to selected persons to service.

(c) Persons will be selected to operate and service vending machines owned by respondents.

(d) Persons must own automobiles or furnish references in order to purchase respondents' vending machines.

(e) The money invested is to provide working capital for the purchase of an inventory of merchandise to be dispensed in said vending machines.

(f) The money invested is secured by an inventory of merchandise worth the amount invested and there is no risk of losing said investment.

(g) Persons purchasing respondents' said vending machines will not be required to engage in selling or soliciting.

(h) The earnings or profits derived from the operation of respondents' said vending machines will be of any greater sum or amount than that customarily earned by operators of said vending machines.

(i) Respondents will set up a vending machine business for purchasers of their vending machines, or that profitable or satisfactory vending machines locations will be secured, or that said vending machines purchased will be installed in profitable or satisfactory locations, or the vending machine routes of purchasers will be otherwise established; or that the routes will be supervised so as to assure their profitable or satisfactory operation.

(j) The sale of merchandise by respondents' vending machines is permanent or depression proof.

(k) The sale of merchandise by respondents' vending machines is the safest or surest business on earth; or that it is (1) free of risk or loss, (2) free of hazard of bad location, or (3) free from the payment of rent or taxes.

(l) The sale of merchandise by respondents' vending machines will show a substantial profit from the first day of their operation, or at or during any time, unless such is the fact.

(m) The sale of merchandise by respondents' vending machines is, or is equivalent to, economic or any other kind of insurance to the selected person against the hazards of old age, permanent or partial disability.

(n) An established route of respondents' machines is worth 25 to 33 $\frac{1}{3}$ % more than the sum invested, or worth any amount that is not in accordance with the facts.

(o) An exclusive territory is given a purchaser of said vending machines.

(p) The vending machines will be delivered to the purchaser within a designated time.

(q) The average sales per day per year per machine is a specified sum and that the machine empties a specified number of times when such is not the fact.

(r) The earnings on an investment of \$700 in respondents' vending machines with average locations will be approximately \$2,500.00 a year, or will be any amount that is not in accord with the facts.

(s) Respondents will repurchase the vending machines from purchasers desiring to dispose of same.

2. Using the word "manufacturing," or any other word or words of similar import or meaning, as a part of respondents' corporate or trade name; or otherwise representing, directly or by implication, that respondents, or any of them, manufacture the merchandise sold by them.

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 December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent National Sales & Mfg. Co., Inc., a corporation, and its officers, and Donald W. Williams individually and as an officer of said corporation, and Ellery R. Swim, individually and as a former officer of said corporation, and Thomas J. Overholser, individually and as a former employee of said corporation 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.