

Act by the majority. Likewise, I find in the record no factual basis for the majority's conclusion. For these reasons I dissent.

IN THE MATTER OF
COMMERCIAL DISTRIBUTORS OF AMERICA, INC.,
ET AL.

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

Docket 7582. Complaint, Sept. 8, 1959—Decision, Mar. 1, 1960

Consent order requiring Newark, N.J., distributors of vending machines and supplies therefor, to cease making false offers of employment in the classified advertisement section of newspapers and periodicals and follow-ups by their salesmen displaying a variety of promotional literature, along with false representations of exaggerated profits, assistance to purchasers, etc., as in the order below set forth.

Mr. Berryman Davis for the Commission.

Mr. William David Webb, of Wyncote, Pa., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On September 8, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising, selling and distributing of vending machines and vending machine supplies. On December 10, 1959,

the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Commercial Distributors of America, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New York. Respondent National Placement and Distribution Agency, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey. Respondent Gene J. Davidson is an officer of both of said corporations. Respondent William J. Stockton is an officer of National Placement and Distribution Agency, Inc. Both individual respondents formulate, direct, and control the policies, acts, and practices of the National Placement and Distribution Agency, Inc. Gene J. Davidson formulates, directs, and controls the policies, acts, and practices of Commercial Distributors of America, Inc. The principal office and place of business of each of the respondents is located at 1507 National Newark Building, 42 Commerce Street, Newark, New Jersey.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Commercial Distributors of America, Inc., a corporation, and its officers, and National Placement and Distribution Agency, Inc., a corporation, and its officers, and Gene J. Davidson, individually and as an officer of each of said corporations, and William J. Stockton, individually and as an officer of said National Placement and Distribution Agency, Inc., and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of machines or devices which vend or dispense merchandise, or which are accessory to the vending or dispensing of merchandise, or the supplies and equipment used in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Employment is offered either by respondents or by any other person, firm, or corporation;
2. Respondents have established routes of their vending machines or devices at the time the offer of sale is made;
3. The earnings or profits derived from the operation of respondents' said machines or devices are any amount greater than that usually and customarily earned by operators of respondents' said machines or devices or similar machines or devices dispensing similar merchandise;
4. Surveys or any other kind of investigations have been conducted to ascertain the feasibility of establishing a route of said machines or devices in any locality or that arrangements have been completed to establish a route of said machines or devices or that said machines or devices will be located so as to return profits in any amount greater than will be in fact returned by such machines;
5. Respondents will repurchase, resell, or relocate said machines or devices sold by them;
6. The cash investment required to purchase respondents' said machines or devices is secured;
7. Selling or soliciting is not required to establish, operate, or maintain a route of said machines and devices;
8. Respondents will supervise the operation of or assist in the maintenance of a route of said machines or devices;

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9. Respondents' business operation is seventy years old or one of the largest of its kind or that respondents are the agents or representatives of or affiliated with the A. L. Bazzini Co., Inc., of New York, New York, or the Newark Packing Co., of Newark, New Jersey; or that respondents' business operation is older or larger than it is in fact or is associated or affiliated with any person, firm, or corporation, unless such is the fact;

10. Respondents will forward on consignment to the buyer additional machines or devices to be operated by the buyer in conjunction with those purchased; or that said machines or devices are available on any terms or conditions other than those on which they are in fact available.

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 1st day of March, 1960, 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.