

IN THE MATTER OF
GLOBE READERS SERVICE, INC., ET AL.

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

Docket 7490. Complaint, May 15, 1959—Decision, Mar. 7, 1960

Order requiring a Michigan City, Ind., seller of magazine subscriptions through door-to-door salesmen, to cease selling subscriptions for unauthorized and undeliverable magazines, refusing to make refunds therefor, and requiring customers to accept substitutes.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. John J. Mathias and *Mr. Harry E. Middleton, Jr.*, for the Commission.

Mr. William N. Kenefick and *Mr. Donald D. Martin*, of Michigan City, Ind., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS, AND ORDER

The Federal Trade Commission issued its complaint against the above-named respondents on May 15, 1959, charging them with violation of the Federal Trade Commission Act by selling, through solicitors, subscriptions for magazines which were not on their authorized list and were undeliverable and thereafter, in such instances, refusing to refund customers' money and requiring said customers to accept a substitute magazine they would not otherwise have ordered or accepted. By answer, respondents denied the charges. Respondent, Arthur Bradley, by separate answer, alleged that he is no longer an officer of respondent corporation and has no interest in the outcome of this action. He asked that the complaint be dismissed as to him, individually.

Hearings were held before a duly designated hearing examiner of the Commission and testimony and other evidence in support of, and in opposition to, the allegations of the complaint were received into the record. In an initial decision filed September 15, 1959, the hearing examiner found that neither the charge that Arthur Bradley, individually, had violated the Federal Trade Commission Act nor the charge that respondents refused to refund customers' money and required such customers to accept a substitute magazine, had been established by the evidence. He therefore ordered that the complaint be dismissed.

Counsel supporting the complaint filed an appeal from said initial decision and the Commission, after considering said appeal, re-

1018

Findings

spondents' brief in opposition thereto and the entire record, has determined that the appeal should be granted and that the initial decision should be vacated and set aside. The Commission further finds that the proceeding is in the public interest and now makes its findings as to the facts, conclusions drawn therefrom and order to cease and desist, which, together with the accompanying opinion, shall be in lieu of the findings, conclusion and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent Globe Readers Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2601 Michigan Street, Michigan City, Indiana.

2. Respondents Warren E. Brubaker, William P. Barry and James Riley are officers of the corporate respondent. They formulate, direct and control its acts and practices, including those alleged to be unlawful. Their address is the same as that of the corporate respondent. Respondent Arthur Bradley, between May 1957 and August 1958, was treasurer of the respondent corporation, but has not been associated with the respondent corporation since the latter date. While employed by Globe Readers Service, Inc., his duties were to see that the company's subscription orders were properly filled. He was the contact man between Globe and the publishers, and did not participate in the formulation, direction or control of the company's activities. The proceeding will be dismissed as to him, and as hereinafter used the term "respondents" will refer to the remaining named respondents.

3. In the course and conduct of their business respondents are now and have been engaged in interstate commerce through the solicitation and sale of magazine subscriptions throughout the various states and by causing such subscriptions to be forwarded to magazine publishers and distributors located in various states other than those in which the magazine subscribers live, and other than that in which respondents' business offices are located.

4. Respondents are now, and at all times mentioned herein have been, in substantial competition in commerce with other corporations, firms and individuals in the solicitation and sale of magazine subscriptions.

5. In the conduct of their business respondents employ certain individuals known generally as crew managers, who enroll and supervise solicitors whose duties are to contact and sell prospective customers in their homes or offices. Respondents, through said crew

Order

56 F.T.C.

managers, supply the solicitors with credentials in the form of a certificate of authorization, and with order and receipt forms, authorized lists of magazines, and other material. The solicitor collects in full for each subscription taken by him and transmits the subscription order and the full amount collected to the crew manager, who remits to him the amount due as commission, and transmits the order and the remainder of the money to respondents, after first deducting his own commission. The subscription sales made in the course and as a result of the representations of said solicitors inure to the benefit of respondents.

6. The Commission finds that for the purposes of this proceeding, the respondents are responsible for the acts and practices of these solicitors in their solicitation and sale of magazine subscriptions.

7. On many occasions, respondents' solicitors take subscriptions for magazines which are not on their authorized list and which cannot be delivered. On all such occasions coming to their attention, it is respondents' practice to accept payment for the unauthorized magazine and then correspond with the customer solely for the purpose of obtaining a substitute subscription from the authorized list. As a result, many such customers do not receive the refund to which they are entitled but are led to accept a substitute magazine. Respondents have carried this practice one step further in many instances by advising customers that a refund is not available since commissions and allowances had been deducted at the time of sale which could not be recovered.

8. Through use of the aforesaid practice, respondents have refused to refund money for subscriptions to magazines they could not deliver and thus have required customers to select substitute magazines.

CONCLUSIONS

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents. The aforesaid acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents' competitors and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Globe Readers Service, Inc., a corporation, and its officers, and Warren E. Brubaker, William P. Barry, and James Riley, individually and as officers of said cor-

1018

Opinion

poration, 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 subscriptions for magazines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Soliciting and accepting magazine subscriptions which respondents are not authorized to solicit.

B. Refusing to refund payments received for subscriptions for magazines which are undeliverable.

C. Requiring customers to accept the substitution of magazines other than those subscribed and paid for.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to Arthur Bradley in his individual capacity and as an officer of the corporation.

It is further ordered, That respondents, Globe Readers Service, Inc., a corporation, and its officers, and Warren E. Brubaker, William P. Barry, and James Riley, individually and as officers 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.

Commissioner Tait not participating.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

Respondents in this matter are charged with violation of Section 5 of the Federal Trade Commission Act in the solicitation and sale of magazine subscriptions. After hearings in due course, the hearing examiner entered an initial decision dismissing the complaint. Counsel supporting the complaint has appealed from that ruling.

The complaint alleges, among other things, that:

In many instances respondents' solicitors sell subscriptions for magazines which are not on respondents' authorized list of magazines and are undeliverable. In these instances, respondents refuse to refund the customers' money and, in order to obtain some benefit for the money expended, such customers are required to accept a substitute magazine from the authorized list which they would not have otherwise ordered or accepted.

The facts disclose that respondents furnished certificates to their solicitors identifying these individuals as their representatives; that the order forms used by the solicitors were those of Globe Readers Service, Inc.; that respondents were well aware that these solicitors were obtaining subscriptions for unauthorized magazines and that

respondents profited from this practice. On the basis of this evidence, it is apparent that so far as the public was concerned, the solicitors were acting for and in behalf of the respondents in the solicitation and sale of magazine subscriptions. Under the authority of *International Art Co. v. Federal Trade Commission*, 109 F. 2d 393, there can be no doubt that respondents are responsible for the acts and practices of these solicitors.

The only issue raised on the appeal is whether the record shows that respondents have refused to refund the customers' money in instances where such customers have subscribed for unauthorized magazines. We think the record fully supports such a finding.

The evidence adduced with respect to this issue establishes that there were many instances in which solicitors sold subscriptions for magazines not on the respondents' authorized list. These unauthorized magazines could not be delivered by the respondents. However, rather than offering to refund the money accepted as a result of their solicitors' misrepresentations, respondents sent all customers who had ordered unauthorized magazines a form "selection letter" (Commission Exhibit 2) for the sole purpose of obtaining a substitute subscription from the authorized list. The record clearly establishes that as a result of this practice, many customers subscribed for magazines other than those they had ordered. In our view, these facts establish a method of doing business whereby respondents refused to refund customers' money and thus required the selection of a substitute magazine, within the intent and meaning of the complaint. Moreover, the record shows that this method of doing business was implemented for a substantial period of time by a letter to customers who requested a refund, advising them that respondents were not in a position to give a refund since commissions and allowances were deducted at the time of sale which could not be recovered (Commission Exhibit 3). The fact that some customers persisted in their efforts to obtain a refund and eventually were successful does not alter the fact that such refund had been refused. We think the hearing examiner in holding to the contrary was too restrictive in his interpretation of the charge.

The hearing examiner also held that the only charge in the complaint is that respondents refuse to refund the customers' money for an unauthorized subscription and require such customers to accept a substitute magazine. We do not construe the complaint as being so limited. In our opinion, the complaint relates to two different practices which are closely related. One is that stated by the hearing examiner. The other is that respondents, through solicitors, sell and accept payment for subscriptions for unauthor-

1018

Decision

ized magazines which are undeliverable, thus leading to the substitution of other magazines by the respondents. As previously stated, both allegations are sustained by the evidence.

In view of the foregoing, the appeal of counsel supporting the complaint is granted. The initial decision is set aside, and we are entering our own findings as to the facts, conclusions and order to