

It is ordered, That respondents Am-Par Record Corp., a corporation, Pamco Music, Inc., a corporation, and Samuel H. Clark, individually, and as an officer of said corporations, and Harry Levine, Edith Schaffer, and Simon B. Siegel, as officers of said corporations, 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

LEONARD SGRO DOING BUSINESS AS UNITED
PRODUCTS COMPANY, AND JOSEPH STEIN

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

*Docket 7816. Complaint, Mar. 10, 1960—Decisions, July 28, 1960,
and Aug. 4, 1960*

Orders, identical in content—one based on a consent settlement agreed to by a sales agent and the other issued in default against his employer—requiring two individuals in Cleveland, Ohio, to cease making—in advertisements in newspapers and by statements of salesmen—false offers of employment, exaggerated earnings claims, and other misrepresentations to sell their vending machines and supplies therefor, as in the order below indicated.

Before: *Mr. John Lewis*, hearing examiner.

Mr. William A. Somers supporting the complaint.

Respondent, *pro se*.

INITIAL DECISION AS TO RESPONDENT JOSEPH STEIN

The Federal Trade Commission issued its complaint against the above-named respondents on March 10, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various false and misleading statements in connection with the sale and distribution of vending machines by them. After being served with said complaint, respondent Joseph Stein appeared and entered into an agreement, dated May 20, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to said respondent. Said agreement which has been signed by Joseph Stein, by counsel supporting the complaint, and approved by the Director, Associate Director and

320

Order

Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The signatory respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that such respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by the signatory respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to respondent Joseph Stein, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Joseph Stein is an individual with his address at 2060 Goodnor Road, Cleveland Heights 18, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered. That respondent Joseph Stein, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale

Order

57 F.T.C.

or distribution of vending machines, vending machine supplies or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The offer made in respondent's advertisements is that of a nationally known candy manufacturer, or is that of any one other than the person or persons who are actually making the offer.

2. The respondent represents a nationally known candy manufacturer or any person, persons, firm or corporation other than themselves.

3. Employment is offered by respondent when in fact, the real purpose of the offer is to obtain purchasers of respondent's products.

4. The respondent's offer is made to selected persons or that such persons must furnish references or own a car.

5. Respondent has established routes of his vending machines at the time the offer of sale is made; or has established routes of his vending machines at any time, unless such is the fact.

6. Respondent, his agents or employees will obtain satisfactory or profitable locations for the machines purchased from him.

7. The agreements permitting the placement of vending machines are duly signed by the person or persons owning or controlling the premises on which the machines may be located, when in fact said agreements are not so signed.

8. The respondent or his agents will return to assist and advise a purchaser of vending machines in their operation.

9. The amount invested in respondent's products is for working inventory; or is for any purpose other than the purchase of said products.

10. Respondent allots exclusive territory in which the machines purchased from him may be located and operated.

11. Respondent, or his representatives, repurchases, or will obtain a purchaser for, the machines sold by him in the event the purchaser is dissatisfied.

12. The earnings or profits derived from the operation of respondent's machines are any amount in excess of those which have been, in fact, customarily earned by operators of his machines under like circumstances.

13. A vending machine of respondent's will empty every two weeks or produces \$7.00 to \$15.00 each time it empties; or will empty in any specified time or produce any specified return, that is not in accordance with the fact.

14. That the investment in respondent's machines is secure or cannot be lost.

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 July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Joseph Stein 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.

Before: *Mr. John Lewis*, hearing examiner.

Mr. William A. Somers and *Mr. Berryman Davis*, supporting the complaint.

No appearance for respondent.

INITIAL DECISION AS TO RESPONDENT LEONARD SGRO

The Federal Trade Commission on March 10, 1960, issued and thereafter served its complaint in this proceeding charging the respondents hereinabove named with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various misrepresentations in connection with the sale and distribution of vending machines by them. Although duly served with said complaint respondents failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on May 17, 1960, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. No appearance was made at said hearing by either of the respondents. However, counsel supporting the complaint advised the undersigned that arrangements had been made with respondent Joseph Stein for an appropriate disposition of the proceeding as to said respondent. Counsel supporting the complaint thereupon moved that, in view of the failure of the other respondent, Leonard Sgro, to appear and show cause, the case be closed for the taking of testimony as to said respondent and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel submitted a form of proposed order and moved that said order be entered against respondent Leonard Sgro. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and

Findings

57 F.T.C.

that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration as to respondent Leonard Sgro on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to said respondent, and the undersigned having been advised that the proceeding will be otherwise appropriately disposed of as to the remaining respondent, the undersigned finds that this proceeding is in the interest of the public and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. Respondent, Leonard Sgro, is an individual doing business as United Products Company. All references made to the respondent herein are to said individual. Said respondent's place of business is located at 6116 Lorain Avenue, Cleveland, Ohio.

PAR. 2. Respondent has been engaged in the promotion, sale and distribution of vending machines and vending machine supplies. In the course and conduct of his business, respondent caused said products, when sold, to be transported from the state in which they were manufactured, to purchasers thereof located in various other states of the United States. Respondent maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent, in the course and conduct of his business, as aforesaid, at all times mentioned herein has been, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of similar products.

PAR. 4. Respondent Leonard Sgro employed sales representatives or agents in selling said products. Respondent placed advertisements concerning said products in various newspapers, typical examples of which are as follows:

START SPARE TIME
SERVICING
HERSHEY CANDY ROUTE

Responsible man or woman will be selected to service NEW HERSHEY CANDY DISPENSERS in this area. No selling or experience necessary. Opportunity of earnings \$3000 a year, devoting spare time to start. Requires about 10 hours a week to service and collect. Applicant must drive car and be able to make small investment of \$595.00 cash for inventory. For interview, write including phone and reference. District Manager, P.O. Box 1951, Cleveland 6, Ohio.

320

Findings

MAN OR WOMAN
HIGH INCOME
OPPORTUNITY

Responsible party able to make \$900 cash inventory investment, will be appointed to supply accounts we establish with (Hershey, M & M and other candy products). Revolutionary development in billion dollar candy dispensing industry creates opportunity where high profit earnings are realized from the start. Income can exceed \$5,000 the first year. Requires only part time till fully developed. Write fully including phone for interview. Manager, P.O. Box 1951, Cleveland 6, Ohio.

Persons responding to said advertisement were called upon by respondent or other agents of said respondent, and the purchase of said products was solicited. In case a sale was made a contract was entered into, the purchase price collected and a purchase order was sent to the manufacturer and supplier of the products and shipment was made direct to the purchaser at his place of residence.

PAR. 5. Respondent Leonard Sgro used and furnished to his sales representatives or agents certain sales material, which was used by the respondent and said sales representatives or agents in their effort to sell respondent's products to prospective purchasers. Through the use of the statements appearing in the advertisements hereinbefore set out, and others similar thereto, but not specifically set out herein, of statements in the sales material and purchase contracts, and by oral statements made by the respondent and said sales representatives or agents, respondent has represented directly or by implication, that:

1. The offer made in the advertisements is that of a nationally known candy manufacturer.
2. The respondent represents a nationally known candy manufacturer.
3. The offer made in respondent's advertisements is one of employment.
4. Such offer is made to selected persons only and that such persons must furnish references and have a car.
5. Routes of respondent's vending machines have been established at the time the offer is made.
6. Respondent or his sales representatives or agents, will secure satisfactory and profitable locations for all vending machines purchased.
7. The agreements permitting the placement of vending machines purchased, have been duly and properly signed by the person owning or operating the premises.
8. The respondent or his agents will return from time to time to assist and advise the purchaser in the operation of his vending machines.

Findings

57 F.T.C.

9. The investment required of the purchasers is for working inventory.

10. Purchasers of vending machines will be given exclusive territory within which their machines may be placed.

11. Respondent or his representatives will repurchase, or find a new purchaser for, the vending machines purchased, in the event the purchaser becomes dissatisfied.

12. A person can reasonably expect to earn \$3,000.00 to \$5,000.00 net profit a year by investing \$595.00 to \$900.00 in respondent's products for part time work in servicing said machines.

13. The machines purchased will empty every two weeks and produce \$7.00 to \$15.00 each time they empty.

14. That the investment in respondent's machines is secure and cannot be lost.

PAR. 6. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact:

1. The offer made in respondent's advertisements was not made by a nationally known candy manufacturer but were advertisements of the respondent who sought persons to purchase his products.

2. The respondent did not represent anyone other than himself.

3. The offer made in respondent's advertisements was not one of employment but was made for the purpose of obtaining purchasers of his products.

4. The offer was not made to selected persons only or to those who could furnish references or own a car, but was open to anyone who had the money to purchase respondent's products.

5. Routes of respondent's vending machines had not been established at the time the offer of sale was made.

6. Respondent, or his sales representatives or agents, seldom, if ever, obtained or assisted in obtaining satisfactory or profitable locations for the machines purchased from them.

7. In many instances the purported agreements permitting the placement of vending machines had not been signed by the persons owning or operating the premises.

8. Neither respondent nor his agents assisted or advised the purchasers in the operation of their machines after their purchase.

9. The investment required was for the purchase of respondent's products, not for a working inventory.

10. Purchasers of respondent's products were not given exclusive territory in which they might locate their machines, but, on the contrary, respondent sold his machines to anyone willing and able to purchase, for placement wherever the purchaser might desire.

320

Order

11. Neither respondent, nor his sales representatives or agents, purchased or found a purchaser for the vending machines of dissatisfied purchasers.

12. A net profit of \$3000.00 to \$5000.00 a year upon an investment of \$595.00 or \$900.00 for respondent's products was greatly in excess of the profit that would accrue in a great majority of the cases, no matter how much time the purchaser devoted to servicing the machines.

13. Seldom, if ever, would the machines offered for sale by respondent be emptied every two weeks or produce \$7.00 to \$15.00 each time they empty.

14. The investment made in respondent's machines was frequently lost in whole or substantial part.

PAR. 7. The use by respondent of the foregoing false, deceptive and misleading statements, representations and practices, had the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief that such statements and representations were true, and into the purchase of substantial quantities of respondent's products by reason of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondent from his competitors and injury has thereby been done to competition in commerce.

CONCLUSION

The acts and practices of respondent, as hereinabove found, were all to the prejudice and injury of the public and of respondent's 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 respondent Leonard Sgro, doing business as United Products Company, or under any other name, and respondent's 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 other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The offer made in respondent's advertisements is that of a nationally known candy manufacturer, or is that of any one other than the person or persons who are actually making the offer.

2. The respondent represents a nationally known candy manufacturer or any person, persons, firm or corporation other than themselves.

3. Employment is offered by respondent when, in fact, the real purpose of the offer is to obtain purchasers of respondent's products.

4. The respondent's offer is made to selected persons or that such persons must furnish references or own a car.

5. Respondent has established routes of his vending machines at the time the offer of sale is made; or has established routes of his vending machines at any time, unless such is the fact.

6. Respondent, his agents or employees will obtain satisfactory or profitable locations for the machines purchased from him.

7. The agreements permitting the placement of vending machines are duly signed by the person or persons owning or controlling the premises on which the machines may be located, when in fact said agreements are not so signed.

8. The respondent or his agents will return to assist and advise a purchaser of vending machines in their operation.

9. The amount invested in respondent's products is for working inventory; or is for any purpose other than the purchase of said products.

10. Respondent allots exclusive territory in which the machines purchased from him may be located and operated.

11. Respondent, or his representatives, repurchases, or will obtain a purchaser for, the machines sold by him in the event the purchaser is dissatisfied.

12. The earnings or profits derived from the operation of respondent's machines are any amount in excess of those which have been, in fact, customarily earned by operators of his machines under like circumstances.

13. A vending machine of respondent's will empty every two weeks or produce \$7.00 to \$15.00 each time it empties; or will empty in any specified time or produce any specified return, that is not in accordance with the fact.

14. That the investment in respondent's machines is secure or cannot be lost.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the initial decision as to respondent Leonard Sgro which was filed by the hearing examiner on May 31, 1960, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforesaid initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent Leonard Sgro, an individual doing business as United Products Company, 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.
