

in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as hereinabove modified.

It is further ordered, That the modified order as here issued shall be served upon respondents in the same manner as was the original order to cease and desist.

IN THE MATTER OF
NATIONAL TRADE PUBLICATIONS SERVICE, INC.,
ET AL.

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

Docket 7525. Complaint, June 17, 1959—Decision, May 5, 1961

Order requiring a concern in Overland Park, Kans., engaged in selling magazine subscriptions to the public through solicitation of their agents, generally handicapped individuals, to cease accepting payment for magazines they were not authorized to sell; requiring purchasers to substitute magazines for those subscribed to and paid for and which they were not authorized to sell and substituting magazines for those paid for without the consent of the subscriber; and representing falsely that certain publications they were authorized to sell were the same in content as others not on their selling list.

Mr. Garland S. Ferguson for the Commission.

Achtenberg, Sandler & Balkin, of Kansas City, Mo., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Respondents are charged with violation of the Federal Trade Commission Act by using false statements and misleading and un-

fair practices in the soliciting and sale of magazine subscriptions through their sales agents or representatives. In their answer, respondents denied that the solicitations and sales are made by their agents or representatives, stating that such sales are made through independent contractors or employees of independent contractors and in addition, denied the various representations and practices charged in the complaint. Hearings were held at Kansas City, Cleveland, Detroit and Washington, D. C., following which, proposed findings and conclusions were submitted by both counsel. The hearing examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions of law proposed by the parties not hereinafter found or concluded are herewith rejected.

FINDINGS OF FACT

1. Respondent National Trade Publications Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Its office, originally located at 3119 Troost Avenue, Kansas City, Missouri, is now located at 7134 West Eightieth Street, Overland Park, Kansas. Individual respondent Melvin R. Lindsey is an officer of said corporation. He formulates, directs and controls the policies of the corporate respondent. Respondent Melvin R. Lindsey has traded and done business under the names of National Publishers Service and Trade Press Bureau.

2. Respondents are now and for some time last past have been engaged in the sale of magazine subscriptions to the public. Respondents are authorized to sell only certain magazines. To solicit such subscriptions, respondents engage the services of so-called "crew managers" who in turn select solicitors who conduct the actual door-to-door canvassing of the public. These crew managers are supplied by the respondents with forms which the solicitors are to use in taking subscriptions. On many of these forms the solicitor is referred to as the salesman or representative of the respondent company. The solicitors also carry a list of magazines indicating the ones which they have been authorized to sell on behalf of the respondent company. The solicitors also carry credentials identifying them as authorized representatives of the respondent company. In many communications originating from the respondent company, reference is made to the solicitor as "our salesman" or "our representative." On occasion, respondent company notifies the crew manager that he is not to allow a certain solicitor to represent the respondent company. In consequence thereof, the crew manager loses his job unless that solicitor is fired.

Findings

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3. In the course and conduct of their business respondents, through their sales agents or representatives, solicit subscriptions for various magazines in various States of the United States. The subscriptions, when obtained by the agents or representatives, are sent by them from various States to respondents' place of business, originally in the State of Missouri, now in the State of Kansas, and are then forwarded by the respondents to magazine publishers, many of whom are located in States other than Missouri and Kansas. Respondents and their sales agents and representatives retain for themselves a part or all of the subscription price of each magazine sold by them.

4. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said subscriptions, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents receive subscriptions from persons in many parts of the United States as well as in Canada, Mexico and Hawaii, with total business approximating two hundred thousand subscriptions per year at an average price of three dollars each.

5. Respondents at all times mentioned herein have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of magazine subscriptions.

6. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have accepted and received payment for magazines which they were not authorized to sell. This charge is substantiated by the testimony of more than a half dozen witnesses, as well as by the correspondence of respondent company.

7. In at least one or two instances, respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have collected money in excess of the regular subscription price.

8. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have failed to provide delivery of magazines for which they were authorized to accept subscriptions. In some instances, the failure of delivery was permanent; in others, the delay ranged from six to fifteen months.

9. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have required persons to substitute other magazines for those they had subscribed to and paid for but which the respondents were not authorized to sell. Form letters of the respondent company used to correspond with subscribers in such cases as well as the testimony of a number of witnesses fully supports this charge.

10. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have substituted magazines for those subscribed to and paid for without the consent of the subscriber. The uncontradicted testimony of several subscribers corroborates this finding.

11. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have represented, contrary to the fact, that the subscription price of magazines, or a portion thereof, would be applied to a veterans' charity or organization or for the benefit of the handicapped or for some other charitable purpose. Respondent Lindsey himself admitted that he had received complaints that the solicitors had represented that they were connected with a charitable organization. Although the record does not contain a categorical and unequivocal representation that a portion of the subscription price would be applied to a veterans' charity or for some other charitable purpose, an unsuspecting and sympathetic subscriber would be misled into thinking that a part of the subscription price eventually wound up in some charitable purpose as a result of the implied representations reasonably inferable from the sales "pitch" and behavior of the solicitors, some of whom were amputees or wore army uniforms, and many of whom were physically handicapped.

12. Respondents, through their sales agents or representatives in connection with the solicitation and sale of magazine subscriptions, have represented, contrary to the fact, that certain publications which they are authorized to sell are the same in context as publications which they are not authorized to sell. The record contains the uncontradicted testimony of several subscribers to this effect. Several other subscribers were informed that the magazines on the subscription list were *similar* to (rather than the *same* as) others not on the subscription list. These other subscribers' testimony has not been considered in connection with this finding.

13. The use by the respondents of the aforesaid false statements and misleading and unfair practices has had, and now has, the tendency and capacity to induce many members of the public to purchase magazine subscriptions from respondents and, in many instances, to subscribe for magazines which they would otherwise not have subscribed for. As a consequence, substantial trade in commerce has been unfairly directed to respondents from their competitors, and substantial injury has thereby been done to competition in commerce. In addition, these acts and practices were and are all to the prejudice and injury of the public.

Discussion

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DISCUSSION

In the answer of the respondents to the complaint, respondents denied that the magazine subscription sales were made through its agents or representatives but stated that such sales were made through "independent contractors or employees of independent contractors." Whether or not these sales persons would be considered independent contractors at common law, the decisions are uniform in enunciating the principle that a commercial concern which holds out order-taking canvassers to the public as its representatives and benefits from their deceptive sales activities is properly subject to Commission corrective action, *Steelco Stainless Steel, Inc. v. Federal Trade Commission*, 187 F.2d 693 [5 S. & D. 265] (7th Cir. 1951); *Goodman v. Federal Trade Commission*, 244 F.2d 584 [6 S. & D. 284] (9th Cir. 1957); *International Art Co. v. Federal Trade Commission*, 109 F.2d 393 [3 S. & D. 188] (7th Cir. 1940)—and this is so even where the misrepresentations are made in violation of instructions and despite honest efforts by the company to prevent deception. *Standard Distributors, Inc. v. Federal Trade Commission*, 211 F.2d 7 [5 S. & D. 619] (2d Cir. 1954); *Perma-Maid Co. v. Federal Trade Commission*, 121 F.2d 282 [3 S. & D. 397] (6th Cir. 1941).

The brief of the respondents argues that Commission counsel has failed to prove that the respondents collected money in excess of the regular subscription price, citing the testimony of one witness who may have been mistaken about the term of the subscription. Respondents, however, completely ignore the uncontradicted testimony of another witness who paid twenty dollars for a three-year subscription to a magazine whose rate was only two dollars per year.

Respondents also argue that Commission counsel has not proved that respondents represented that the subscription price would be applied to charitable purposes. They point out, quite correctly, that not a single witness testified that such representation was made. The rule is well established, however, that actual deception need not be shown. It is sufficient if the practices have the capacity or tendency to deceive. Over-all impressions must be considered. In making that consideration, it must be borne in mind that the Federal Trade Commission Act is intended for the protection of all members of the public, including the "ignorant, the unthinking and the credulous." *Charles of the Ritz Dist. Corp. v. Federal Trade Commission*, 143 F.2d 676 [4 S. & D. 226] (2d Cir. 1944). Solicitation by one wearing an army uniform or by an amputee referring to the solicited subscription as a means of obtaining "points to go to trade school" or "points for new limbs" can, wittingly or unwittingly, easily create in the mind of the credulous the impression that his subscription was in the

nature of a charitable contribution which, of course, it was not. Such sales promotion is deceptive and unfair to competing sellers in commerce in its implications.

Respondents also argue that Commission counsel has not sustained the charge that the respondents had represented its authorized magazines were the same in content as some unauthorized publications. They point to the testimony of certain of the witnesses to the effect that the solicitor claimed one magazine to be *similar* to another. Although claims of similarity, made by a salesman may be warranted under some circumstances, I find it unnecessary to pass upon that point. The charge made is that the respondents represented one magazine to be not similar to, but the *same* as, another. Several witnesses corroborated the charge. Further discussion of the issue seems unnecessary since in each instance the magazines compared were not at all the same.

Another specific argument raised by the respondents is that Commission counsel has not shown that the respondents have failed to provide delivery of magazines subscribed for. Respondents point out that there has been no proof that they have failed to forward these subscriptions but only that there has been a failure of delivery to the subscriber. They argue, however, that delivery is not the responsibility of the respondents who, by contract, undertake only to forward the subscriptions to the publishers. The ordinary subscriber in dealing with a magazine solicitor is not thinking in terms of using a solicitor as a mere transmittal agent, nor do solicitors ply their trade representing themselves as mere transmittal agents. Instead, their usual behavior is that of a salesman selling a commodity and not merely placing orders on behalf of the buyer. It may well be that, nevertheless, the respondents should not be held responsible for failure to provide delivery where the failure is due to circumstances beyond their control, such as the bankruptcy of the publication or the discontinuance of summer issues, as was the case in several instances. No explanation, however, is suggested for the failure of several subscribers to receive an authorized subscription magazine for the better part of one year or more and for another subscriber's complete failure to receive his subscription to two authorized magazines. As it is said of justice, delivery delayed is delivery denied, in the absence of any justification for the delay. Respondents, however, offered no justification even to the extent of showing that they had expeditiously forwarded the subscriptions, the proof of which was entirely within their own command.

Finally, respondents argue that the quantity of the proof when compared to the volume of business handled by the respondents was

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"so infinitesimal as to fail absolutely." I do not think the respondents' position is well taken. This is not the situation where the Commission's proof consists of but an isolated instance of misrepresentation. On the contrary it is a mosaic of various illegal acts, each of which constitutes an unfair practice in commerce. Taken together, these episodes give us a picture of misrepresentation and deception practiced by the respondents over a period of years in a number of widely separated communities. Respondents do not suggest what quantum of proof should be necessary to sustain such a charge in a situation such as this. Obviously, it would be impractical and unwise to bring in as witnesses a majority of the two-hundred-thousand-plus subscribers. Even as many as one thousand subscriber witnesses would constitute but a minor fraction of respondents' business, yet would enmesh the trial of this matter endlessly. The application of a *de minimis* rule to a situation such as this where there has been proof of multiple and varied misrepresentations in commerce would clearly be inappropriate whether or not such rule is warranted in other circumstances. See *Associated Dry Goods Corporation*, Federal Trade Commission Docket No. 7184, December 14, 1959; *Consumer Sales Corp. v. Federal Trade Commission*, 198 F.2d 404 [5 S. & D. 419] (2d Cir. 1952).

CONCLUSION

The aforesaid acts and practices were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondents National Trade Publications Service, Inc., a corporation, and its officers, and Melvin R. Lindsey, individually and as an officer 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 magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Accepting subscriptions for magazines or other publications for which they have no authority to solicit.

2. Collecting money from subscribers in excess of the regular price of subscriptions for the magazines or other publications.

3. Failing to provide subscribers delivery of magazines or other publications for which they are authorized to accept subscriptions.

4. Requiring subscribers to substitute magazines or other publications for those subscribed for.

5. Substituting magazines or other publications for those subscribed for without the consent of the subscriber.

6. Representing, directly or by implication, that the subscription price of magazines or other publications sold by them, or any portion thereof, will be applied to a veterans' charity, veterans' organization, for the benefit of the handicapped or any other charitable purpose, or will be applied or used for any other purpose that is not in accordance with the fact.

7. Representing directly, or by implication, that any magazine or publication which respondents are authorized to sell is the same in any respect to magazines or other publications which they are not authorized to sell, unless such is the fact.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

The complaint herein charges respondents with violating the Federal Trade Commission Act in seven respects in the solicitation and sale of magazine subscriptions. The hearing examiner found that all of the charges were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondents have appealed from this decision.

Respondents are authorized to sell only certain magazines, usually on the basis of an agreement with the publishers thereof. They solicit subscriptions through salesmen selected by "crew-managers" engaged by respondents or, in the case of trade journals only, through salesmen which they hire directly. The charges, in the order in which they are set forth in the complaint, are that respondents (1) accepted and received payment for unauthorized magazines; (2) collected money in excess of the regular subscription price; (3) failed to provide delivery of authorized magazines; (4) required persons to substitute magazines for unauthorized magazines which they have paid for; (5) substituted magazines for those paid for without the consent of the subscriber; (6) falsely represented that all or a portion of the subscription price of a magazine will be applied to certain charitable purposes; and (7) falsely represented

that certain authorized publications are the same in content as certain unauthorized publications.

Respondents first argue that the second, third, sixth and seventh charges are not supported by the evidence. With the exception of the seventh charge, we agree with respondents' contention.

The only evidence in support of the second charge, that respondents collected money in excess of the subscription price, is the testimony of two witnesses. One of these witnesses testified that she paid eight dollars for a three-year subscription to a magazine for which the three-year rate was five dollars. However, this testimony can be given little weight as the facts disclose that respondents actually entered her subscription for five years for which the subscription rate was eight dollars. The testimony of the other witness, that he paid twenty dollars for a three-year subscription to a magazine whose yearly rate was \$2.50, is uncontradicted. It appears that this witness was led to believe that he was subscribing for a more expensive magazine not on respondents' authorized list, which practice is covered by the seventh charge in the complaint. In any event, we are not persuaded that this one instance warrants a conclusion that respondents engaged in the practice of overcharging subscribers.

The third charge alleges that respondents failed to provide the delivery of authorized magazines. The evidence in support of this charge shows that one subscriber never received two publications ordered through respondents and that several others did not receive authorized magazines for almost a year after subscribing. However, it is clear that respondents have no control over the publishers they represent, nor are they responsible for the failure of said publishers to fulfill subscriptions or continue publication of a magazine. Moreover, there is no showing that respondents represented to prospective subscribers that they could provide delivery. While we believe that the record demonstrates a failure on the part of respondents to promptly forward subscriptions to the publishers, we must find that the third charge, as pleaded, has not been sustained.

It is obvious from the record that the alleged false representation in the sixth charge, as interpreted by counsel supporting the complaint, was that all or a part of the subscription money price of magazines would be used as a charitable contribution to certain veterans' or other groups. It is likewise clear that, insofar as this sixth charge is concerned, the matter was tried on that issue.

As the hearing examiner correctly found, there is no showing in this record that respondents' salesmen expressly represented that the subscription price of a magazine would be applied to charitable

purposes. However, the hearing examiner inferred such a representation from the fact that certain statements were made to purchasers by respondents' salesmen who either wore army uniforms or were amputees. These statements were to the effect that subscriptions were being solicited as a means of obtaining points to go to trade school or for new limbs. We think the most that can be inferred from this evidence is that these salesmen solicited subscriptions out of sympathy for their own personal plight. In our view, the inference drawn by the hearing examiner is not warranted.

The only other evidence on this point is the testimony of respondent Lindsey to the effect that the company has received one or two complaints of such representations by their salesmen since 1951. We do not think this statement constitutes substantial evidence of the existence of the practice alleged in the sixth charge.

Respondents also take issue with the hearing examiner's ruling sustaining the seventh charge. The testimony of several witnesses fully supports a finding that respondents' salesmen represented that certain authorized publications are the same in content as publications which they are not authorized to sell. There can be no doubt that these representations were misleading and the record shows that several subscribers who relied thereon complained to respondents concerning such misrepresentation upon receipt of the authorized publication. Moreover, we agree with respondents that the distinction made by the hearing examiner between the claims of "same" and "similar," as used by respondents' salesmen in comparing publications, is too subtle for the average purchaser. We find that both claims are deceptive. Paragraph 7 of the order in the initial decision will be modified to conform with our findings on this charge.

Respondents argue that the evidence in support of the first, fourth and fifth charges, as well as the seventh charge, consists of isolated instances when considered in connection with their total yearly sales of two hundred thousand subscriptions, and that, accordingly, such evidence does not establish a course of action.

Some fifteen witnesses testified in support of the complaint. These witnesses testified as to practices which took place in Kansas City, Detroit and Cleveland, and, with one exception, all of their testimony relates to events taking place within a period of about one year. Their uncontradicted testimony discloses that in each of these cities, respondents' salesmen solicited and accepted subscriptions for magazines not on respondents' authorized list. Upon receipt of a complaint from a subscriber, respondents sent a form letter requesting the subscriber to make a substitute selection from the au-

thorized list. The form letter states that since commissions were allowed when the order was sold, no cancellations or refunds are available. In those instances in which the subscriber advised respondents that he did not want a publication on respondents' list, respondents then sent a personal letter, usually after an extensive delay, in which the subscriber was told that he must take a substitute publication. In some instances, a subscriber accepted the substitute. However, the record shows several instances wherein the subscriber persisted in his demand for a refund whereupon respondents of their own accord made the substitution.

In addition to the consumer witnesses, counsel supporting the complaint introduced the testimony of Mr. Harry Hites, Jr., Sales Director of the publisher of the Kiplinger Letter. His testimony, supported by copies of correspondence with respondents, shows that over at least a three-year period, respondents' salesmen in many different parts of the country entered numerous initial or renewal subscriptions for that publication. Respondents have never been authorized to sell subscriptions to the Kiplinger Letter.

There can be no doubt that respondents were aware of the practices of their salesmen, encouraged such practices and took an active part therein. Despite the fact that respondents were continually advised, through correspondence, telephone calls and a personal visit by Mr. Hites, of the activities of their salesmen in soliciting subscriptions to the Kiplinger Letter, it appears that such practices continued until action was taken by the attorneys for that publisher. Also, the record shows that respondents received payment for renewal of subscriptions to the Kiplinger Letter several months prior to the time the buyer's current subscription expired. No action was taken on these orders until complaint was received from the buyer, at which time respondents sent the usual form letter requiring that a substitute selection be made.

Although the order form and subscriber's receipt which respondents furnish their salesmen caution the prospective subscriber to choose only the magazines printed thereon, there are several underlined spaces on the order form in which the name of an unauthorized magazine may be conveniently printed. That this was done by respondents' salesmen is clearly evident from several receipts in evidence. Also, the very fact that respondents used a *form* letter to advise subscribers that their subscriptions were not on the authorized list militates against any conclusion that such unauthorized sales were isolated instances. Cf. *Consumer Sales Corporation v. Federal Trade Commission*, 198 F.2d 404, 407 [5 S. & D. 419] (2d Cir. 1952).

The deceptive acts established in this record, occurring over the period of time and in the different locations shown, cannot be regarded as merely single, inadvertent occurrences. To the contrary, they are shown to be an integral part of the sales procedure employed by respondents in their solicitation and sale of magazine subscriptions. Such a course of conduct clearly constitutes an unfair and deceptive practice within the prohibition of Section 5 of the Federal Trade Commission Act.

Respondents' contention that paragraphs 4 and 5 of the hearing examiner's order, which are adopted as paragraphs 2 and 3 of the Commission's order, are duplicative is without substance. These paragraphs prohibit the future use of two separate unfair practices which are charged in the complaint and which are established on the record.

To the extent indicated herein, respondents' appeal is granted but in all other respects it is denied. Our order providing for appropriate modification of the initial decision is issuing herewith.

Commissioner Elman did not participate in the decision of this matter.

FINAL ORDER

Respondents having filed an appeal from the initial decision of the hearing examiner, and the matter having been heard on briefs in support thereof and in opposition thereto; and the Commission having rendered its decision granting in part and denying in part the appeal and directing modification of the initial decision:

It is ordered, That paragraphs 7 and 8 on page 3 of the initial decision and paragraph 11 on page 4 thereof be stricken, and that paragraphs 9, 10, 12 and 13 on pages 3 and 4 be renumbered 7, 8, 9 and 10, respectively.

It is further ordered, That renumbered paragraph 9 be modified to read as follows:

Respondents, through their sales agents or representatives, in connection with the solicitation and sale of magazine subscriptions, have represented that certain publications which they are authorized to sell are the same in content as publications which they are not authorized to sell. The record contains the uncontradicted testimony of several witnesses to this effect. In addition, several other witnesses were informed that the magazines on the subscription list were similar to others not on the subscription list. The testimony of these witnesses discloses that they subscribed to authorized publications as a result of such representations and later complained to

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respondents that the magazines they received were not the same or similar to the magazines with which they were compared. An example of this practice is the representation by respondents' salesmen that the publication "Capper's Weekly (News)," as listed on respondents' order form, is the same as Newsweek magazine. In our opinion, the copy of Capper's Weekly in evidence (Commission Exhibit 49A-D) is obviously different from the national publication "Newsweek." We find from the evidence that the words "same" and "similar," as used by respondents' salesmen in comparing publications on the authorized list with unauthorized publications, are deceptive.

It is further ordered, That these paragraphs beginning with the second full paragraph on page 5 of the initial decision through and including the second full paragraph on page 6 thereof be stricken.

It is further ordered, That the following order be, and it hereby is, substituted for the order contained in the initial decision:

It is ordered, That respondents, National Trade Publications Service, Inc., a corporation, and its officers, and Melvin R. Lindsey, individually and as an officer 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 magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Accepting subscriptions for magazines or other publications for which they have no authority to solicit.
2. Requiring subscribers to substitute magazines or other publications for those subscribed for.
3. Substituting magazines or other publications for those subscribed for without the consent of the subscriber.
4. Representing directly, or by implication, that any magazine or publication which respondents are authorized to sell is
 - (a) the same in content as any magazine or publication which respondents are not authorized to sell, or
 - (b) similar to any magazine or publication which respondents are not authorized to sell when in fact the magazines or publications compared are different in either content, form, coverage or any other material respect.

It is further ordered, That the second, third and sixth charges of the complaint (subparagraphs 2, 3 and 6 of Paragraph Six) be, and they hereby are, dismissed.

ART NATIONAL MANUFACTURERS DIST. CO., INC., ET AL. 719

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Decision

It is further ordered, That the hearing examiner's initial decision, as modified and supplemented by the Commission's opinion, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, National Trade Publications Service, Inc., and Melvin R. Lindsey, 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