

Complaint

58 F.T.C.

IN THE MATTER OF
DAVID SINGER DOING BUSINESS AS
ADAM INDUSTRIES ET AL.

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

Docket 8287. Complaint, Feb. 9, 1961—Decision, June 7, 1961

Consent order requiring a New York City concern engaged in the sale and distribution of toys and novelties, to cease using exaggerated earnings claims and other misrepresentations in soliciting distributors to service established toy routes, as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that David Singer, an individual trading and doing business as Adam Industries, and Muriel Singer, individually, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent David Singer is an individual trading and doing business under the name of Adam Industries. His office and principal place of business is located at 170 West 74th Street, New York, New York.

Respondent Muriel Singer is an individual and acts in a managerial capacity of Adam Industries with her office and principal place of business the same as respondent David Singer.

Respondents David Singer and Muriel Singer cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of toys, novelties, sundries and magic tricks to distributors for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other

States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent David Singer, trading as Adam Industries, with the cooperation of respondent Muriel Singer, inserts advertisements in newspapers and magazines and other advertising media soliciting distributors to service established toy routes. Persons responding to said advertisements are contacted by respondents or their representatives. Said respondents or their agents or representatives then display to the prospective distributor a variety of promotional literature and make various oral representations concerning said articles of merchandise in an offer to induce the prospective distributor to buy said articles of merchandise. Among and typical but not all inclusive of the statements and representations made in newspapers, magazines, circulars and by other printed material distributed to prospective distributors, as well as oral representations made by respondents or their agents or representatives, are the following:

MAN OR WOMAN
Established Toy Routes
GOOD INCOME
Operate from Home
Several Choice Territories
NOW AVAILABLE

We will appoint a Distributor to service a number of the sensational self-service "MAGIC TOY SHOP" displays ESTABLISHED BY OUR OWN COMPANY in markets, drug, variety stores, etc. Each "MAGIC TOY SHOP" earns money. Simply replace Magic Toys each week and collect money.

REQUIRES ONLY FEW HOURS
PER WEEK

This is not a job but a chance to get into something you may have always wanted—a business of your own. One that can be handled in spare time and still leave room for full time expansion. Capable of earning \$400 monthly. If you have a desire to better yourself—if sober, honest, really sincere, have a car (Minimum investment \$495 required) apply at once—giving complete details about yourself, phone number. Write or wire.

ADAM INDUSTRIES
170 West 74th Street,
New York 23, N.Y.

*THE SELF SERVICE MAGIC TOY RACK:
IT'S BIG BUSINESS!*

IF YOU ARE ACCEPTED AS A DEALER BY OUR AGENCY DIVISION, YOU HAVE AN EXCLUSIVE AGENCY FOR DESIGNATED PLACEMENTS ONLY.

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THE MANUFACTURER OF THE MAGIC TOYS HAS BEEN IN BUSINESS OVER 50 YEARS AND IS WELL RATED IN DUN & BRADSTREET. THEY EMPLOY OVER 140 PEOPLE TO SERVICE YOUR NEEDS AT ALL TIMES.

If Our Regional Director Sets You Up With A Distributorship, Every Dollar You Invest On Your Original Investment, Will Not Cost You ONE CENT.

Due to the fact that it involves a great deal of time, effort and expense, on the part of Adam Industries to establish a distributor and to show him how to own and operate his business * * *.

* * *

Adam Industries selects and establishes all locations so there is no selling or soliciting.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents David Singer, trading as Adam Industries, and Muriel Singer, represented, directly or by implication, that:

1. A person can reasonably expect to earn a net profit of up to \$400.00 monthly by investing \$495.00 and devoting his spare time to selling respondents' products.
2. Respondents select and establish all locations.
3. There is no selling or soliciting required by the distributors purchasing respondents' products.
4. Respondents were selective with regard to persons qualified to become distributors.
5. Surveys had been made by respondents to determine locations which would prove profitable for sale of such merchandise.
6. Distributors would have exclusive territories.
7. Adam Industries has been in business a long time as a large and successful manufacturer of its own products and is well-rated by Dun & Bradstreet.
8. Samples of products shown to prospective distributors were indicative of the quality or value of the products which would appear on racks or available for placement.

PAR. 6. The aforesaid statements and representations made in the advertising matter and orally by respondents David Singer trading as Adam Industries, and Muriel Singer, and their representatives or agents are false, misleading and deceptive. In truth and in fact:

1. A profit of \$400.00 per month upon an investment of \$495.00 in respondents' products is greatly in excess of the profit that will accrue in a great majority of cases no matter how much time is devoted to selling the products.

2. Neither respondents nor respondents' agents obtain locations or assist in obtaining locations for the products purchased from respondents.

3. Selling and soliciting were required of a distributor if profitable locations were to be obtained.

4. Respondents were not selective with regard to persons becoming distributors. The only requirement is the purchase price.

5. Surveys had not been conducted by respondents to determine locations which would prove profitable in the sale of such merchandise.

6. Persons are not given exclusive territory within which to sell respondents' merchandise.

7. Adam Industries has been in business a relatively short time and does not manufacture the products sold by it. Said products are purchased from another source who imports much of it from Japan. In addition, Adam Industries is not well-rated by Dun & Bradstreet.

8. In most instances the quality or value of the products purchased by distributors was inferior in quality and differed from the samples shown by respondents or their agents or representatives.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, 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.

Mr. Michael J. Vitale for the Commission.

Mr. Jac M. Wolf, of New York, N.Y., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 9, 1961, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On March 16, 1961, there was submitted to the undersigned hearing examiner an agreement between respondent David Singer, an individual trading and doing business under the name of Adam Industries, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The agreement further provides that the complaint insofar as concerns the individual respondent Muriel Singer should be dismissed for the reasons set forth in the affidavit attached to said agreement.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent David Singer is an individual trading and doing business as Adam Industries, with his office and principal place of business located at 170 West 74th Street, in the City of New York, State of New York.

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Decision

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent David Singer, an individual trading and doing business as Adam Industries, or trading and doing business under any other name or names, 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 toys, novelties, sundries, and magic tricks, or any other merchandise, 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 earning or profits derived from the sale of respondent's merchandise are any amount in excess of those which have been in fact customarily earned by distributors of respondent's products.

2. Respondent or his sales representatives obtain or assist in obtaining satisfactory locations for products purchased from respondent.

3. No selling or soliciting is required of the purchaser for the sale of respondent's products.

4. Prospective distributors must possess any particular qualifications before the products are sold to them.

5. Surveys have been made to determine locations which would prove profitable for the sale of such products.

6. Purchasers of respondent's products are given exclusive territory within which to sell such products.

7. Adam Industries has been in business a long time and is a large and successful manufacturer of its own products.

8. Adam Industries is well-rated by Dun & Bradstreet.

9. Products actually sold by respondent to distributors were of a higher quality or value than they actually are.

It is further ordered, That this complaint herein be, and it hereby is, dismissed as to individual respondent Muriel Singer.

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 7th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent David Singer, individually and trading as Adam Industries, 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.
