

and form in which they have complied with this order.

IN THE MATTER OF
SELLS ENTERPRISES, INC., ET AL.

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

Docket C-97. Complaint, Mar. 14, 1962—Decision, Mar. 14, 1962

Consent order requiring Atlanta, Ga., distributors of toys, nursery products including potted plants, coffee bars and supplies, knives, and other merchandise, to cease making a variety of misrepresentations in newspaper advertisements soliciting distributors to service merchandise routes, including deceptive employment offers, exaggerated earnings claims, purported assistance in securing routes, and special selection of customers, as in the order below indicated.

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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 Sells Enterprises, Inc., a corporation, and Edward S. Munro, individually and as an officer of said corporation, 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 Sells Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 188 Walton Street, N.W., in the city of Atlanta, State of Georgia.

Edward S. Munro is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, and his address is the same as that of said corporation.

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, nursery products including potted plants, coffee bars and supplies, knives, and other articles of merchandise 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 Georgia 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. In the course and conduct of their business as aforesaid, respondents have been, and are now, in direct and substantial competition, in commerce, with corporations, firms and individuals in the sale of the same or similar merchandise.

PAR. 5. Respondents insert advertisements in various newspapers soliciting distributors to service merchandise routes. Persons responding to said advertisements are contacted by respondents or their agents or 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 merchandise in an effort to induce the prospective distributor to buy the merchandise. Among and typical, but not all inclusive, of the statements and representations made in newspapers and in printed material distributed to prospective distributors are the following:

SPARE TIME
FULL TIME
OPPORTUNITY
REAL INCOME
Self Service
Toy Route Business

Deliver and collect ONLY. 10¢ to 98¢ toys. No selling. Choice territory. Acquire profitable self-service cash. Toy Route in grocery, drug stores, super markets, etc., which we will establish for you. Our beautiful self-service DISPLAYS are America's greatest toy variety, and rapidly replacing cheap, unsightly racks.

NOT A GET RICH SCHEME, SOUND REPEAT BUSINESS.

Note: herewith gross profits of just a few of our successful distributorships: Panama City, Fla., 114 days work—\$5,960.00; Port Arthur, Tex., 43 days work—\$1,530.00; Beaumont, Tex., 137 days work—\$4,717.00; Gastonia, N.C., 100 days work—\$3,871.00; Nashville, Tenn., 356 days work—\$10,399.00; Birmingham, Ala., 444 days work—\$12,303.00; Decatur, Ala., 85 days work—\$2,998.00; Beloit, Wis., 319 days work—\$8,812.00; Roanoke, Ala., 120 days work—\$2,263.00; St. Petersburg, Fla., 32 days work—\$1,248.00; Miami, Fla., 65 days work—\$2,042.45; Jackson, Miss., 14 days work—\$475.54.

Many more in twenty states. We are a National Concern and will finance expansion to full time for conscientious, qualified person. Must have car. Be between 25 and 35, and have \$2,500 to \$5,000 working capital to start. This is a proven business and only sincere persons need apply. Write give age, phone employment record.

SELLS ENTERPRISES, INC., 188 Walton St., N.W., Atlanta 3, Ga.

NEW BUSINESS

Permanent year around business. Man or woman. Deliver light weight packaged products to small and medium size employers. Name brand products used. Business established for you by written contract with each employer. Repeat each two weeks indefinitely. Your profit \$3.00 to \$4.00 each package delivered. Easy to deliver 100 or more packages weekly. Expansion possibilities unlimited. Spare or full time. Openings in other Florida cities now. \$3,000 minimum working capital required. Phone 56-5592 or write P.O. Box 12303, St. Petersburg 33.

MANAGER
MAN OR WOMAN
NEW BUSINESS

Supply green potted plants to Super Markets, Drug Stores, and other established retail outlets, weekly direct from Florida Nurseries. No selling as Company

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establishes all retail outlets for you. No overhead, operate from home. No experience necessary. A new Business with little or no Competition offering a fabulous unlimited future. Full or spare time to start. Must have car, be between 30 and 50, have references, and \$2,000 working capital. Sizable income your first week. Write giving full background information and phone. SELLS ENTERPRISES, INC., 188 Walton Street, N.W., Atlanta, Georgia.

SERVICE MANAGER
YOUR OWN BUSINESS

Responsible person to own and manage very profitable local business that is fully established for you and producing a profit. No overhead. Operate from home, full or spare time. No experience necessary. Woman can handle. Age 30 to 45. Must have car and \$2,000 to \$4,000 working capital. Substantial income starts when you take over. National concern with its own operations in many states invites your banker and lawyers investigations and will guarantee under written contract 100% profit in first 12 months. For qualified person with sales experience. Company will finance expansion to full time. Write for appointment, give full background. Inspect our bank, Chamber of Commerce and other references. See what others do in this business. Lifetime opportunity. A three billion dollar industry. Sells Enterprises, Inc., 188 Walton Street, N.W., Atlanta, Georgia.

MANAGER NEW BUSINESS

Permanent year around business. Man or woman. Deliver small light weight packaged products to small and medium sized employers. Name brand products are supported by TV, radio, magazine, and newspaper advertising throughout America. Business established for you by written contract with each employer. Repeats each two or three weeks indefinitely. Your profit \$4.00 to \$6.00 each package delivered. Easy to deliver 100 or more packages weekly. Expansion possibilities unlimited, spare time or full time. Openings in your state area now. \$3,000.00 minimum cash working capital required. Call Mr. Moore today or Monday, ALpine 6-0611, Extension 205.

PAR. 6. By and through the use of the statements in the aforesaid advertisements and others of similar import, not specifically set out herein, respondents represent and have represented, directly or by implication that:

1. The offer made by respondents' advertising is an offer of employment.
2. Respondents' offer is limited to selected persons or those with certain qualifications.
3. Respondents offer for sale established profitable merchandise routes.
4. Respondents will secure profitable locations for the merchandise displays sold by them or will locate such displays in drugstores, supermarkets and other high traffic areas.

5. Persons purchasing respondents' merchandise displays will earn substantial income from the first week, or are guaranteed to earn 100% profit on their investment the first year, and unlimited and fabulous earnings.

6. Purchasers will make a profit of \$3.00 to \$6.00 each week on each display.

7. Respondents establish or set up the business or routes for distributors and all that is required of the distributor is the delivery of small packages to these established locations.

8. Respondents' offer is to manage an established business and that the only effort required of the distributor is to deliver packages to said business.

9. It is easy to deliver 100 packages a week at a profit of \$4.00 to \$6.00 per package.

10. No selling is required to successfully operate respondents' distributorships or merchandise routes.

PAR. 7. Respondents and the salesmen and representatives employed by them, in the course of their solicitation for the sale of their products, have repeated the statements set out in Paragraph Five hereof and have made additional oral statements to prospective purchasers of their said products, of which the following are typical:

1. Purchasers of respondents' products are granted exclusive territories within which to operate their businesses.

2. Purchasers of respondents' products will realize a 25% profit or commission on all products sold by them.

3. Respondents will send experts to make traffic surveys and place the displays of merchandise in supermarkets, chainstores, drugstores and other large stores that will yield the biggest profits.

4. Profits of \$5.00 to \$10.00 a week or \$50.00 a month per location will be assured, or that profits of \$75.00 to \$100.00 a week will be made immediately after placing of the merchandise and displays.

5. Respondents' employees will relocate displays that are not profitable.

6. Respondents have large numbers of distributors of plants and toys throughout the country who are making big profits, including those who are making \$30.00 to \$40.00 per display per month.

7. Transportation costs will be paid by respondents or an allowance sufficient to pay such costs will be made.

8. Respondents will train and assist the purchasers of their products in conducting their businesses.

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PAR. 8. The aforesaid statements and representations made in advertising matter or orally by respondents or their agents or representatives are false, misleading and deceptive. In truth and in fact:

1. The offer in respondents' advertisements is not an offer of employment, but is made for the purpose of obtaining purchasers for their products.

2. Respondents' offer is not limited to any selected group of persons or those with certain qualifications other than their financial ability to purchase and pay for respondents' merchandise.

3. Respondents, in their advertisements, do not offer for sale established and profitable merchandise routes. No effort is made by respondents to locate any of the merchandise displays until after the sale thereof has been consummated.

4. Respondents do not in most instances secure profitable locations for the merchandise displays. Certain locations are no more than a token compliance with the respondents' obligation under the contracts with their distributors and such locations are almost without exception undesirable, unsuitable and unprofitable. Respondents do not generally locate such displays in chainstores, supermarkets, drugstores, or other high traffic areas.

5. Persons purchasing respondents' merchandise displays in most instances do not earn substantial incomes from the first week, or at all, and respondents do not guarantee 100% profits of distributors' investments, or any other level of profits, and such profit is not realized either the first year or at any other time in the great majority of cases.

6. Purchasers do not make a profit of \$3.00 to \$6.00 each week on each display.

7. Respondents' sole efforts in establishing or setting up routes or the businesses of distributors consist of placing the displays in any or all locations where permission can be obtained from the occupants of the premises, and in many cases in order to resell any of respondents' merchandise the distributors have to relocate the displays which have been placed by respondents' employees. The delivery of the "small packages" is not to established businesses, but is to the locations which respondents' employees have secured as above.

8. Respondents' offer is not to manage and establish businesses with the only effort required of the purchaser being to deliver packages but is an offer to sell merchandise to distributors who must finance and manage their own businesses.

9. Operation of a distributorship for respondents or the purchase of respondents' merchandise does not consist of delivering packages

only and the great majority of respondents' distributors do not "make a profit of \$4.00 to \$6.00 a package".

10. Selling is required on the part of purchasers or distributors of respondents' merchandise displays in that they must relocate displays in most instances, in which case it is necessary to sell the merchants and others to the extent that they will permit the displays to be placed in their establishments.

11. Purchasers of respondents' products are not granted exclusive territories in which to operate their businesses.

12. Purchasers of respondents' products seldom, if ever, realize a 25% profit or commission on all products sold by them, the percentage of profit in most instances being much less than that represented by respondents.

13. Respondents do not send experts or others to make surveys or to find the most favorable and profitable locations for the displays of merchandise but merely send their representatives into purchasers' areas to sign up an easily available space regardless of its desirability as a profitable location for such business.

14. Profits of \$5.00 to \$10.00 a week or \$50.00 a month per location are not assured, and profits of \$75.00 to \$100.00 a week are not made immediately after respondents' displays of merchandise are placed.

15. Respondents' employees do not relocate displays that are unprofitable and any such relocations are required to be made by the purchasers of respondents' merchandise.

16. Respondents do not have large numbers of distributors of their merchandise throughout the country who are making big profits.

17. Respondents do not pay transportation costs of their merchandise or make allowances sufficient to pay such costs.

18. Respondents do not train or assist the purchasers of their merchandise in operating their businesses.

PAR. 9. 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 said erroneous and mistaken belief.

PAR. 10. 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 methods of competition in commerce and unfair and deceptive acts and

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practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sells Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 188 Walton Street N.W., in the city of Atlanta, State of Georgia.

Respondent Edward S. Munro is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Sells Enterprises, Inc., a corporation, and its officers, and Edward S. Munro, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of toys, nursery products including potted plants, coffee bars and supplies, knives 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. Employment is offered by respondents, when in fact the real purpose of respondents' advertisement is to obtain purchasers and distributors of their products.
2. Respondents' products are sold only to a selected group of persons, or that any qualifications are necessary to become a distributor other than ability to pay for the merchandise ordered.
3. Established or profitable merchandise routes are offered for sale.
4. Only profitable locations will be secured by respondents for merchandise displays or that respondents usually or customarily obtain locations in chainstores, supermarkets, drugstores or other high traffic areas for merchandise displays sold by respondents.
5. Purchasers of respondents' merchandise displays will earn substantial profits from the first week or \$75 or \$100 per week immediately, or will make a profit of \$3.00 to \$6.00 per display per week.
6. Purchasers of respondents' products will derive earnings or profits from the operation of a display route or from a single display or location in any amounts which are in excess of the earnings or profits typically received by others contemporaneously engaged in the operation of similar distributorships or merchandise display routes situated in similar locations in like trade areas.
7. Distributors or purchasers of respondents' products are guaranteed 100% profit on their investment the first year or representing in any manner that profits are guaranteed by respondents to distributors.
8. The only effort required for profitable or successful operation of respondents' display routes is the delivery of packages.
9. Respondents' offer is to manage an established business.
10. No selling is required in the operation of respondents' merchandise display routes.
11. Purchasers of respondents' merchandise will be granted exclusive territory for the operation of their display routes.
12. Purchasers of respondents' products will make 25% profit on their investment for each display or misrepresenting in any other manner the percentage of profit or mark up afforded to operators of display routes.
13. Respondents employ or furnish experts to make surveys or to locate favorable or profitable placement of the merchandise displays or that such displays will be placed only in desirable and profitable locations.
14. Profits of \$5.00 to \$10.00 a week or \$50 a month per location are assured.

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15. Respondents' employees or representatives will relocate the displays at the request of the purchaser or operators of the display routes.

16. Respondents have large numbers of successful distributors over the country who are making large or substantial profits per week.

17. Respondents will pay all transportation costs or make allowances to fully meet such costs.

18. Respondents will train or assist the purchasers of their merchandise in operating their display routes or in the resale of the merchandise sold by respondents.

It is further 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 this order.

IN THE MATTER OF

SWANEE PAPER CORPORATION

MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF
THE CLAYTON ACT

Docket 6927. Modified order, Mar. 16, 1962

Order modifying—in accordance with the decree of the Court of Appeals for the Second Circuit (291 F. 2d 833) which held that “the order should be limited to the particular practice found to violate the statute”—desist order of Mar. 22, 1960 (56 F.T.C. 1077), requiring cessation of violation of Sec. 2(d) of the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on March 22, 1960; and the court on June 22, 1961, having rendered its decision, and, on August 3, 1961, having entered its final decree modifying and, as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court having denied a petition filed by respondent for writ of certiorari to the court of appeals for review of said decision and final decree;

Now therefore, it is hereby ordered, That the aforesaid order to cease and desist be modified, in accordance with the said final decree of the court of appeals, to read as follows:

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Order

It is ordered, That respondent Swanee Paper Corporation, a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce (as "commerce" is defined in the Clayton Act) of paper products, do forthwith cease and desist from:

Paying or contracting to pay anything of value to any third person as compensation or in consideration for any advertising or promotional display services or facilities if such services or facilities are furnished by or through any customer of Swanee in connection with the sale or offering for sale of Swanee's products, and such compensation or consideration paid or contracted to be paid to said third person is used in whole or in part to provide benefits for said customer, unless the benefits thus derived by said customer are made available on proportionally equal terms to all other customers of Swanee competing in the distribution of its products.

IN THE MATTER OF
WEST-WARD, INC., ET AL.

MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 8141. Modified order, Mar. 16, 1962

Order modifying, as justified by changed conditions of fact, order of Mar. 1, 1961 (58 F.T.C. 249), against New York City drug distributors by eliminating the general requirement that they cease to claim they had an adequate quality control system.

ORDER MODIFYING THE FINAL ORDER OF THE COMMISSION

Respondents West-Ward, Inc., and Samuel G. Goldstein having moved for the modification of the order of the Commission dated March 1, 1961, which motion has been treated by the Commission as a motion for reopening pursuant to Section 3.27 of the Commission's Rules of Practice (1955); and the Commission having determined that the reopening of this matter and the modification of its order are justified by changed conditions of fact and are in the public interest,

It is ordered, That this matter be, and it hereby is, reopened and the final order of the Commission modified to read as follows:

ORDER

It is ordered, That respondents, West-Ward, Inc., a corporation, and its officers, and Samuel G. Goldstein, individually and as an officer

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of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of drugs or food do forthwith cease and desist, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement:

(a) Misrepresents the nature or extent of the procedures used by them in the manufacture, preparation or distribution of drugs or food;

(b) Represents, directly or indirectly:

(1) That a quantitative analysis is made of each of respondents' preparations to determine the amount of each of the active ingredients contained therein, unless such is the fact.

(2) That respondents have established the stability as to potency or disintegration characteristics of their enteric coated tablets, unless such is the fact.

(3) That respondents perform assays in their own laboratories on all of the preparations offered for sale and sold by them.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the terms or representations prohibited in paragraph 1 hereof.