

Complaint

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IN THE MATTER OF

YOUR INCOME TAX RECORDS, INC., ET AL.

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

Docket C-269. Complaint, Nov. 15, 1962—Decision, Nov. 15, 1962

Consent order requiring New York City sellers, through their franchised distributors, of a combined record keeping system and tax service for small businesses, to cease—in advertisements in newspapers, brochures, and other advertising material to induce the purchase of distributorships—misrepresenting distributors' earnings and opportunities for profits; respondents' time in business, experience and importance; approval of their system by banks, etc., as in the order below set forth in detail.

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 Your Income Tax Records, Inc., a corporation, and James W. Riley, 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 Your Income Tax Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 53 Worth Street, New York 13, N.Y.

Respondent James W. Riley is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, through franchised distributors, of a combined record keeping system and tax service for small businesses. Businessmen purchasing said systems and service are referred to as "subscribers" by respondents. The record keeping system consists of a loose-leaf binder called "Your Income Tax Saver" which contains forms and instructions for maintaining records of the business. The tax service furnishes the

subscriber with a monthly income tax bulletin, answers his inquiries regarding income taxes which the subscriber may submit, and prepares his income tax return at the end of the year from a summary of figures furnished by him. The record keeping system and tax service, covering a period of two years, is called the Executive Two Year System and costs the subscriber \$99.50.

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. In the conduct of their business, at all times mentioned herein, respondents have been and are in substantial competition, in commerce, with corporations, firms and individuals in the sale of products and services of the same general kind and nature as those sold by respondents.

PAR. 5. In furtherance of the sale of their products and services, respondents grant to distributors the right to sell their products and services in an exclusive trade territory in consideration of the initial purchase by distributors, covering the first year, of an inventory consisting of said bookkeeping systems and various supplies called the "franchise investment" in the minimum amount of \$6500, and the purchase each year thereafter by the distributor of at least twenty-five Executive Systems during each calendar quarter. For the purpose of inducing the purchase of said distributorships, respondents have made various statements in advertisements in newspapers of national circulation, in brochures, in letters and in other advertising material respecting the prospective earnings from said distributorships, the permanency of ownership of said distributorships and affiliation with respondents, their experience and expertness in preparing income tax returns, the length of time they have been in business, their staff and facilities and their recognition and approval by banks, credit bureaus and others. Typical, but not all inclusive, of such statements are the following:

FED UP WITH THE RAT RACE?

• ENJOY SECURITY • DIGNITY • PRESTIGE IN A PROFITABLE BUSINESS OF YOUR OWN

* * * * *

This is our proposition: We provide an essential service to small businesses. We've been in business for 18 years, have clients from coast to coast, many of

them for all these years. Our service is sold only through exclusively franchised local distributors.

A man with executive ability who can devote full time to this business can earn in excess of \$10,000 a year and establish his own retirement fund through automatic renewals of the service.

If you are interested in a solid, profitable business of your own, you can secure your future in this non-seasonal, recession proof professionally proven Business Management Service with a constant flow of reorders. This service is built around a record control system for medium sized companies that is recognized as unique by Banks, Chambers of Commerce as well as credit associations across the country.

You need no special knowledge or experience, no office other than your own home. We train you at our expense right in your own territory and back you up all the way with an effective sales promotion program. If you qualify then the minimum investment is \$6,650 in an inventory of material with a resale value of more than \$10,000.

We think this final word is an order: We're not interested in the "fast buck operator" in allocating distributorships. We want to talk only to men who want to establish a solid, profitable business of their own . . . a business they can live with . . . a business they can be proud to talk about at a local business club luncheon.

Choice territories: In New York, New Jersey, Pennsylvania, Maryland, New England and Georgia.

. . . many of our distributors recoup their original investment . . . plus a substantial profit in the first few months.

Most of our distributors earn back every penny of their investment in a matter of a few months plus a substantial profit.

. . . our service is . . . a plan that is approved by Banks, Chambers of Commerce, Credit Bureaus.

A man of normal executive ability could earn a minimum of \$10,000 per year in his efforts . . . and then build from there.

. . . a modest investment to make . . . can lead up to a normal yearly income of up to \$15,000.

THE GROWTH POTENTIAL of the Typical YITR Distributorship A CONSTANTLY EXPANDING BUSINESS

In a few years it can start working "for you" and give you a lucrative semi-retirement income. The growth possibilities are big enough to be staggering. You establish for yourself hundreds of friendly clients or subscribers, who create for you a permanent ever-increasing, steady income through the renewal of our service every twenty-four months. It is a constantly increasing income since you are continually adding new Subscribers who in turn keep renewing.

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SCHEDULE of COST and POTENTIAL PROFIT

Distributor's Cost \$44.50

Dealer's Cost \$54.50

Subscriber's Cost \$89.50

NATURE OF SALES FORCE	Weekly Total	Yearly Total
Your personal sales of just one each day or five per week at a \$55.00 profit per sale.....	\$275.00	
4 Associate-Distributors (Your salesmen or dealers) each making one sale per day or a total of twenty sales per week at your override of \$10.00 each.....	\$200.00	
	\$475.00	\$24,700
Your personal sales of just one each day or five sales per week at a \$55.00 profit per sale.....	\$275.00	
2 Associate-Distributors (your salesmen or dealers) each making one sale per day or a total of ten sales per week at your override of \$10.00 each.....	\$100.00	
	\$375.00	\$19,500
Just covering the territory by yourself and making just one sale per day or five sales per week at \$55.00 profit per sale.....	\$275.00	\$14,300

Your work is complete after the initial sale.

The distributor has only one job to do: sell the service. All tax work is the responsibility of the New York Office. Every two years his customers' subscriptions come up for renewal, giving him steadily increasing income as new subscribers are enrolled, and the old ones renewed.

... you are the owner of your own business.

Since 1943 ...

The personnel of Your Income Tax Records, Inc., has processed over ONE QUARTER MILLION TAX RETURNS ...

We've been in business for 18 years, have clients from coast to coast, many of them for all these years. ...

The staff of Your Income Tax Records, Inc., has available one of the finest and costliest income tax libraries. This library is available to them during your entire business year so that they may properly answer all your questions on income taxes. This library is a permanent one and belongs to our organization. It is not hired for only the Income Tax Season. No other organization can make this statement!

The Staff of Your Income Tax Records, Inc., will serve you your entire business year! This is a full time staff employed not only for the Income Tax season but on a permanent basis! No other organization can make this statement.

The personnel of Your Income Tax Records, Inc., is the staff who for 14 years prepared an average of over 15,000 income tax returns per year. No other organization can make this statement.

Ours is the only company of this type that is successfully and entirely managed by accountants and Income Tax specialists who have been in this work since 1943. YOUR INCOME TAX RECORDS, INC., is the most experienced Income Tax organization of its kind in America ... No other organization can claim these advantages.

PAR. 6. Through the use of the aforesaid statements and representations set out in paragraph 5, above, respondents have represented directly or by implication:

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1. That purchasers of respondents' distributorships are assured of earning substantial incomes that will increase yearly.
2. That the sale of distributorships confers absolute ownership thereof on purchasers and creates permanent business affiliations between the parties.
3. That distributors recoup the purchase price of distributorships within six months after purchase.
4. That distributors make a substantial net profit in addition to recovery of the amount paid for the distributorship within the first six months and that distributors are assured of earning \$10,000 in the first year of their operation.
5. (a) That distributors customarily or typically employ associate distributors.
(b) That distributors employing associate distributors will likely derive additional net income in the amount of from \$5200 to \$10,400 per year.
(c) That distributors employing associate distributors will likely realize a profit of from \$19,500 to \$24,700 per year resulting from earnings from their own sales and from those of their associate distributors.
6. That a distributor can establish his own retirement fund by automatic renewals of the service without requiring further effort on his part.
7. That distributors could devote their time exclusively to making sales.
8. That the corporate respondent is the only organization engaged in the same kind of business having a full time staff and its own income tax library.
9. That Your Income Tax Records, Inc., has been in the record keeping and tax service business for 18 years.
10. That Your Income Tax Records, Inc., has prepared over 250,000 income tax returns.
11. That Your Income Tax Records, Inc., is the most experienced organization of its kind in the United States.
12. That respondents' record keeping systems and services are approved, and recognized as unique, by banks, chambers of commerce and credit organizations throughout the United States.

PAR. 7. In truth and in fact:

1. The income earned from respondents' distributorships by many distributors has been insubstantial and many of the distributorships sold failed to produce incomes that increased yearly.

2. The sale of distributorships by respondents does not confer absolute ownership thereof on purchasers or create permanent business affiliations between the parties. The continuance of such ownership or affiliation is dependent upon purchasers' conformance with terms and conditions of the franchise agreement entered into by the parties.

3. Many purchasers of respondents' distributorships have not recouped the purchase price of their distributorships within six months or in a longer period of time during which they held such distributorships.

4. Seldom if at all has any distributor of respondents' systems earned net profits in the first year of his operation in an amount in excess of the amount paid for the distributorship and \$10,000 is not typical of the earnings by distributors in the first year.

5. (a) Distributors do not customarily or typically employ associate distributors.

(b) Distributors' net income is not customarily or typically augmented by income from sales by associate distributors in the amounts of \$5,200 to \$10,400 per year.

(c) Distributors do not customarily or typically earn net profits combined with those of associate distributors which amount to \$19,500 to \$24,700 per year.

6. In many instances the distributor must keep in contact with the subscriber in order to retain the subscriber's business and the distributor must continue to sell a minimum number of systems per year in order to retain his franchise.

7. Distributors are required to perform services and give advice to subscribers from time to time, hence they are unable to devote their time exclusively to making sales.

8. Other organizations engaged in the same kind of business as the corporate respondent have full time staffs and income tax libraries similar to respondents.

9. The respondent corporation was incorporated in February 1956 and therefore has been engaged in the record keeping and tax service for less than seven years.

10. The respondent organization has not prepared 250,000 income tax returns. This claim is based largely on the number of income tax returns allegedly prepared by persons prior to their joining the respondent organization.

11. The corporate respondent is not the most experienced organization of its kind in the United States. Other organizations have been engaged in the same kind of business as long or longer than the corporate respondent.

12. Respondents' record keeping system and services have not been approved, or recognized as being unique, by banks, chambers of commerce and credit organizations throughout the United States.

Therefore, the statements and representations referred to in paragraphs 5 and 6 hereof were false, misleading and deceptive.

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 said erroneous and mistaken belief.

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 methods of competition in commerce and unfair and deceptive acts and 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, Your Income Tax Records, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business

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located at 53 Worth Street, in the city of New York, State of New York.

Respondent James W. Riley 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 Your Income Tax Records, Inc., a corporation, and its officers, and James W. Riley, 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 business record keeping systems and tax services in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist representing directly or indirectly to prospective distributors of such record keeping systems:

1. That purchasers of respondents' distributorships are assured of earning substantial incomes that will increase yearly.

2. That the sale of distributorships confers absolute ownership thereof on the purchasers or that a permanent business affiliation between the parties is created by such sale, without disclosing that the permanency of such ownership or affiliation is dependent on purchasers' conformance with the terms and conditions set out in franchise agreements.

3. That distributors are assured of recouping the purchase price of distributorships within six months, or any other specified period of time.

4. That the net profit of a new distributor in his first year of operation will exceed the purchase price of such distributorships or that any distributor is assured of earnings amounting to \$10,000 in his first year of operation; or misrepresenting in any manner the net profit of earnings to be made by distributors in the first year of operation.

5. (a) That distributors customarily or typically employ associate distributors.

(b) That distributors employing associate distributors will or are likely to earn an additional income in the amount of from \$5,200 to \$10,400 per year.

(c) That distributors employing associate distributors will realize a profit from their own sales and those of associate dis-

tributors in the amount of \$19,500 to \$24,700 per year.

6. That profits or earnings to be realized by distributors will be any amount in excess of the average earnings or profits in fact being realized or derived by respondents' distributors similarly engaged in selling respondents' systems and services.

7. That distributors can establish their own retirement funds by automatic renewals of the service by subscribers without requiring any further effort on the part of distributors.

8. That distributors will be able to devote their time exclusively to making sales.

9. That Your Income Tax Records, Inc., is the only organization engaged in the sale of record keeping systems and tax service which has a full time staff or its own income tax library.

10. That Your Income Tax Records, Inc., has been in the business record keeping and tax service business for 18 years, or any other period of time not in accordance with fact.

11. That Your Income Tax Records, Inc., has prepared over 250,000 income tax returns or any number of income tax returns not in accordance with fact.

12. That Your Income Tax Records, Inc., is the most experienced organization of its kind in the United States; or misrepresenting in any manner the business experience of respondents.

13. That respondents' system or services are approved, or are recognized as being unique, by banks, chambers of commerce or credit institutions throughout the United States; or misrepresenting in any manner the approval or recognition of said systems or services by others.

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

PARKER BROTHERS, INC.

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

Docket 7976. Complaint, June 24, 1960—Decision, Nov. 19, 1962

Consent order requiring a Salem, Mass., toy manufacturer to cease violating