

Complaint

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IN THE MATTER OF

TOY MERCHANDISING CORP. ET AL.

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

Docket C-897. Complaint, May 13, 1965—Decision, May 13, 1965

Consent order requiring a New York City corporation engaged in selling toys through individual distributors who service "toy routes," to cease misrepresenting the quality and origin of its toys, and making deceptive earnings, location, routes and other claims to promote its distributorships.

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 Toy Merchandising Corp., a corporation, and Fred Holm and Tim Johnson, individually and as officers 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 Toy Merchandising Corp. 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 located at 34-10 58th Street, Woodside 77, Queens, New York.

Respondents Fred Holm and Tim Johnson are officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 of toys and toy shops 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.

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PAR. 4. In the course and conduct of their aforesaid business, respondents insert advertisements in newspapers soliciting distributors to service established toy 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 distributors a variety of respondents' promotional literature purporting to furnish to prospective distributors the manner in which prospective distributors may reasonably anticipate earnings and profits through an investment in respondents' distributorships. Among and typical, but not all inclusive, of the statements and representations made in newspapers, circulars and other printed material disseminated by respondents to prospective distributors, are the following:

MAN OR WOMAN
To Service
PART TIME
TOY ROUTE
Very Small Starting Capital
GOOD INCOME
Operate from Home
Several Choice Territories
AVAILABLE SOON

We will appoint a sincere man or woman to service a number of sensational self-service "TOY SHOP" Displays located in markets, drug, variety stores, etc. Each "TOY SHOP" earns money. Simply replace toys each week and collect money.

REQUIRES ONLY FEW
HOURS EACH 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.

NOT A GET-RICH-QUICK-SCHEME

If you have a desire to better yourself—if sober, honest, really sincere, have a car (min. \$298 req.) apply at once—giving complete details about yourself, phone number. Airmail or wire:

TOY MERCHANDISING CORP.
34-10 58th Street
Woodside 77, New York

It takes but a few minutes to replace toys which are bought from the "TOY SHOP" Display—and collect the money. SERVICE to the stores is the key to success in our type of toy business.

While there is a small outlay at first for the newly appointed Distributor to get under way, WE PROVIDE FOR THE RETURN OF EVERY CENT OF THE STARTING CAPITAL over and above the regular profits.

NO SELLING is required to become a *success* in this field

We establish our authorized Distributors in the "TOY SHOP" business

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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 represented, directly or by implication, that:

1. Respondents have established routes of their toys or toy shops prior to or at the time the offer of sale is made and that persons selected by respondents merely have to service said route by replacing toys and collecting money.

2. Beginning with the initial purchase, each toy shop earns a profit for the distributor, and that a person who purchases three toy shops can reasonably expect to earn a net profit of \$65 a month if each toy shop sells a daily average of six toys.

3. The required minimum initial investment of \$298 is secured by an inventory of comparative worth.

PAR. 6. In truth and in fact:

1. Respondents do not establish routes prior to or at the time of sale, and in fact neither respondents nor their agents obtain locations or assist in obtaining locations for the products purchased from respondents. Distributors are required to secure their own locations for the products purchased from respondents.

2. It is impossible for a distributor to make a profit from the initial purchase of respondents' products.

3. The required minimum initial investment of \$298 is not secured by an inventory of comparative worth. The distributor who makes an initial minimum investment of \$298, receives toys, which, if sold according to respondents' suggested retail prices, would receive \$153.90 as gross proceeds of the retail sale of such toys. The distributor would then be obliged to deduct 40% from said gross proceeds of retail sale, which 40% amounts to \$61.56. Said 40% of the retail gross, proceeds of sale, \$61.56 under respondents sales program is paid to the location owners providing the selling space to the distributor. Therefore, after said payment of 40% of the gross retail proceeds to the location owner, the distributor retains only the remainder of 60% of the retail gross proceeds of sale, which 60% amounts to \$92.34. Therefore from a required minimum initial investment of \$298, the distributor receives only \$92.34 for his initial investment of \$298.

Therefore, the statements and representations as set forth in Paragraphs Four and Five herein were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, respondents' agents or representatives call upon such persons re-

sponding to respondents' advertisements and solicit them to purchase distributorships for respondents' toys and other products through respondents' so-called "toy shops" sales program.

In the course of such solicitation, said agents or representatives, either directly or by implication, have made many oral statements and representations to prospective distributors. Typical, but not all inclusive are the following by way of illustration but not limitation:

1. Distributors would have exclusive territories.
2. Samples of products shown to prospective distributors were indicative of quality or value of the products which would appear on racks or available for placement.
3. Respondents' products were of domestic manufacture.
4. There is no selling or soliciting required by the distributor purchasing the respondents' products.

PAR. 8. In truth and in fact:

1. Distributors are not given exclusive territory in which to sell respondents' merchandise.
2. In most instances the quality or value of the merchandise purchased by distributors was inferior in quality and value to the samples shown by respondents or their agents or representatives.
3. In most instances respondents failed to clearly and conspicuously disclose to prospective purchasers that a substantial amount of their merchandise was of foreign origin.
4. Purchasers must engage in extensive selling or soliciting in order to establish, operate and maintain locations for the retail sale of products purchased from the respondents.

Therefore, the statements and representations as set forth in Paragraph Seven herein were and are false, misleading and deceptive.

PAR. 9. 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. 10. 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.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged were and are all to the prejudice and injury of the

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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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Toy Merchandising Corp., 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 located at 34-10 58th Street, Woodside 77, Queens, New York.

Respondents Fred Holm and Tim Johnson are officers of the corporation and their address is the same as that of the 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, Toy Merchandising Corp., a corporation, and its officers, and Fred Holm and Tim Johnson, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any cor-

porate or other device, in connection with advertising, offering for sale, sale or distribution of toys, toy shops or any other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondents customarily establish or have established routes for their products prior to or at the time the offer of sale is made.

2. Representing, directly or indirectly, that distributors contracting with respondents merely have to service said routes by replacing toys and collecting money.

3. Misrepresenting the ease by which, or the extent to which, earnings or profits can be realized through the operation of a distributorship for respondents' products or representing, directly or by implication, that distributors will realize earnings or profits in any amount which is in excess of that which the respondents can establish as being the earnings or profits which may reasonably be attained.

4. Representing, directly or indirectly, that the initial cash investment required to purchase respondents' products is secured by an inventory of merchandise worth the amount invested.

5. Representing, directly or indirectly, that purchasers of respondents' products are given exclusive territory within which to sell such products.

6. Misrepresenting in any manner, by use of samples or otherwise, the grade, type, quality, variety or price of any merchandise offered to distributors.

7. Representing, directly or indirectly, in any manner or by any means, that products offered for distribution or sale are of domestic origin when said products, or substantial parts thereof are of foreign origin.

8. Placing in the hands of jobbers, dealers, distributors, retailers, and others, means and instrumentalities by and through which they may mislead and deceive the purchasing public concerning any merchandise in respect to the origin of merchandise made available for distribution or sale by respondents.

9. Representing, directly or indirectly, to purchasers that selling or soliciting is not required to establish, operate or maintain a route of respondents' products.

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.

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IN THE MATTER OF

AMERICAN RETAIL BOARD OF TRADE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-898. Complaint, May 18, 1965—Decision, May 18, 1965*

Consent order requiring a Springfield, Mo., collector of delinquent accounts, operating a small business with one office and one employee to assist with the individual respondent, to cease representing falsely, through the use of their trade name and the use of fictitious terms and statements in the course of business, that their business is a nationwide organization of retailers with corresponding attorneys and collectors affiliated with them.

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 the American Retail Board of Trade, Inc., a corporation, and Alvin B. Ayers, 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, American Retail Board of Trade, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 1022 South Glenstone Street, M.P.O. 108, in the city of Springfield, State of Missouri.

Respondent Alvin B. Ayers is an officer of said corporation. He formulates, controls and directs the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of the individual respondent is the same as that of the corporate respondent.

PAR. 2. Respondents now operate, and have operated for more than one year last past, a collection agency under the name American Retail Board of Trade, Inc. Business is secured by respondents by solicitation of agents.

Respondents use assignment forms upon which each delinquent account is listed showing the name of the debtor, address, date of indebtedness incurred and the amount due. These assignment forms are sent from respondents' place of business in the State of Missouri to creditors located in various States of the United States. The credi-