

Complaint

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IN THE MATTER OF

WHITEHILL SYSTEMS, INC., ET AL.

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

Docket C-900. Complaint, May 26, 1965—Decision, May 26, 1965

Consent order requiring New York City sellers of business record keeping systems and tax services for small businesses through franchised distributors, to cease misrepresenting in advertisements in newspapers and in brochures, to induce the purchase of distributorships, the earnings and profits, permanency of ownerships, recovery of initial investment, training expenses, and the nature of business opportunity being offered.

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 Whitehill Systems, Inc., a corporation, and Louis Weisberg, 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 Whitehill Systems, 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 71 Fifth Avenue, New York 3, New York.

Respondent Louis Weisberg is an officer of the corporate respondent. He formulates, directs and controls the 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 bookkeeping system and tax service for small businesses. The record keeping system consists of a loose leaf binder called "Whitehill Taxkeeping Systems" which contains forms and instructions for keeping records of the business. The tax service undertakes to furnish purchasers with income tax bulletins, answers their inquiries regarding income taxes and, upon request, prepares the purchaser's income tax return at the end of the year from a summary of figures furnished by him. The

bookkeeping system and tax service is for a two-year period and sells for \$119.50.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products and services, 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 and services 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 the furtherance of the sale of their products and services, respondents grant to distributors the exclusive right to sell such products and services in an exclusive territory for an initial term of two years in consideration of the purchase by distributors, covering the first year, of an inventory consisting of said bookkeeping systems and various supplies for the amount of \$7500, and the purchase each year thereafter of at least 25 Taxkeeping Systems during each calendar quarter. The agreement states that it shall be automatically extended for two year terms provided after the initial period the undertakings assumed by the distributor are faithfully performed. For the purpose of inducing the purchase of said distributorships, respondents have made various statements in advertisements in newspapers of national circulation and in brochures respecting prospective earnings from said distributorships, the permanency of ownership of said distributorships and the association with respondents, the recovery of the initial investment, the training of the distributor at the respondents' expense, and the nature of the opportunity being offered.

Typical, but not all inclusive, of such statements and representations are the following:

Here's what a Whitehill franchise could mean * * * [See attached "Schedule of Cost and Potential Profit"]

Figure it out for yourself any way you want to!

No matter how you figure, this is a sound, highly profitable business.

* * * investment * * * secured by inventory

* * * investment * * * guaranteed by inventory

* * * a lifetime of security * * *

* * * for a man who wants a lifetime business of his own

We train you * * * at our own expense

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Schedule of cost and potential profit

	Cost to distributor	Cost to dealer	Cost to user
Whitehill taxkeeping system.....	\$44. 50	\$59. 50	\$99. 50
The following will give you some idea of the potential income with dealers including yourself:			
Just covering the territory by yourself and making an average of 4 sales per week, at a profit of \$55.00 per sale (weekly total).....			
		220. 00	
Yearly total.....			11, 440. 00
1 Subdistributor (your salesman or dealer), making 3 sales per week, at your override of \$15.00 each.....		45. 00	
Plus your personal sales of 4 sales per week, at a profit of \$55.00 per sale.....		220. 00	
Weekly total.....		265. 00	
Yearly total.....			13, 780. 00
2 Subdistributors (your salesmen or dealers), each making 3 sales per week, or a total of 6 sales per week at your override of \$15.00 each.....		90. 00	
Plus your personal sales of 4 sales per week, at a profit of \$55.00 per sale.....		220. 00	
Weekly total.....		310. 00	
Yearly total.....			16, 120. 00

ON YOUR OWN BUT NOT ALONE!

Would you like to reap the benefits of self-employment? Do you want a business of your own—with the backing of a 20-year established National company? Complete N.Y. home office and field training provided, if you qualify.

\$7500 investment required provides inventory requiring \$12,000 plus COMPANY FINANCING AVAILABLE. You will own a business which has been endorsed by thousands of small businessmen and featured in trade journals throughout the country. Scores of men, with little or no experience in our field—Business Management Controls—have achieved success. Investment usually recovered in less than a year plus a substantial profit. No royalty fees. For complete information write today, including brief resume, phone number, and territory preference.

Box 000, Wall Street Journal, 44 Broad St., New York 4, N.Y.

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

1. That distributors generally realize annual net profits solely from the sale of respondents' record keeping system of from \$11,000

to \$12,000, if working alone, or of from \$13,000 to \$14,000, if they employ the services of one sub-distributor or of from \$16,000 to \$17,000 if they employ the services of two sub-distributors and that all prospective franchise purchasers could expect to realize equally high net profits.

2. That the majority of distributors develop businesses which require the employment of one or more sub-distributors and that a majority of prospective distributors could expect to develop businesses of such size as to require the employment of one or more sub-distributors.

3. That distributors generally will be able to recover their investment in less than one year and in addition thereto make a substantial profit.

4. That the initial investment of distributors is secured or guaranteed by the inventory.

5. That distributors acquire a permanent, lifetime business.

6. That distributors are trained wholly at respondents' expense.

7. That respondents are affording the opportunity of investing in and managing a business engaged primarily in the installation of business record systems.

PAR. 7. In truth and in fact:

1. Distributors do not generally realize annual net profits solely from the sale of respondents' record keeping system of from \$11,000 to \$12,000, if working alone, or of from \$13,000 to \$14,000 if they employ the services of one sub-distributor or of from \$16,000 to \$17,000, if they employ two sub-distributors and prospective distributors could not expect to realize equally high net profits.

2. The majority of distributors do not develop businesses which require the employment of one or more sub-distributors nor could the majority of prospective distributors expect to develop businesses of such size as to require the employment of one or more sub-distributors.

3. Distributors will rarely, if ever, be able to recover their investment in less than one year and in addition thereto make a substantial profit.

4. The initial investment of distributors is not secured or guaranteed by the inventory. Distributors who discontinue the business can liquidate their inventory only at a fraction of the original investment.

5. Distributors do not acquire a permanent lifetime business. The continuance of such business is dependent upon the distributor's conformance with the terms and conditions of the franchise agreement.

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6. Distributors are not trained wholly at respondents' expense. Part of the distributor's initial investment is used for training costs.

7. Respondents are not affording the opportunity of investing in and managing a business engaged primarily in the installation of business record systems. Such business opportunity as may be afforded is exclusively that of direct selling of a bookkeeping system to small businesses.

Therefore the statements and representations referred to in Paragraphs Five and Six hereof were and are 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 tendency and capacity 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 and services 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 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 de-

terminated 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 Whitehill Systems, 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 located at 71 Fifth Avenue, in the city of New York, State of New York.

Respondent Louis Weisberg, 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 Whitehill Systems, Inc., a corporation, and its officers, and Louis Weisberg, 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 or any other products or services in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that distributors or prospective distributors of respondents' bookkeeping system generally realize or may expect to realize annual net profit solely from the sale of said systems of from \$11,000 to \$12,000 if working alone, or of from \$13,000 to \$14,000 if they employ one sub-distributor, or of from \$16,000 to \$17,000 if they employ two sub-distributors, or that distributors or prospective distributors realize or may expect to realize net profits from the sale of said systems in excess of the profit for a given period realized by a majority of respondents' distributors.

2. Misrepresenting in any manner the profits or other benefits which are realized by respondents' distributors or which may be expected to be realized by prospective distributors.

3. Representing, directly or indirectly, that the majority of distributors or prospective distributors develop, or may expect to develop, businesses which require the employment of one or more sub-distributors.

4. Representing, directly or indirectly, that distributors will be able to recover their investment and in addition earn a substan-

tial profit in less than one year; or misrepresenting in any manner the time within which distributors will be able to recover their investment or earn a substantial profit.

5. Representing, directly or indirectly, that the distributor's initial investment is secured or guaranteed by inventory; or representing in any other manner that there is no risk or loss of the distributor's investment.

6. Using the words permanent, lifetime, or any other words of similar import or meaning in reference to the business to be acquired by distributors without clearly and conspicuously revealing in immediate connection therewith that the continuation of the business is dependent upon conformance with the franchise agreement entered into by and between respondents and the distributor.

7. Representing, directly or indirectly, that distributors are trained wholly at respondents' expense or misrepresenting in any manner the amount or kind of contribution made by respondents to the training of distributors.

8. Representing, directly or indirectly, that the business opportunity afforded by respondents is that of investing in and managing a business engaged primarily in the installation of business record systems; or misrepresenting in any manner the type of business for which franchises are being offered.

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

FRUEHAUF TRAILER COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF