

RECORD

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

Docket C-906. Complaint, June 10, 1965—Decision, June 10, 1965

Consent order requiring a Hempstead, Long Island, N.Y., publisher of a periodical known as National Labor Record which is independently organized and operated, deriving a large part of its income from the sale of advertising space, to cease misrepresenting that his paper is endorsed by, affiliated or connected with any labor union, intimidating and coercing

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business concerns into purchasing advertising space, and publishing unauthorized advertisements of various concerns and then seeking to exact payment for such advertisements.

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 Kohler, an individual, trading and doing business as National Labor Record, hereinafter referred to as respondent, has 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 Kohler is an individual trading and doing business as National Labor Record, with his office and principal place of business located at 631 Fulton Avenue, Hempstead, Long Island, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the publication of a paper known as National Labor Record. Said paper is published periodically and is caused by respondent to be circulated from its point of publication in one State to subscribers and purchasers located in various other States of the United States.

Further, respondent in the course and conduct of his business engages in extensive transactions involving the transmission of letters, advertising proofs, checks and other business instrumentalities and extensive transactions by long distance telephone, all between and among various States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publication in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. A large part of respondent's income is derived from the sale of advertising space in National Labor Record to business concerns. Respondent and his duly authorized agents and representatives contact said business concerns by telephone and other means and seek to induce them to purchase advertising space in said publication. In the course of said solicitations, respondent and his agents and representatives represent, directly or by implication, to prospective advertisers that said publication is endorsed by, affiliated with, or the official publication of the American Federation of Labor.

PAR. 4. In truth and in fact, National Labor Record is not endorsed by, affiliated with, or the official publication of the American

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Federation of Labor or any other labor union, but is independently organized and operated.

Therefore, the statements and representations referred to in Paragraph Three hereof are false, misleading and deceptive.

PAR. 5. In addition, in order to induce the purchase of advertising space in National Labor Record, respondent threatens, and has threatened, directly or by implication, that if business concerns did not purchase such space, their products would receive unfavorable treatment by labor union members. This practice now has, and has had, the tendency and capacity to intimidate and coerce, and does intimidate and coerce business concerns, unfairly, to purchase advertising space in the aforesaid publication.

PAR. 6. Further, in the course and conduct of his business, respondent has also engaged in the unfair and deceptive practice of placing advertisements of various concerns in his paper without having received authorization therefor and then seeking to exact payment for said advertisements from said concerns.

PAR. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the publication of newspapers and other periodicals and in the selling of advertising to be inserted therein and particularly with the publishers of newspapers and other periodicals published or endorsed by labor unions.

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 prospective advertisers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of advertising space by reason of said erroneous and mistaken belief. The unfair and deceptive practices engaged in by respondent of publishing unordered or unauthorized advertisements has subjected firms and individuals to harassment and unlawful demands for payment of non-existent debts.

PAR. 9. The aforesaid acts and practices of respondent, were and are all to the prejudice and injury of the public and of respondent's 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.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 David Kohler is an individual trading and doing business as National Labor Record, with his office and principal place of business located at 631 Fulton Avenue, Hempstead, Long Island, New York.

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 Kohler, an individual, trading and doing business as National Labor Record, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the soliciting, offering for sale, or sale in commerce, of advertising space in the paper now designated as National Labor Record, or any other publication, whether published under that name, or any other name, and in connection with the offering for sale, sale or distribution of said paper, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that said paper is endorsed by, affiliated with, or an official publication of, or otherwise connected with a labor union.

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2. Inducing or seeking to induce any business concern to purchase advertising space in or contribute to respondent's publication, by means of expressed or implied threats that such business concern may be subjected to unfavorable treatment at the hands of representatives or purported representatives of labor should it refuse to make such purchase or contribution.

3. Placing, printing or publishing any advertisement on behalf of any person or firm in said paper without a prior order or agreement to purchase said advertisement.

4. Sending bills, letters or notices to any person or firm with regard to an advertisement which has been, or is to be, printed, inserted or published on behalf of said person or firm, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order of agreement to purchase said advertisement.

It is further ordered, That the respondent herein 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 this order.

IN THE MATTER OF

AMERICAN SERVICE & SUPPLY COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE