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Complaint

form in which they have complied with the order to cease and desist set forth herein.

IN THE MATTER OF

NATIONAL OUTDOOR DISPLAY, INC., ET AL.

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

Docket C-1137. Complaint, Nov. 16, 1966—Decision, Nov. 16, 1966

Consent order requiring a Memphis, Tenn., manufacturer of electrical signs to cease recruiting salesmen and distributors through misrepresentations as to earnings, sales opportunities, training, and financial assistance.

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 National Outdoor Display, Inc., a corporation, and Hal Burns, 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 National Outdoor Display, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 2191 Filmore Street, Memphis, Tennessee.

Respondent Hal Burns is the secretary-treasurer, and general manager of the corporate respondent. He formulates, directs, and controls the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. His business 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 manufacturing, advertising, offering for sale, sale and distribution of electrical signs to the general public.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused, their said

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product, when sold, to be shipped and transported from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States, and maintain and at all times hereinafter mentioned 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, and for the purpose of promoting the sale of said products to members of the general public, and inducing members of the public to become salesmen and distributors for the respondents, the said respondents have made or caused to be made numerous statements and representations in advertisements and other promotional material with respect to the said merchandise, the profits and income made by salesmen and distributors of same, training programs and financial assistance offered by respondents, and available franchises of existing, growing, and profitable businesses in various States of the United States.

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

(A)

FRANCHISE
OPEN

Existing growing profitable business in this area or state distributorship available for our product. Investment only secondary to the individual's ability and aggressiveness to succeed in this very profitable business. We have the most wanted item on the market today. Every business firm a potential customer. Complete individual training program. Financing arrangements provided to appointed individual. Interviews now being held by appointment only.

(B)

\$500 PER WEEK

Executive type experienced salesmen to call on business owners. \$500 per week and more is now being made by our salesmen which we will quickly prove to you.

SUCCESSFUL BUSINESS
FOR A SUCCESSFUL MAN

A National Company will discuss a distributorship branch, only with a person with previous business success. Financial ability, and leadership. Company will assist initial organization and sales organization. Investment of \$3,750. Secured by merchandise. Possible earnings in excess of \$40,000 per year.

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto, but not specifically set

forth herein, and the oral statements and representation of respondents' salesmen, respondents have represented, directly or by implication that:

1. Salesmen of said merchandise were earning \$500 per week or more.
2. Distributors could expect to earn in excess of \$40,000 a year.
3. Franchises were open and available in various areas for existing, growing, profitable businesses.
4. Without qualification every business is a potential customer.
5. A complete, individual training program would be given to salesmen and distributors.
6. Financial arrangements would be provided to appointed distributors.

PAR. 6. In truth and in fact:

1. None of respondents' salesmen had earned or were earning \$500 a week.
 2. No distributor has earned \$40,000 a year. Many, if not all distributors appointed by respondents have lost money in the enterprise and such earnings would be improbable.
 3. The franchise areas advertised did not represent existing, growing, profitable businesses and the business in those areas was nonexistent and would have to be developed.
 4. Every business is not a potential customer because of various State laws or local ordinances which regulate such electrical signs.
 5. The training program was inadequate and impersonal consisting only of the playing of a record and a short lecture to groups.
 6. No financing arrangements were provided for distributors.
- Therefore, the statements and representations as set forth in Paragraphs Five and Six were and are false, misleading and deceptive.

PAR. 7. 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 articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforeseaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity to misleading members of the general public into the erroneous and mistaken belief that said statements and representations were and are true, and into the accept-

ance of sales jobs, and in the investments of substantial sums of money as distributors of respondents' products, by reason of said erroneous and mistaken beliefs.

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 National Outdoor Display, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 2191 Filmore Street, Memphis, Tennessee.

Respondent Hal Burns is the secretary-treasurer and general manager of said corporation, and his address is the same as that of the 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 National Outdoor Display, Inc., a corporation, and its officers, and Hal Burns, 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 selling, offering for sale or promotion of the sale of signs, displays or 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. Salesmen of respondents' products have earned, or are earning \$500 a week or any other amounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that their salesmen regularly earn the represented amount.

2. Distributors of respondents' products have earned the sum of \$40,000 a year, or will receive earnings or compensation in any amount: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that distributors of said products have regularly and consistently received earnings or compensation in the represented amounts in the regular course of business.

3. Franchise areas are available in growing, profitable, existing businesses: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish the truth of such representations.

4. Every business is a potential customer for purchase of respondents' products.

5. Respondents provide a complete individual training program for salesmen and distributors of their products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a training program of the kind and scope represented is in fact furnished all salesmen and distributors.

6. Respondents provide financing arrangements for distributors of respondents' products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that financing in the amount and under the terms and conditions stated is provided.

7. Misrepresenting in any manner, the earnings of salesmen or distributors; the nature or character, kind and status of business offered for sale; the potential market for sales;

Certification of Record

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the training program provided, or the available financial support.

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.
