

IN THE MATTER OF
ARCHWAY INDUSTRIES, INC., ET AL.

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

Docket C-1158. Complaint, Jan. 12, 1967—Decision, Jan. 12, 1967

Consent order requiring a Richmond Heights, Mo., distributor of cigar vending machines, cigars and supplies to cease using exaggerated earning claims and other misrepresentations to sell its cigar vending machines and supplies.

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 Archway Industries, Inc., a corporation, and Paul A. Hejna, Jr., and Bernard Barhorst, 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 Archway Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 1410 Big Bend Boulevard, Richmond Heights, Missouri.

Respondents Paul A. Hejna, Jr., and Bernard Barhorst are officers of said corporation. 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 cigar vending machines, cigars and supplies used and dispensed thereby to purchasers for installation in commercial establishments such as hotels, motels, bowling alleys, etc., and operated as a business on a route basis.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products, when sold, to be transported from their place of business located in the State of Missouri, or from the places of business of their suppliers, to purchasers thereof located in various other States of the United States other than the State of origination. Respondents 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 course and conduct of their business as aforesaid, respondents cause advertisements to be inserted in newspapers, soliciting persons to whom to sell said products. Persons responding to said advertisements are contacted by respondents or their representatives. Said respondents or their representatives, in soliciting the sale of said products, make various oral statements and representations concerning the business opportunities and benefits to be derived by purchasing said products.

Among and typical, but not all inclusive, of the statements and representations made in newspapers, circulars, form letters, flyers and by other printed material given to prospective purchasers are the following:

BIGGEST
MONEY
MAKER

Get in Now on The Cigar
Smoking Boom thru Auto-
matic Cigar Dispensers.
Cigar Sales Are Climbing
(SKYROCKETING) Due To
Cancer Scare.
We Turn Over Top Locations
for you to service in your
area * * * Leading Restaurants,
Hotels, Motels, Cocktail
Lounges, Bus Terminals,
Bowling Alleys, Etc.
No Selling or Soliciting
required.
Full or Part Time.
(5 to 8 hours weekly)

Complaint

71 F.T.C.

No previous experience
necessary * * * We train you.

COULD NET UP TO
\$800.00 PER MONTH

To qualify, you must have:

1. An Automobile
2. \$3495.00 Cash available immediately
3. References

For interview, write:

CIGARS
8703 Antler Drive
Richmond Heights, Mo. 63117

* * * * *
Our SELECTRA CIGAR machines are
unconditionally guaranteed.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, separately and in connection with said oral statements and representations made by the respondents or their representatives, respondents represent, and have represented, directly or by implication that:

1. Persons selected must own a car and have references to qualify to purchase respondents' products.
2. Respondents obtain top sales producing locations such as leading restaurants, hotels, motels, cocktail lounges, bus terminals, and bowling alleys for the placing of vending machines purchased from them.
3. Purchasers investing the sum of \$3,495 in said vending machines and cigars may reasonably expect to earn net profits approximating \$800 per month and that said investment may reasonably be expected to be returned out of net profits in a year or less.
4. Respondents' vending machines are unconditionally guaranteed.
5. That the purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.
6. No selling or soliciting will be required.
7. A survey has been made of the market in which the prospective purchaser will operate.
8. If the purchaser becomes dissatisfied or for any reason wishes to go out of the business, the respondents will either accept a return of the machines or will help the purchaser to resell them.
9. The vending machines are equipped with a humidifier.

10. The vending machines are able to handle all popular brands of cigars.

11. The vending machines to be delivered will be the same as the one depicted in the photograph which is displayed to the prospective customer by the salesman.

12. The respondents will furnish advertising and other promotional material.

PAR. 6. In truth and in fact:

1. It is not necessary to own a car or to furnish references in order to purchase respondents' vending machines or other products but, on the contrary, the only requirement is that the purchaser must have, immediately available, the amount of money required to purchase the vending machines and cigars.

2. Respondents do not obtain top sales locations such as leading restaurants, hotels, motels, cocktail lounges, bus terminals, and bowling alleys for the vending machines purchased from them, but such locations as may be secured by respondents are usually undesirable, unsuitable and unprofitable.

3. Purchasers who have invested the sum of \$3,495 in the purchase of said vending machines and supplies do not earn profits approximating \$800 per month and do not earn sufficient net profits for the return of the investment in a year or less but, on the contrary, in most instances, persons purchasing said vending machines and supplies make little or no profit from the operation of the machines.

4. Respondents' vending machines are not unconditionally guaranteed but, on the contrary, are guaranteed for one year by warranty of the manufacturer which agrees to repair or replace, as required, any defective machine or part, where the defect existed at the time of shipment, upon return to the manufacturer of the part or machine in question, freight prepaid.

5. Respondents do not train the purchasers of the vending machines in the operation of the machines or the method to be used in servicing the locations where installed.

6. The purchasers of the machines are required to do selling and soliciting, since it is frequently necessary to place machines in other locations because of the undesirable, unsuitable, and unprofitable nature of the locations selected by the respondents or for other reasons.

7. No survey has been made of the market in which the prospective purchaser intends to operate, prior to the contact by the salesman or thereafter.

8. Respondents do not accept the return of the machines and do

not help the purchaser to sell them, regardless of the purchaser's reasons for going out of business.

9. The vending machines are not equipped with a humidifier.

10. The vending machines cannot handle all popular brands of cigars but, on the contrary, are only of a proper size to handle "Phillies" cigars.

11. The vending machines delivered to the purchaser are not the same as that depicted in the picture which was displayed to the prospective purchaser by the salesman; but differ therefrom in substantial and material respects.

12. The respondents furnish little, if any, advertising or promotional material.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof 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 the same or similar products.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and 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. 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 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 Archway Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 1410 Big Bend Boulevard, Richmond Heights, Missouri.

Respondents Paul A. Hejna, Jr., and Bernard Barhorst are officers of said corporation and their 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, Archway Industries, Inc., a corporation, and its officers, and Paul A. Hejna, Jr., and Bernard Barhorst, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines and vending machine supplies 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. Persons must own an automobile or that persons must furnish references in order to purchase respondents' products.

2. Respondents will furnish top sales producing locations or misrepresenting, in any manner, the sales potential or character of the locations in which respondents place their

vending machines and products at the time of the purchase of the machines.

3. Purchasers of respondents' vending machines and products will earn net profits approximating \$800 per month or any other amount of net or gross profits: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the represented earnings, either gross or net, are those which have been typically earned by others operating respondents' machines in circumstances similar to those under which they will be operated by the purchaser.

4. The net profits from the operation of said vending machines will be sufficient to return the investment of the purchaser within a year or any other period of time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the net profits typically earned by others operating respondents' machines in circumstances similar to those under which they will be operated by the purchaser have been sufficient to return said investment within the time specified.

5. Respondents' vending machines are guaranteed unless the nature, conditions, and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

6. Purchasers of respondents' vending machines will be trained by the respondents as to the operation of the machines or the methods to be used in servicing the locations where installed.

7. No selling or soliciting will be required.

8. A survey has been made of the market in which the prospective purchaser will operate.

9. If the purchaser becomes dissatisfied, or for any reason wishes to go out of the business, the respondents will accept a return of the machines and repay the purchase price or will help the purchaser to resell the machines.

10. The vending machines sold by the respondents and intended for the sale of cigars are equipped with a humidifier.

11. The vending machines sold by the respondents will handle all popular brands of cigars or misrepresenting in any

manner the number of brands which will be handled by respondents' machines.

12. The vending machines to be delivered by the respondents will be the same or similar to the one depicted in the picture displayed to the prospective customer: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the vending machine depicted in the picture shown to the prospective purchaser is a true reproduction of the vending machines actually delivered to the customer.

13. The respondents will furnish advertising or promotional material: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such advertising or promotional material is actually furnished to purchasers of respondents' vending machines and 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.
