

IN THE MATTER OF
GEMINI ENTERPRISES, INC., ET AL.

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

Docket C-1454. Complaint, Nov. 20, 1968—Decision, Nov. 20, 1968.
Consent order requiring a Brentwood, Mo., distributor of radio and television tube-testing machines and supplies to cease securing dealerships for its machines by making exaggerated earning claims, and misrepresenting location, service, and resale of its machines.

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 Gemini Enterprises, Inc., a corporation, and Richard Misemer, 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 Gemini Enterprises, 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 1750 Brentwood Boulevard, in the city of Brentwood, State of Missouri.

Respondent Richard Misemer is an individual and an officer of said corporation. 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 of radio and TV tube testing machines, tubes and the supplies and equipment used in connection therewith to purchasers at retail.

Said machines are intended to be located in various places such as service stations, grocery and drug stores where the public will test the tubes from their radio and television sets and purchase replacements for defective tubes.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, said products, when sold, to be shipped from their place of business in the State of Missouri, and from the places of business of their suppliers to purchasers thereof located in various other States other than the State of origination, 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.

PAR. 4. Respondents' method of doing business is to insert newspaper advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations respecting the aforesaid articles of merchandise.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said articles of merchandise, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers, in promotional material and in oral statements and representations by salesmen concerning the location and relocation of said testers, the profits, the training

1227

Complaint

and assistance and resale of the investment.

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

DISTRIBUTOR
For This Area

Recession--Depression Proof Business

Part-Time Work--For Extra Income Now! A chance to enter the multi-million dollar Electronics Replacement field. No experience required! Merely restock locations with world famous SYLVANIA or RCA radio, TV, and color tubes; sold through our new (1967 Model) self-service tube testers. Company guaranteed discounts in this repeat business assures exceptional and profitable income for our dealers. All accounts contracted for and set up, plus training and operating instructions by Company. Will not interfere with present business or occupation, as accounts can be serviced evenings or on weekends! Color TV creating enormous demand and surge in future sales throughout the industry.

Earning potential up to \$500.00 per month or more, depending on size of route.

INVESTMENT OF \$2,290.00 UP TO \$3,600.00 IS REQUIRED. Also, a good car and 4 to 8 spare hours a week. If you are interested and meet these requirements: have a genuine desire to be self-sufficient and successful in an ever expanding business of your own, then write us today! U-TEST DIV. of GEMINI ENTERPRISES, Inc., 1750 Brentwood Blvd., Brentwood, Missouri 63144. Include phone number in resume.

OUR COMPANY INTEGRITY CAN WITHSTAND
THOROUGH INVESTIGATION.

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import, but not expressly set out herein, separately and in connection with the oral statements and representations made by respondents or their representatives, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents already have established routes or machines located at profitable locations at the time the offer of sale is made;
2. Respondents obtain top sales producing locations for the placement of tube testing machines purchased from them;
3. Persons investing \$2,290 or more in said articles of merchandise can expect earnings of \$500 or more per month;
4. A machine purchased from respondents will return the purchaser's complete investment therein within eight months to a year from the date of purchase;
5. Purchasers of respondents' machines will receive frequent and regular visits from respondents or their representatives;

and that they will provide training as to the operation of the machines and the methods to be used in servicing them;

6. Respondents will promptly relocate machines for purchasers at any time they prove unprofitable in their original locations;

7. If the purchaser becomes dissatisfied, or for any reason wishes to go out of business, the respondents will either accept a return of the machines and tube stock charging only a small percentage of their original cost or will help the purchaser to resell them.

PAR. 7. In truth and in fact:

1. Respondents do not have routes established or machines located at profitable locations at the time the offer of sale is made, but ship and locate machines only after final payment for said articles of merchandise is received.

2. Respondents do not obtain top income producing locations, but place most of the machines in small grocery or drugstores which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable and unprofitable.

3. Earnings in the amount \$500 or more per month will not be realized by persons investing \$2,290.00 or more. Persons investing the foregoing amounts in said articles purchased from respondents receive appreciably smaller returns on their investments;

4. In most instances, a machine purchased from respondents will not return the purchaser's complete investment within eight months to a year from the date of purchase, but will usually require a substantially longer period of time;

5. Purchasers of respondents' machines do not receive frequent or regular visits from respondents or their representatives; and the training received during such visits is limited;

6. In most instances, respondents do not relocate unprofitable machines for their purchasers. Relocation of said machines, if any, occurs only after a substantial delay;

7. Respondents do not accept the return of the machines or tube stock and do not help the purchaser to resell them regardless of the purchaser's reasons for going out of business. In fact, the purchaser must advertise for prospective leads, while respondents merely check out leads received. Such efforts may prove unsuccessful, or result in a sale at much less than the original investment.

Therefore, the statements and representations as set forth in Paragraphs Five and Six hereof, were and are false, misleading

1227

Decision and Order

and deceptive.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale of tube testing machines and supplies of the same general kind and nature as those sold by respondents.

PAR. 9. 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 by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on

Decision and Order

74 F.T.C.

the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gemini Enterprises, 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 1750 Brentwood Boulevard, Brentwood, Missouri.

Respondent Richard Misemer 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 Gemini Enterprises, Inc., a corporation, and its officers, and Richard Misemer, 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 advertising, offering for sale, sale or distribution of radio and television tube testing devices or the tubes, supplies and equipment for use in connection therewith, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Respondents' already have established routes or machines located at profitable locations at the time the offer of sale is made;

2. Respondents, their agents, representatives or employees will obtain chain store, top traffic or similar highly profitable locations for the machines purchased from them.

3. Purchasers investing \$2,290 or more in respondents' tube testing devices and the tubes, supplies and equipment for use in connection therewith can expect earnings of \$500 or more per month;

4. Persons investing in respondents' products will derive gross or net profits or other earnings in any stated amount or range of amounts: *Provided, however*,

That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such represented profits or earnings were not in excess of those which have been usually and customarily earned by purchasers of said products who invest equivalent amounts.

5. A machine purchased from respondents will return the purchaser's complete investment therein within eight months to a year from the date of purchase; or misrepresenting in any manner the time within which a purchaser's investment will be returned.

6. Purchasers of respondents' machines or other products will receive frequent or regular visits from respondents or their representatives; or that respondents or their representatives will provide training, or other advice and assistance, in the operation of and the methods to be used in servicing respondents' said machines or any other products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that training, advice and assistance in the operation of and the methods to be used in servicing respondents' machines or other products were afforded to each purchaser to the extent of and in conformity with the representations made to the purchaser.

7. Respondents will relocate machines for purchasers at any time they prove unprofitable in their original locations: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said machines were relocated promptly for purchasers to the extent of and in conformity with the representations made to the purchaser.

8. 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 tube stock or will help the purchaser to resell them.

B. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall

Complaint

74 F.T.C.

forthwith distribute a copy of this order to each of its operating divisions.

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.
