

Complaint

IN THE MATTER OF

YOUNGSTOWN SPECTRUM CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1510. Complaint, Mar. 24, 1969—Decision, Mar. 24, 1969*

Consent order requiring two affiliated Youngstown, Ohio, marketers of radio and television tube testing devices and supplies to cease using exaggerated earning claims, deceptive offers of assistance in obtaining profitable locations, and other misrepresentations to recruit franchised distribution of their products.

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 Youngstown Spectrum Corporation, a corporation, International Distribution Center, Inc., a corporation, and Edward M. Gallagher, individually and as an officer of said corporations, 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. Respondents Youngstown Spectrum Corporation and International Distribution Center, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio. Respondent Edward M. Gallagher is an individual and an officer of said corporations. He formulates, directs and controls the acts, practices and policies of the said corporate respondents including the acts and practices hereinafter set forth. The principal office and place of business of the respondents is located at 5335 Market Street, Youngstown, Ohio. Respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in advertising, offering for sale, selling and distributing of radio and television tube testing devices and the tubes, supplies and equipment for use in connection therewith, and franchises or distributorships relating thereto to purchasers at retail.

Said tube testing devices are located in various places such as hardware stores, drug stores and the like where the public will be induced to 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 and transported from their aforesaid place of business in the State of Ohio, and from the various places of business of their suppliers to purchasers thereof located in various States of the United 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 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 regarding the aforementioned franchises or distributorships and undertake to sell and do in many instances sell said products and franchises to such persons.

PAR. 5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of said products, franchises or distributorships, respondents have made various statements and representations concerning said franchises, distributorships, and the business opportunity afforded. Such representations have been made and continue to be made by respondents, their employees, agents or representatives, through advertising and promotional material furnished by respondents to said employees, agents or representatives, through advertisements inserted in newspapers and periodicals, through letters and other advertising literature circulated generally among the purchasing public, and through oral representations made by respondents, their employees, agents or representatives.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following:

GUARANTEED PROFIT STRUCTURE

RCA

SYLVANIA

GENERAL ELECTRIC

WESTINGHOUSE

PART TIME WORK FOR ADDED INCOME
EXCEPTIONAL HIGH EARNINGS

RELIABLE party or persons, male or female, wanted for this area to handle the world-famous RCA, SYLVANIA, G.E. AND WESTINGHOUSE TELEVISION AND RADIO TUBES. Sold through our latest modern tube testing and merchandising units. Will not interfere with your present employment.

To qualify, you must have \$3,750 cash available immediately, car, 5 spare hours weekly. Earning potential could be \$500 per mo. in your spare time. More, full time. This company will extend financial assistance to full time if desired. Do not answer unless fully qualified for time and investment.

- INCOME STARTS IMMEDIATELY
- BUSINESS IS SET UP FOR YOU
- WE SECURE LOCATIONS
- SELLING, SOLICITING OR EXPERIENCE NOT NECESSARY

For personal interview, company representative in Cleveland Sun. thru Wed. Call A.M. or P.M.

MR. E. GALLAGHER
267-1708
Area Code 216

Interested parties outside the Cleveland area may also call.

PAR. 6. Through the use of the aforesaid statements and representations, and others of similar import and meaning, but not specifically set out herein, separately and in connection with statements and representations orally made by respondents, their employees, agents and representatives to prospective purchasers, respondents have represented, and do represent, directly or by implication, to the purchasing public, that:

1. Persons investing \$3,750 in said products, franchises or distributorships will earn a net income of \$100 to \$500 per month.

2. Purchasers of respondents' products, franchises or distributorships must own an automobile, furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products, franchises or distributorships.

3. The net profits from the operation of said products, franchises or distributorships will be sufficient to return the investment of the purchaser within one year or some other stated period of time.

4. Respondents have conducted a machine location survey of the area and that they obtain top sales producing locations for the placement of tube testing machines purchased from them which assure profits in the represented amounts.

5. No selling, soliciting or experience are or will be required.

6. If the purchaser becomes dissatisfied, or for any reason wishes to go out of business, the respondents will either accept

a return of the equipment and articles of merchandise purchased from them or will help the purchaser to resell them so that the purchaser will recoup his investment.

7. The purchaser's investment in the franchise, distributorship, or articles of merchandise is secure.

8. The purchaser will receive an exclusive territory for the sale of the product involved and that no other franchisee or distributor of respondents' products will be located in the said exclusive territory.

PAR. 7. In truth and in fact:

1. Income in the foregoing amount will not be realized by persons investing the sum indicated. Persons investing the foregoing amount in said franchises, distributorships and articles of merchandise purchased from respondents receive little, if any, net profits from their investment.

2. It is not necessary for purchasers of respondents' products, franchises or distributorships to own an automobile, to furnish references, to have special qualities or to be specially selected to qualify for purchase of respondents' products, franchises, or distributorships. The only requirement is that the purchase price be paid.

3. Few, if any, purchasers realize a return of their investment within one year or any other stated period of time.

4. Respondents seldom, if ever, conduct or have available a machine location survey of the prospective purchaser's area and do not obtain top income producing locations for tube testers which assure profits in the represented amounts; but place most of the machines in locations which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable, and unprofitable.

5. Purchasers of respondents' products, franchises or distributorships are required to do selling and soliciting and to have experience. It is frequently necessary to place machines in other locations because of the unprofitable nature of the locations selected by respondents and like any other business venture experience is required.

6. Respondents do not repurchase the franchise, distributorship or articles of merchandise purchased from them and do not help the purchaser to resell them regardless of the purchaser's reasons for going out of business.

7. The purchaser's investment is not secure. Said business

operation is subject to all of the hazards of small businesses of this type.

8. Respondents on a substantial number of occasions have sold more than one company franchise or distributorship and products in the same territory.

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

PAR. 8. 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. 9. 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 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 mistaken and erroneous belief.

PAR. 10. 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 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 the public record and having duly considered the comment filed thereafter pursuant to § 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Youngstown Spectrum Corporation and International Distribution Center, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Ohio, with their office and principal place of business located at 5335 Market Street, Youngstown, Ohio.

Respondent Edward M. Gallagher is an individual and officer of said corporations and his address is the same as that of said corporations.

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 Youngstown Spectrum Corporation, a corporation, International Distribution Center, Inc., a corporation, and their officers, and Edward M. Gallagher, individually and as an officer of said corporations, 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 or television tube testing devices or the tubes, supplies or equipment for use in connection therewith, or of any other products, or of any franchises or distributorships connected therewith, 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 investing \$3,750.00 in respondents' said tube testing devices and the tubes, supplies or equipment for use in connection therewith, or the franchises or distributorships

ate conjunction therewith, the average net or gross earnings realized by a substantial number of purchasers from machines in locations obtained by respondents or through their assistance under circumstances similar to those of the purchaser to whom the representation is made.

(7) Selling, soliciting or experience is not required of those investing in any product or business offered by respondents: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that selling, soliciting or experience is not required for the successful operation of such business.

(8) Respondents will repurchase or otherwise assist in the disposition of products, franchises or distributorships purchased from respondents.

(9) The purchasers' investment in the franchise, distributorship or articles of merchandise purchased from respondents is secure.

(10) Purchasers of respondents' products, franchises or distributorships, are granted exclusive territories within which their products may be placed for operation; or that sales will not be made to other persons in such territories: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that respondents do give an exclusive franchise or distributorship purchased from them.

It is further ordered, That the respondents shall forthwith 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 or services, franchises, or distributorships and secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their 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.

relating thereto, will earn a net income of \$100 to \$500 per month.

(2) Purchasers of respondents' products, franchises or distributorships will earn any stated or gross or net amount; or representing, in any manner, the past earnings of said purchasers unless in fact the past earnings represented are those of a substantial number of purchasers and accurately reflect the average earnings of these purchasers under circumstances similar to those of the purchaser or prospective purchaser to whom the representation is made.

(3) Purchasers of respondents' products, franchises or distributorships must own an automobile, furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products, franchises or distributorships: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented qualification or requirements are in fact fully enforced as to each purchaser.

(4) The net profits from the operation of said business, franchises or distributorships will be sufficient to return the investment of the purchaser within one year or within 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 said investment is usually and fully recovered by a substantial number of purchasers in the represented time under circumstances similar to those of the purchasers or prospective purchasers to whom the representation is made.

(5) Respondents, their agents, representatives or employees have conducted or have available a machine location survey or other potential business survey in the prospective purchasers trade area: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a bona fide survey of the kind represented has in fact been conducted or is available.

(6) Respondents, their agents, representatives or employees will obtain satisfactory or profitable locations for the machines purchased from them: *Provided, however*, That nothing herein shall be construed to prohibit respondents from truthfully and nondeceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immedi-

Complaint

IN THE MATTER OF

ALL-STATE INDUSTRIES OF NORTH CAROLINA, INC.,
ET AL.

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

Docket 8738. Complaint, June 19, 1967—Decision, Apr. 1, 1969

Order requiring five affiliated companies selling residential aluminum siding and other home improvement products to cease using "bait and switch" tactics and fictitious pricing, falsely guaranteeing and implying that it manufactures its products, and failing to disclose that its sales contracts may be negotiated to a finance company.

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 All-State Industries of North Carolina, Inc., ABC Storm Window Co., Inc., All-State Industries of Tennessee, Inc., All-State Industries, Inc., and All-State Industries of Illinois, Inc., corporations, and William B. Starr, individually and as an officer of said corporations, 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 All-State Industries of North Carolina, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1130 West Lee Street, Greensboro, North Carolina. The aforesaid company was originally incorporated and did business at the above address as ABC Jalousie Company of North Carolina, Inc.

Respondent ABC Storm Window Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 1128 West Lee Street, Greensboro, North Carolina.

Respondent All-State Industries of Tennessee, Inc., was origi-