

FEDERAL TRADE COMMISSION ACT

Docket C-1543. Complaint, June 10, 1969—Decision, June 10, 1969

Consent order requiring a Fort Worth, Texas, marketer of protective coating products to cease using exaggerated earning claims to recruit salesmen and misrepresenting its assets.

Complaint

75 F.T.C.

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 Texas Refinery Corp., a corporation, and Adlai M. Pate, Jr., and Hal B. Brooks, 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. Texas Refinery Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 830 North Main Street, in the city of Fort Worth, State of Texas.

Respondents Adlai M. Pate, Jr., and Hal B. Brooks are individuals and are officers of the corporate respondent. 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 offering for sale, sale and distribution of protective coating products to members of the buying public.

PAR. 3. 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 Texas to purchasers thereof located in various other States of the United States, 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. In the course and conduct of their business as aforesaid, respondents employ agents and salespersons who canvass, solicit and sell respondents' products to members of the buying public. For each sale made said agents and salespersons are paid a commission, or percentage of the sales price paid by the purchaser.

PAR. 5. In the course and conduct of their aforesaid business, it has been and is the practice of respondents, as an integral part of the sales promotion program employed by them, to advertise for and solicit the services of agents and salespersons through

and by means of newspapers and other advertising media and in the course thereof to make representations as to monies which will be realized by such agents and salespersons through employment by respondents.

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

GOOD MAN OVER 40 for short trips surrounding Independence. Man we want is worth up to \$16,500 in year, plus regular cash bonus * * *.

\$17,000 PLUS REGULAR CASH BONUS for man over 40 in McKeesport area. * * *

* * * * * Earn \$12,000 to \$25,000 commission and more yearly right in this area. * * * *

IF \$1,500 IN A MONTH—Interests you * * * you interest us. We have opening for man over 39 in Allentown area. * * * *

Earn \$12,000 to over \$50,000 a year! Work right in the Rapid City area! * * * *

KEEP YOUR JOB EARN 25% MORE Big money-making business you can have in PART TIME. Worth up to \$600 in a month for the right man over 40 in Lexington area. * * * *

EXTRA INCOME PART TIME Up to \$600 in a month for man over 30. * * * * *

DON'T READ FURTHER IF UNDER AGE 60! E. A. Montgomery, age 74, earned \$9,654.42 in one year! Other Senior Citizens earned even more. Their ONE YEAR earnings were.

\$16,338.74—Norman Huhn

\$25,676.56—D. L. Dippert

\$15,683.53—Roy Parker

\$20,233.19—P. G. Buker

\$12,126.86—M. O. Trindel

* * * * * We need two more men * * * * * in Huntsville area to enjoy similar earnings. * * * *

* * * Texas Refinery, a * *, \$50,000,000 organization * * *.

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, and are now representing, directly or by implication:

1. That respondents' agents or sales persons will be employed on a salary basis.

2. Each and every agent or salesperson employed full time by respondents may expect to earn and has a reasonable probability of earning the aforesaid higher amounts.

3. Each and every agent or salesperson employed part time

by respondents may expect to earn and has a reasonable probability of earning \$600 a month.

4. That Texas Refinery Corp. has assets of \$50,000,000.

PAR. 7. In truth and in fact:

1. Respondents' agents or salespersons are not employed on a salary basis but work on a commission basis, or receive a percentage of the sale price paid by a purchaser.

2. Each and every agent or salesperson employed full time by respondents may not expect to earn and does not have a reasonable probability of earning the aforesaid higher amounts. Only a very small percentage of such persons ever enjoy such favorable incomes. The majority of such agents and salespersons receive substantially less than one-half of such amounts.

3. Each and every agent or salesperson employed part time may not expect to earn and does not have a reasonable probability of earning \$600 a month. Only a very small percentage of such persons ever enjoy such favorable income. The average earnings of such agents and salespersons is less than one-half such amount.

4. The assets of Texas Refinery Corp. are substantially less than \$50,000,000.

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, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid statements and representations in connection with the recruitment of personnel to sell their products has had, and now has, the capacity and tendency to mislead prospective employees into the erroneous and mistaken belief that such statements and representations were, and are, true and to induce them to respond to such advertisements and to enter into respondents' employment in reliance thereon.

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 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Texas Refinery Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 830 North Main Street, in the city of Fort Worth, State of Texas.

Respondents Adlai M. Pate, Jr., and Hal B. Brooks 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 Texas Refinery Corp., a corporation, and its officers, and Adlai M. Pate, Jr., and Hal B. Brooks, 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 offering for sale, sale or distribution of protective coating products or any other product, 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 an agent or salesperson whose earnings will consist of commissions or a combination of salary and commissions will be employed solely on a salary basis; or misrepresenting, in any manner, the basis of remuneration or the terms or conditions of employment of respondents' agents, salespersons or employees.

2. Representing, directly or by implication, that either full-time or part-time agents or salespersons will earn any stated or gross or net amount; or representing, in any manner, the past earnings of either full-time or part-time agents or salespersons unless in fact the past earnings represented are those of a substantial number of such agents or salespersons and accurately reflect the average earnings of such agents or salespersons under circumstances similar to those of the person to whom the representation is made.

3. Representing, directly or by implication, that Texas Refinery Corp. has assets of \$50,000,000 or any other amount in excess of its actual assets; or misrepresenting, in any manner, the assets of any business owned, operated or controlled by respondents.

It is further ordered, That respondent corporation shall 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.

IN THE MATTER OF

BRAEBURN MFG. CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING
ACTS