

COFFEE BAR MANUFACTURING COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-1689. Complaint, Feb. 13, 1970—Decision, Feb. 13, 1970

Consent order requiring two Richardson, Texas, sellers of eyeglass cleaners through franchised distributorships who also formerly sold other items in this manner to cease misrepresenting that they manufacture their products, exaggerating the earnings of their franchisees, falsely guaranteeing any certain percent on their investments, granting exclusive territories, and making other misrepresentations to obtain franchised dealers.

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 Coffee Bar Manufacturing Company, Inc., a corporation, Royal Distributing Company, Inc., a corporation, and Gary Epstein and Harold Epstein, individually and as officers 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

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thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Coffee Bar Manufacturing Company, Inc., and Royal Distributing Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Texas, with their principal office and place of business located at 801 South Sherman, in the city of Richardson, State of Texas.

Respondents Gary Epstein and Harold Epstein are officers and stockholders of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of eyeglass cleaners and displays advertising such item, and routes, licenses, franchises and distributorships for the sale of their eyeglass cleaners to dealers for resale to members of the general public. Formerly respondents advertised, offered for sale, sold and distributed various items of merchandise, such as coffee bars and tools and displays advertising such items, and routes, licenses, franchises and distributorships for the sale of such items to dealers for resale of such items to members of the general public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their 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 aforesaid business, and for the purpose of inducing the purchase of their products, routes, licenses, franchises and distributorships, respondents have made, and are now making, statements and representations in oral sales presentations to prospective purchasers and in advertisements inserted into newspapers and in promotional material with respect to earnings, profits, location of routes, character of business, security of investment, and exclusivity of territories granted.

Typical and illustrative of said statements and representations

contained in respondents' newspaper advertisements, but not all inclusive thereof, are the following:

Exclusive Distributorship

We are looking for a sensible down-to-earth individual with whom we can work side by side to our mutual benefit. This individual will, with our wholehearted cooperation and our tremendous background of successful experience, operate an agency from which he will supply drink packets of Maxwell House Coffee, Sanka, Hot Chocolate, Soups and other General Foods products, to offices, plants, motels, retail stores, service stations, etc. throughout a specified area. He will use our unique and highly unusual Coffee-Bars the cost of which is less than \$15 each. These are not vending machines.

We are not jobbers or professional salesmen. We are the manufacturers of these Coffee-Bars and the sole distributors throughout the United States.

Nor are we looking for a part-time operator. The individual we appoint will have plenty to do. He will be the only distributor in his area handling our equipment. There is a necessary investment of \$5,000 fully secured by an inventory of such equipment.

There is virtually no limit to the profit potential. If you want good earnings from the very first day, if you are the sort of person who will accept a challenge when really big money is at stake, Write or Phone us: COFFEE BAR MFG. CO., INC. . . .

* * * * *

CALL ON Established accounts in . . . area handling our nationally famous QUALITY TOOL LINE. A few hours work weekly can make you hundreds of dollars monthly. We do all the selling necessary. All you do is service the accounts. Investment of \$995.00 puts you in business. (100% investment return clause.) For further information phone:

PAR. 5. By and through the use both of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations by their salesmen and representatives made to prospective purchasers and purchasers, the respondents have represented, and are now representing, directly or by implication, that:

1. Respondents manufacture the products they offer for sale; or, in some instances, that they are directly affiliated with manufacturing companies in various capacities such as selling company or distributor.

2. Persons investing in respondents' distributorships realize profits of \$1,000 per month or \$400 per month, or various other substantial amounts from their investment.

3. Respondents guarantee their distributors the return of 100 percent of their investment.

4. Distributors purchase inventory at the wholesale price; or that the full amount of their investment or, in some instances, a stated

portion thereof is secured by the value of the inventory and display racks which they receive for their initial investment.

5. The territories in which respondents grant distributorships are exclusive to the distributors to whom granted.

6. Respondents establish profitable accounts and routes for their products, and that distributors who are sold such accounts and routes need only service the accounts and routes by restocking merchandise and collecting money.

PAR. 6. In truth and in fact:

1. Respondents do not manufacture all the products they offer for sale and are not directly affiliated with manufacturing companies in various capacities such as selling company or distributor.

2. Few, if any, persons investing in respondents' distributorships realize profits in the aforesaid amounts from their investment; and a substantial number of such persons realize little or no profit therefrom.

3. Respondents do not guarantee their distributors the return of 100% of their investment or any other percent of the investment.

4. Distributors do not purchase inventory at the wholesale price but at the retail price, and the full amount of the investment or the portion thereof so represented is not fully secured by the value of the inventory and display racks which they receive for their initial investment.

5. The territories in which respondents grant distributorships, in a substantial number of instances, are not exclusive to the distributors to whom granted; and respondents have, in some instances, granted a territory to more than one distributor.

6. Respondents seldom, if ever, establish profitable accounts or routes for their distributors; and in some instances franchisees are required to secure their own accounts and routes.

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

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents had been, and now are, in substantial competition, in commerce, with corporations, firms and individuals, engaged in the sale of products, franchises and business opportunities of the same general kind and nature as those sold by the respondents.

PAR. 8. 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 pur-

chasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' products, routes, licenses and distributorships in substantial quantities or numbers by reason of said 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 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. Respondents Coffee Bar Manufacturing Company, Inc., and Royal Distribution Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Texas, with their offices and principal place of business located at 801 South Sherman, in the city of Richardson, State of Texas.

Respondents Gary Epstein and Harold Epstein are officers of said corporations and their principal offices and place of business are located at the above address.

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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 Coffee Bar Manufacturing Company, Inc., and Royal Distribution Company, Inc., corporations, and their officers, and Gary Epstein and Harold Epstein, individually and as officers 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 coffee bar units, tools, eyeglass cleaners, routes, licenses, franchises or distributorships for the sale of such items, or any other product or service, or the routes, licenses, franchises or distributorships in connection therewith, 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:

(a) Respondents manufacture any product not in fact manufactured in a factory owned, controlled and operated by them; or that they are affiliated with or are factory representatives of any other manufacturing company; or in any manner misrepresenting their business status, their trade relationships or affiliations, or their plant or facilities.

(b) Persons investing in any business opportunity offered by respondents will earn any stated gross or net amount or will realize any stated profit or will realize a substantial amount of earnings or profit; or representing, in any manner, the past earning of any investor, distributor or franchisee unless, in fact, the past earnings represented are those of a substantial number of investors, distributors or franchisees and accurately reflect the average earnings of these investors, distributors or franchisees under circumstances similar to those of the investor, distributor or franchisee to whom the representation is made.

(c) Respondents guarantee their investors, distributors or franchisees the return of 100 percent or any other percentage of their investment.

(d) Investors, distributors or franchisees purchase inventory at the wholesale price; or that their investment or any portion thereof is secured by the value of the inventory and

display equipment which they receive for their initial investment in excess of the amount such goods and equipment would bring at a forced sale on the open market.

(e) Persons investing in any business opportunity offered by respondents will be granted an exclusive territory in which to sell products purchased from respondents unless respondents provide in all contracts, licenses or agreements with such persons to whom such exclusive territories have been granted, a description of the size and limits of the territories and a statement that no other investor, franchisee or distributor of the same products has been, or will be, granted the same territory or any part thereof and unless respondents, in all instances, abide by such provisions.

(f) Respondents establish profitable accounts or routes for their investors, franchisees or distributors; or representing in any manner, the profitableness of accounts or routes previously established for respondents, investors, franchisees or distributors unless, in fact, the representation made has been the experience of a substantial number of investors, franchisees or distributors and accurately reflects the profitableness of such accounts or routes under circumstances similar to those of the investor, distributor or franchisee to whom the representation is made.

2. Failing to (a) deliver a copy of respondents' Statement of Business Principles and Code of Conduct as attached here to all of respondents' present salesmen, customers or other persons, firms and corporations engaged in the sale of respondents' products, routes, licenses, franchises or distributorships, and to obtain therefor a signed statement acknowledging receipt thereof; and (b) incorporate the exact terms of said Statement into all future contracts and other instruments evidencing the business relationship between respondents and their salesmen, licensees, franchisees, routemen, distributors and/or other persons, firms and corporations who may engage in the sales on behalf of respondents in subparagraph (a) of this paragraph.

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

It is further ordered, That 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 the order.

STATEMENT OF BUSINESS PRINCIPLES AND CODE OF CONDUCT

In keeping with good business practices and ethical standards of conduct we strictly adhere to the following principles:

(a) No official, salesman or other employee should represent, directly or by implication, that we manufacture any product not in fact manufactured in a factory owned, controlled and operated by us; or that we are affiliated with or are factory representatives of any other manufacturing company, unless such are the actual facts; or in any manner misrepresenting our business status, our trade relationships or affiliations, or our plant or facilities.

(b) No official, salesman or other employee should represent, directly or by implication, that persons investing in any business opportunity offered by us will earn any stated gross or net amount or will realize any stated profit or will realize a substantial amount of earnings or profit; nor do we represent in any manner, the past earnings of any investor, distributor or franchisee unless, in fact, the past earnings represented are those of a substantial number of investors, distributors or franchisees and accurately reflect the average earnings of these investors or franchisees under circumstances similar to those of the investor, distributor or franchisee to whom the representation is made.

(c) No official, salesman or other employee should represent, directly or by implication, that we guarantee our investors, distributors or franchisees the return of 100 percent or any other percentage of their investment.

(d) No official, salesman or other employee should represent, directly or by implication, that investors, distributors or franchisees purchase inventory at the wholesale price, unless such is an actual fact; or that their investment or any portion thereof is secured by the value of the inventory and display equipment which they receive for their initial investment in excess of the amount such goods and equipment would bring at a forced sale on the open market.

(e) No official, salesman or other employee should represent, directly or by implication, that persons investing in any business opportunity offered by us will be granted an exclusive territory in which to sell products purchased from us unless we provide in all contracts, licenses or agreements with such persons to whom such exclusive territories have been granted, a description of the size and limits of the territories and a statement that no other investor, franchisee or distributor of the same products has been, or will be,

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granted the same territory or any part thereof and unless we in all instances, abide by such provisions.

(f) No official, salesman or other employee should represent, directly or by implication, that we establish profitable accounts or routes for our investors, franchisees or distributors, nor do we represent in any manner the profitability of accounts or routes previously established for our investors, franchisees or distributors unless, in fact, the representation made has been the experience of a substantial number of investors, franchisees or distributors and accurately reflects the profitability of such accounts or routes under circumstances similar to those of the investor, distributor or franchisee to whom the representation is made.

We further require that all our investors, distributors, franchisees and salesmen adhere to and abide by these principles and standards of conduct.

IN THE MATTER OF

GOLDEN PRINCESS CHINCHILLA INC., ET AL.

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