

Consent order requiring a Waco, Texas, seller of personal improvement courses consisting of printed matter and recordings to cease misrepresenting that all franchises and distributors of respondents' products will have no difficulty in selling its 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 Success Motivation Institute, Inc., a corporation, and Paul J. Meyer, 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 Success Motivation Institute, Inc., 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 5000 Lakewood Drive, Waco, Texas.

Respondent Paul J. Meyer is an individual and officer of the corporate respondent. 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 to retail distributors for resale to the purchasing public of personal improvement courses consisting of printed matter and recordings.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Texas to their retail distributors located in various other States of the United States. 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 aforesaid business, respondents have engaged in, and now engage in, a continuing program of recruiting retail distributors or franchisees (hereinafter variously referred to as distributorships or distributors) to sell respondents' products. Those persons who are successfully recruited by respondents are required to invest a substantial sum of money as a condition to being granted a franchise to distribute respondents' products. The monies paid respondents include an amount to cover the cost of an initial inventory of respondents' products.

Respondents solicit the sale of their distributorships in the following manner and by the following means. Respondents publish, or cause to be published, in magazines and newspapers of regional and national circulation, advertisements inviting inquiries from persons interested in becoming distributors. To persons who respond to such invitations, respondents send through the mails advertising and promotional material containing many statements and representations regarding respondents' products and the financial and other benefits to be enjoyed by persons who become distributors of respondents' products. Persons who express further interest are mailed additional advertising and promotional material, may receive a telephone sales presentation by one of respondents' sales representatives and may, in some instances, be invited to visit respondents' place of business in Waco, Texas.

PAR. 5. By and through the means of the statements and representations contained in the advertising and promotional material referred to in Paragraph Four hereof and statements and representations made by respondents' sales representatives during the course of oral sales presentations to prospective distributors, respondents, for the purpose of inducing the sale of distributorships, represent, directly or by implication, to such prospective distributors:

(1) That no special ability or aptitude is required to become a successful distributor other than the desire to succeed.

(2) That distributors will encounter no difficulty in selling respondents' products.

(3) That respondents' distributors are uniformly successful and all enjoy substantial incomes from their distributorships.

PAR. 6. In truth and in fact,

(1) The desire to succeed is not the only prerequisite to success as a distributor of respondents' products.

Respondents' personal improvement courses and other products are intangibles and only persons who have the appropriate personality and verbal communications skills and other attributes of a successful intangibles salesman in addition to the desire to succeed can be expected to become successful distributors of respondents' products.

During the course of soliciting the purchase of a distributorship by a prospective distributor, respondents make no bona fide effort to determine whether the prospective purchaser possesses the appropriate personality, verbal communications skills and other attributes which would indicate that he possesses the potential of becoming a successful distributor.

(2) Respondents' products are difficult to sell because of the intangible nature of such products.

(3) Respondents' distributors are not uniformly successful and all do not enjoy a substantial income. While among respondents' distributors may be some who achieve success and substantial incomes, there are a substantial number who do not achieve either. Further, respondents fail to disclose to prospective distributors relevant information which would assist prospective distributors in evaluating the probabilities of their success including the median and mean gross sales to respondents' distributors during the previous calendar or fiscal year. Respondents also fail to disclose information as to the length of time their distributors have been associated with respondents and the turnover in such distributors.

Therefore, respondents' statements, representations, acts and practices as set forth above 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 have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of franchises or distributorships to persons interested in establishing their own businesses.

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 purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into investing substantial sums of money in becoming distributors of respondents' products, including the purchase of substantial quantities of respondents' products.

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, and having duly considered the comments filed thereafter pursuant to § 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 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 Success Motivation Institute, Inc., 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 5000 Lakewood Drive, Waco, Texas.

Respondent Paul J. Meyer is an individual and officer of said corporation. He formulates, directs and controls the acts and practices of said corporation and his address is the same as that of the 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 Success Motivation Institute, Inc., a corporation, and its officers, and Paul J. Meyer, 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 or sale of franchises, licenses or distributorships to sell personal improvement courses, books, phonograph records or any other product, or of the books, phonograph records, supplies or equipment for use 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) No special ability or aptitude is required to become a

successful franchisee or distributor of respondents' products; misrepresenting, in any manner, the experience, background, aptitudes or abilities required to become a successful franchisee or distributor of respondents' products.

(b) Franchisees or distributors will encounter no difficulty in selling respondents' products; misrepresenting, in any manner, the degree of effort required to sell respondents' products.

(c) Respondents' franchisees or distributors are uniformly successful and all enjoy substantial income; misrepresenting, in any manner, the degree of success or amount of income realized by respondents' franchisees or distributors.

(2) Using any deceptive scheme, device or plan to obtain leads to prospective franchisees or distributors or to induce persons to become franchisees or distributors.

(3) (a) Failing to determine in good faith, prior to having a prospective franchisee or distributor enter into an agreement to become a franchisee or distributor of respondents' products, through the evaluation of the personal history of the prospect and the administration of bona fide personality evaluation tests and within the error tolerances reasonably expected in the use of such predicative instruments, whether the prospect possesses the aptitude and abilities necessary to successfully sell respondents' products and to recruit other persons to sell respondents' products. (b) Failing to inform prospective franchisees or distributors of the results of such evaluation and testing reasonably in advance of the execution of the agreement to become a franchisee or distributor.

(4) Failing to furnish to prospective franchisees or distributors reasonably prior to such persons agreeing to become franchisees or distributors, a written tabulation or statistical summary showing, on an accumulative and comparative basis for each calendar year, beginning with the calendar year 1966, for each of the corporate respondents' operating divisions the following information:

(a) The median and mean gross sales to respondents' franchisees or distributors exclusive of initial inventories sold to new franchisees or distributors during the calendar year.

(b) The number of franchisees or distributors at the beginning of the calendar year, the number appointed during the year, the number terminated during the year, the num-

ber retained at the end of the year, and the length of time that those retained at the end of the year have been respondents' franchisees or distributors.

(c) The foregoing information shall be tabulated as a running 4 year analysis so that prospective franchisees or distributors will be furnished such information for the 4 calendar years immediately preceding the year in which the information is to be furnished: *Provided*, That, the information for the calendar year most recently completed prior to the year in which the information is to be furnished will be made available within 45 days of the close of that calendar year.

(5) Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the advertising and sale of franchises or distributorships to sell respondents' products, and failing to secure from each salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the 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
WEIMAN CO., INC.

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

Docket C-1769. Complaint, July 15, 1970—Decision, July 15, 1970

Consent order requiring a Chicago, Ill. manufacturer of household furniture to cease describing the exposed surfaces of its furniture as solid "walnut," "fruitwood," or "mahogany" when in fact the wood is of veneered construction.