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Order

least 30 days prior to any corporate 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 herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

TRADE ADVERTISING ASSOCIATES, INC., ET AL.
TRADING AS TRADE UNION NEWS

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

Docket 8582. Complaint, June 28, 1963—Decision, Sept. 24, 1970

Order modifying an earlier order, 65 F.T.C. 650, dated May 15, 1964, by adding thereto a paragraph which forbids the respondent from using words implying that it is officially connected with any labor union, and requiring it to place on certain printed matter the statement "Not affiliated with, endorsed by, or an official publication of any labor organization or union."

Mr. Frank P. Dunn, supporting order to Show Cause.

Grunewald & Turk, Brooklyn, N.Y., by *Mr. Norman Turk* for respondents.

CERTIFICATION OF RECORD AND REPORT OF PROCEEDINGS
BY WILLIAM K. JACKSON, HEARING EXAMINER

JUNE 22, 1970

Preliminary Statement

On June 19, 1969, the Commission issued an Order To Show Cause why its cease and desist order of May 15, 1964 [65 F.T.C. 650], in this proceeding should not be modified

. . . to prohibit respondents additionally from using, with or without a qualifying statement or statements, the names or designations Trade Union News, Trade Union News of New Jersey or any other name or designation

which represents directly or by implication, that any of respondents' publications is endorsed by, affiliated with or is an official publication of any labor union, brotherhood, guild, workers federation or any other type of labor organization or association and otherwise to alter and modify its order in conformance therewith.

On August 25, 1969, respondents filed their answer to the Order To Show Cause requesting that it be denied, and on October 27, 1969, filed a memorandum in support thereof. An answering brief was filed by counsel supporting the Commission's Order To Show Cause on November 14, 1969.

Thereafter, on December 9, 1969, the Commission issued an *Order Reopening Proceeding and Directing Hearings for Receipt of Evidence* [76 F.T.C. 1090]. Specifically the Commission referred this matter to a hearing examiner to receive evidence on the question:

... whether the use by respondents of the names or designations "Trade Union News" and "Trade Union News of New Jersey" or the use of words or phrases of similar import or meaning (such as trade, labor, union, guild, brotherhood, workers) in the titling of their publications (with or without a qualifying statement or statements) in itself constitutes, or may be understood, as an implied representation that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union or unions.

Pursuant to the Commission's order of December 9, 1969, evidentiary hearings were conducted by the undersigned examiner on March 24, 25 and 26, 1970, at New York, New York, in accordance with Part 3, Subpart H, § 3.72(b) (3) of the Commission's Rules of Practice for Adjudicative Proceedings and the record has been closed. On April 24, 1970, the parties filed proposed findings of fact, conclusions and proposals for modification of the order.

Summary of the Proceedings

The record in this proceeding consists of 305 pages of testimony (Tr. 303-607), thirteen (13) exhibits for the Commission (CX 50A-X through CX 62) and eighteen (18) exhibits for the respondents (RX 1 through RX 18). Counsel supporting the complaint called eight (8) advertiser-witnesses and it was stipulated by the parties that had he called two additional witnesses, their testimony would have been substantially the same as the other eight. In addition, counsel supporting the complaint called respondent Joseph Lash. Respondents called as defense witnesses, Joseph Lash and Eugene Serels, individual respondents, and Mr. Charles Shafman, an advertiser.

Findings of Fact

1. The testimony of most of the witnesses called indicates that respondents' method of soliciting ads was by telephone,¹ although one witness stated two men contacted him in person at his plant.² Generally the caller, who in some cases identified himself as John Scott,³ asked the witness to run an ad in the "Trade Union News" or renew an ad previously run in the "Trade Union News."⁴ Almost all of the witnesses agreed to run ads, which were identified,⁵ although some of them testified it was only after additional representations, high pressure tactics or subtle suggestions of union affiliation were utilized by the caller.⁶ In all instances of solicitation by telephone, the witnesses were never shown a copy of the newspaper or any other document,⁷ and many of the witnesses stated they had never seen a copy of the "Trade Union News" until shown it in the hearing room.⁸

2. In several cases, within approximately thirty minutes after the telephone call and the witnesses' oral agreement to run an ad, a messenger from respondents arrived with a formal authorization for execution by the witness.⁹ This form carried the format of the newspaper's masthead at the top including the qualification which appears immediately thereunder.¹⁰ These witnesses testified they signed this document or authorized one of their personnel to approve it and pay for the ad.¹¹ Several of the witnesses said they received billings, invoices, etc., but did not bother to read the firm's letterhead thereon which was identical to the masthead of the paper and contained the qualification "The Nation's Leading 'Independent' Labor Publication."^{11a} One witness stated he merely checked the copy of the ad and the price, before authorizing payment.¹²

¹ Tr. 341, 345; Tr. 370; Tr. 426, 436; Tr. 458, 464; Tr. 517; Tr. 545.

² Tr. 489-490.

³ Tr. 370; Tr. 458, 464; Tr. 495.

⁴ Tr. 341, 346-48, 355, 402-03; Tr. 370, 377, 379; Tr. 426; Tr. 546; Tr. 600.

⁵ Tr. 319, CX 51S; Tr. 369, CX 51E; Tr. 392, CX 52K (Tr. 423, witness Hain did not authorize this ad); Tr. 426, CX 53F; Tr. 457, CX 53H; Tr. 489, CX 52D; Tr. 516, CX 55G; Tr. 545, CX 50E, CX 50F.

⁶ Tr. 341-42, 359; Tr. 427; Tr. 458, 464, 482-87; Tr. 517.

⁷ Tr. 326, 361-62; Tr. 373, 385; Tr. 429; Tr. 461; Tr. 494; Tr. 518.

⁸ Tr. 373; Tr. 429; Tr. 518.

⁹ Tr. 398-401, RX 9; Tr. 461, 467, Tr. 508, RX 13, RX 14, Tr. 511; Tr. 495-97, RX 12; Tr. 517.

¹⁰ The qualification reads: "The Leading Independent Labor Newspaper." Tr. 461, 510, RX 13, RX 14; Tr. 550, RX 17; Tr. 497-98, RX 12. See also RXs 1-8, RX 9, RX 11, RX 18, CXs 60, 61, 62.

¹¹ Tr. 461; Tr. 496; Tr. 517, 519.

^{11a} Tr. 379, 382, RX 1 through RX 8; Tr. 397, CX 60, CX 61, CX 62; Tr. 399, RX 9; Tr. 430; Tr. 461, 466, 510; Tr. 495, 496; Tr. 551.

¹² Tr. 514.

3. Most of the witnesses stated that at the time of the receipt of the telephone call soliciting the ad, they formed an opinion as to the relationship of the publication to labor based solely on the name of the publication "Trade Union News."¹³ In almost every case, the witnesses testified it was their belief, based on the use of the words "Trade Union" or "Union" in the name of the publication, that the publication was affiliated with or supported by a union.¹⁴ Many of the witnesses agreed that the substitution in the titling of the newspaper of words or phrases of similar import or meaning; such as trade, labor, union, guild, brotherhood, workers, would also connote affiliation with or support by a union.¹⁵ The degree of affiliation varied from witness to witness, but it ran from a general impression that the publication was in some way associated with the American labor movement—affiliated with a union or organized labor¹⁶—to a definite feeling that it was affiliated with "ILGWU, the Amalgamated, and the Teamsters."¹⁷

4. Those witnesses who noticed the qualification on billings, invoices or the "authorization form" for the ad at the time they executed it, testified that this language did not alter their impression that the publication had an affiliation with labor or unions.¹⁸ When asked directly whether the word "independent" connotated "non-affiliation" with organized labor, several witnesses testified it did not, or it was meaningless¹⁹ while one said it might.²⁰ The reaction of those witnesses who did not notice this qualification at the time they signed the authorization, but who were directed to consider its significance during the course of their examination, testified substantially the same as the others. Some witnesses thought it did not connote non-affiliation with labor or a labor organization,²¹ one admitted it might,²² and some were unsure.²³ In all but one case,²⁴ the qualifi-

¹³ Tr. 370; Tr. 433; Tr. 459-60; Tr. 493-94 (see footnote 2, *supra*); Tr. 517; Tr. 546-47.

¹⁴ Tr. 327; Tr. 370; Tr. 434; Tr. 460; Tr. 494; Tr. 518; Tr. 547.

¹⁵ Tr. 331, 334-35; Tr. 371-72, 373-74; Tr. 411-12; Tr. 462-63; Tr. 496; Tr. 519-20; Tr. 548-50.

¹⁶ Tr. 372; Tr. 520.

¹⁷ Tr. 517-18.

¹⁸ Tr. 374, 383; Tr. 406-11; Tr. 466.

¹⁹ Tr. 351, 352; Tr. 374; Tr. 419; Tr. 438-39; Tr. 466.

²⁰ Tr. 552; Respondents' witness, Shafman, testified that his partner, Mr. Gordon, previously had mentioned to him that Trade Union News was an independent newspaper (Tr. 594), so with that prior knowledge, when he was asked what the words "independent labor newspaper" connote, he testified that it meant "independent of direct affiliation with labor unions, et cetera" (Tr. 597-98).

²¹ Tr. 419; Tr. 498; Tr. 524.

²² Tr. 552.

²³ Tr. 421.

²⁴ Tr. 349-50.

cation was never volunteered at the time of the initial oral solicitation, unless specifically a question was asked regarding the paper's affiliation with labor unions and only then was the qualification mentioned by the solicitor.²⁵ One of the witnesses indicated that the word "non-affiliated" rather than the word "independent" if contained in the qualification would have been more meaningful to him.²⁶

5. Respondent Joseph Lash testified that he purchased the name of Trade Union News in 1959 from the original owners and filed a business certificate to that effect in the New York County Clerk's Office.²⁷ Mr. Lash further stated that he has continuously used the name of Trade Union News since that time and he has caused a publication to be printed under that name.²⁸ Mr. Lash also testified that the name Trade Union News was of great value and importance to the newspaper published by the witness and his business associates.²⁹ In addition, Mr. Lash stated that if the publication lost its name it would suffer a great financial loss both in advertising revenue and subscriptions.³⁰

Conclusionary Findings of Fact

1. The use by respondents of the names or designations "Trade Union News" and "Trade Union News of New Jersey" in the titling of their publications in itself constitutes, or may be understood, as an implied representation that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union or unions.

2. The use by respondents of words or phrases of similar import or meaning to the names or designations "Trade Union News" and "Trade Union News of New Jersey" (such as trade, labor, union, guild, brotherhood, workers) in itself constitutes or may be understood, as an implied representation that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union or unions.

3. The use by respondents of the names or designations "Trade Union News" and "Trade Union News of New Jersey," in connection with the printed qualifying statement "The Leading Independent Labor Newspaper," does not satisfactorily correct in the minds

²⁵ Tr. 377; Tr. 461; Tr. 495; Tr. 518; Tr. 548.

²⁶ Tr. 351.

²⁷ Tr. 562-63, 565.

²⁸ Tr. 565.

²⁹ Tr. 568-69.

³⁰ Tr. 570.

of a substantial segment of the public the impression that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union or unions.

Discussion

Respondents do not contest the fact that the continuing use of the names "Trade Union News" and "Trade Union News of New Jersey" together with the qualifying statement, "The Leading Independent Labor Newspaper," may be misleading to a substantial segment of the public, but they argue that under the doctrine enunciated by the courts, excision of the trade name under certain circumstances may be avoided if such remedy "would be a harsh, drastic and unwarranted step of the Federal Trade Commission." See *FTC v. Royal Milling Co.*, 288 U. S. 212, 217 (1933); *Jacob Siegel Co. v. FTC*, 327 U. S. 608 (1946); *In the Matter of Devcon Corporation*, Docket C-607, February 26, 1968 [73 F.T.C. 272].

In support of this argument respondents agree to accept any of the following qualifications to be used in conjunction with their trade names:

a. In all of the oral solicitations for advertising, the following verbal statements will be made in the solicitations:

1. Not affiliated with any labor union.
2. This newspaper claims no affiliation with any labor union.
3. Not associated with, sponsored by or affiliated with any labor organization or union.
4. Not endorsed by or affiliated with any labor organization or union.

b. In addition thereto, anyone of the aforestated statements, which will be orally stated, will also be clearly written, in a prominent place in ten point bold type, on the masthead, of each publication, and will clearly appear on all other forms of letterheads, billheads and authorizations shown under the name Trade Union News in clear bold legible type.

Recommendation

1. The public interest requires that the Commission's order of May 15, 1964, be altered and modified.

2. The use by respondents of the names or designations "Trade Union News" and "Trade Union News of New Jersey" with the written qualification "The Leading Independent Labor Newspaper" is insufficient to correct the impression that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union and must be further clarified.

3. Excision of the words "Trade" and "Union" from respondents' trade name would be a harsh and drastic remedy causing respondents significant financial loss.

4. The use by respondents in both oral solicitations for advertising and on all printed materials including the masthead of the newspapers, letterheads, billheads, and stationery of the qualifying statement "Not affiliated with, endorsed by, or an official publication of any labor organization or union" would appear to be sufficient to eliminate the tendency of the trade name to mislead and to deceive.

This recommendation is primarily based on the following testimony of Henry Bacarisse, Jr.:

HEARING EXAMINER JACKSON: Would the word "non-affiliated" mean anything to you?

THE WITNESS: I think in this particular case it would certainly be much more meaningful than "independent" (Tr. 351).

Certification

The record consisting of 305 pages of testimony (Tr. 303-607), 13 exhibits for the Commission (CX 50A-CX 62), and 18 exhibits for the respondents (RX 1-RX 18), together with the briefs, proposed findings and conclusions submitted by the parties are hereby certified to the Commission.

FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The Commission having reopened this proceeding and having issued its order of June 19, 1969, to show cause why the order issued May 15, 1964 [65 F.T.C. 650], should not be modified, and

The hearing examiner, pursuant to Commission direction, having conducted hearings and having certified the record of said hearings to the Commission together with findings of fact and his recommendation that the order of May 15, 1964, be altered and modified, and

The Commission having determined that the public interest requires modification of the order of May 15, 1964, now enters its Findings of Fact, Conclusions, and Final Order.

FINDINGS OF FACT AND CONCLUSIONS

1. The Commission adopts the hearing examiner's "Findings of Fact" and "Conclusionary Findings of Fact" set forth in his Certification of Record and Report of Proceedings dated June 22, 1970.

2. The Commission further finds, as stated by the hearing exami-

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ner in his "Recommendation," that the use by respondents both in oral solicitations for advertising and on all printed materials including the masthead of the newspapers, letterheads, billheads, and stationery of the qualifying statement "Not affiliated with, endorsed by, or an official publication of any labor organization or union" would appear to be sufficient to eliminate the tendency of the trade name to mislead and deceive.

3. The public interest requires modification of the order of May 15, 1964 [65 F.T.C. 650], in accordance with the above findings of fact.

FINAL ORDER

It is ordered, That respondents Trade Advertising Associates, Inc., a corporation, and its officers, and Joseph Lash and Eugene Serels, individually and as officers of said corporation, and as co-partners trading and doing business as Trade Union News, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the soliciting, offering for sale or sale in commerce of advertising space in the newspaper designated as Trade Union News, or any other publication, whether published under that name, or any other name, and in connection with the offering for sale, sale or distribution of said newspaper, or any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the names or designations Trade Union News, Trade Union News of New Jersey or using the words trade, labor, union, guild, brotherhood, workers or any other word, words or combination of words of similar import or meaning in the title of their publications without disclosing in a clear and conspicuous manner in all oral solicitations for advertising and on all printed materials including the masthead of the newspapers, letterheads, billheads, and stationery the statement "Not affiliated with, endorsed by, or an official publication of any labor organization or union."

2. Representing, directly or by implication, that any of their publications are endorsed by, affiliated with, or an official publication of, or otherwise connected with a labor union or trade union.

3. Representing that any of their publications was the "Winner of the National Trade Union Advertising Award" or "Winner of International Editorial Excellence Award," or otherwise

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misrepresenting that any of the respondents' publications have been presented with an award or distinction as a result of a competitive contest.

4. Misrepresenting in any manner that competitive contests are or have been conducted by impartial and qualified individuals to determine the relative quality or merits of any of their publications in comparison with competing publications.

5. Placing, printing or publishing any advertisement on behalf of any person, firm, or corporation, in any of respondents' publications without a prior order or agreement to purchase said advertisement.

6. Sending bills, letters or notices to any person, firm or corporation, with regard to an advertisement which has been or is to be printed, inserted or published on behalf of said person, firm or corporation, or in any other manner seeking to exact payment for any such advertisement, without a bona fide order or agreement to purchase said advertisement.

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

POLYNESIAN POOLS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-1798. Complaint, Sept. 24, 1970—Decision, Sept. 24, 1970

Consent order requiring a Silver Spring, Md., seller of residential swimming pools to cease violating the Truth in Lending Act by failing to state in terminology prescribed by Regulation Z the cash price of the pool, the number, amount, and due date of scheduled payments, the annual percentage rate of the finance charge, and the deferred payment price.