

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

IN THE MATTER OF
WHITE INDUSTRIES, INC., TRADING AS QUAIN T SHOP
FOLKS, ETC.

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

Docket C-1861. Complaint, Feb. 16, 1971—Decision, Feb. 16, 1971

Consent order requiring a Westfield, Massachusetts, mail-order seller of greeting cards and stationery to cease using order forms with spaces for making checks to automatically request forwarding of further merchandise, using order forms which purport to be effective prior to being signed by purchaser, using such forms unless they have separate paragraphs setting forth that future shipments are authorized and describing the merchandise to be sent, shipping merchandise without disclosing that it is sent unsolicited and may be treated as a gift, seeking to collect for such shipments, except that the last two provisions of this order shall not be effective until six months after the date of the order.

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 White Industries, Inc., a corporation, and Arthur T. White and K. Stanley Zolyn, 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. Respondent White Industries, Inc., t/a "Quaint Shop Folks," "White Quaint Shop," "White, The Magazine Bargain Man", "Thomas Terry Studios" and "Friendlycraft Studios," is a

corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located in the city of Westfield, State of Massachusetts.

Respondents Arthur T. White and K. Stanley Zolyn are individuals and 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 advertising, offering for sale, sale and distribution of magazine subscriptions, greeting cards, stationery and home accessories to the 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 Massachusetts to purchasers thereof located in various other States of the United States, and maintain, and at all time 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 now use, and for some time last past have used, a form of order, wherein by the checking of a single block or box a prospective customer not only indicated he is ordering present merchandise, the nature of which is generally known to him, but he is also unknowingly or unwittingly requesting the forwarding of merchandise, the nature of which is unknown to him at a later date "for advance preview with never any obligation to buy."

Typical and illustrative, but not all inclusive of such forms are the following:

1. ☐ Yes, I want to see the complete 50-piece Stationery Ensemble with my initial in genuine raised golden printing. Send it at once for free inspection and next season send your new offerings for advance preview with never any obligation to buy. . . .

2. ☐ Also rush the order below. I am including \$1 payment for exclusive Quaint Shop Greetings sent to me for examination, as a see-before-you-buy special service to regular customers. Next season send your new offerings for advance preview and keep me on your list for this service which I may discontinue at any time.

When payment for, or return of the future "advance preview" merchandise is not forthcoming, the respondents cause letters to be sent to the recipient of said merchandise for the purpose of inducing

payment or the return of the merchandise. The payment form attached to these letters also contains a single block or box, which when checked not only indicates payment for the merchandise but also requests the forwarding of unknown merchandise at a future date.

Typical and illustrative, but not all inclusive of such payment forms is the following:

☐ Here is my \$1 payment for exclusive Quaint Shop Christmas Cards sent me for preview examination as a "see-before-you-buy" special service to regular customers. Next season send your new offerings for advance examination and keep me on your list for this service which I may discontinue at any time.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set forth herein, and by means of the manner and method by which these statements and representations are repeatedly made to the recipient of unknown or unwittingly requested advance preview merchandise, the respondents have represented, and are now representing, directly or by implication that:

1. Money is due and owing for merchandise, which the recipient was unknowingly or unwittingly duped into requesting.
2. The recipient of such merchandise is under an obligation to pay for or return such merchandise.

PAR. 6. In truth and in fact:

1. Money is not due and owing for merchandise, the requesting of which was obtained by deception because such merchandise is the same as unsolicited or unordered merchandise.
2. The recipient of such merchandise is not under any obligation to pay for or return such merchandise.

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

PAR. 7. Furthermore, it was an unfair practice and a false, misleading and deceptive act and practice for the respondents to seek to elicit orders or payments in the manner aforesaid and to fail to disclose clearly and conspicuously that the said order or payment also contained a request to forward unknown merchandise at a future date for advance preview or for any other reason.

In the absence of such a disclosure prospective purchasers would have no reason to suspect that the respondents would use their order or payment in the above described manner.

Therefore, the aforesaid forms, acts and practices were, and are unfair, false, misleading and deceptive.

Decision and Order

78 F.T.C.

PAR. 8. 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 merchandise of the same general kind and nature as those sold by respondents.

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' product by reason of said erroneous and mistaken 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 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 White Industries, Inc., t/a "Quaint Shop Folks," "White's Quaint Shop," "White, The Magazine Bargain Man," "Thomas Terry Studios" and "Friendlycraft Studios," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located in the city of Westfield, State of Massachusetts.

Respondents Arthur T. White and K. Stanley Zolyn are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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 White Industries, Inc., a corporation, t/a "Quaint Shop Folks," "White's Quaint Shop," "White, The Magazine Bargain Man," "Thomas Terry Studios," and "Friendlycraft Studios," or under any other name or names, and its officers, and Arthur T. White and K. Stanley Zolyn, 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 greeting cards or other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any kind of order or payment form, wherein by the making of a single check or other mark indicating the placing of an order or the making of a payment for present known merchandise, a purchaser simultaneously or automatically makes a request for the forwarding of merchandise at a later date for "advance examination," "advance preview" or for any other reason.

2. Using any form of communication by which purchasers authorize or purport to authorize respondent to send merchandise at a future date which purports to be effective prior to being signed and returned by the recipient.

3. Using any such form of authorization set forth in Paragraph Two unless such authorization is set forth in a completely separate and distinct paragraph (or, at respondents' option, a completely separate and distinct document) which separate par-

agraph (or separate document) contains no words, statement, or information not necessary to such authorization and which does not clearly and conspicuously state the following:

- a. That the document is an authorization for respondents to send merchandise at a future date; and
- b. The period of time for which the authorization will be operative shall not exceed one year, or one offering whichever is less; and
- c. The description of the merchandise contemplated by the authorization form.

4. Misrepresenting, directly or by implication, the legal relationship or legal obligation, if any, that exists between respondents and the mailees to whom respondents send merchandise.

5. Shipping merchandise without a prior express written authorization as described in Paragraphs Two and Three above, unless attached to said merchandise there is a clear and conspicuous statement informing the recipient of the following:

- a. That the merchandise is being sent to the recipient unsolicited; and
- b. That the recipient is not obligated to return the merchandise; and
- c. That the recipient may treat the merchandise as a gift, that he may use, discard, or dispose of it in any manner that he sees fit without any obligation whatsoever to the sender.

6. Sending any communication, or making any demands or requests that seek to obtain payment for or the return of any merchandise sent without a prior express written authorization as described in Paragraphs Two and Three above.

Provided, however, That Paragraphs Five and Six shall not become effective until six (6) months after the Commission's entry of this order to cease and desist.

It is further ordered, That respondents notify the Commission at least thirty (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 this order.

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

317

Complaint

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.