

IN THE MATTER OF

GRAYEL ENTERPRISES, INC., ET AL.

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

Docket C-1878. Complaint, Mar. 8, 1971—Decision, Mar. 8, 1971

Consent order requiring Baltimore, Md., sellers and distributors of household appliances, books, tools and other merchandise to cease misrepresenting that respondents are conducting a market survey and that prospective customers have won a prize or have been specially selected, misrepresenting that respondents' purpose is to introduce the EMDEKO brand products, soliciting promises from buyers that they will not sell or give away any of respondents' products, failing to disclose that persons invited to visit respondents' place of business will be urged to buy respondents' products, operating a lottery, using the words "comparative value" to refer to prices in excess of prices in the trade area, misrepresenting that customers purchasing respondents' products are afforded savings, and failing to maintain adequate records to substantiate savings claims; respondents are also required to place on the face of all sales contracts a statement that the contract may be sold to a third party who is not liable for the execution of the contract; respondents shall also cease making sales contracts effective before the expiration of three days, failing to disclose to the buyer that he may rescind the sales contract prior to midnight of the third day, and negotiating any customer note to a third party before the expiration of five days.

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 Grayel Enterprises, Inc., a corporation, and Grayson W. Foster and Elinor O'Connor Foster, 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 Grayel Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 6600 York Road, Baltimore, Maryland.

Respondents Grayson W. Foster and Elinor O'Connor Foster are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts

and practices hereinafter set forth. Their business 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 household appliances, books, tools and other merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their agents, representatives, and employees to contact various persons by telephone and by post in the District of Columbia for the purpose of inducing such persons to travel into the State of Maryland to the respondents' place of business so that they might be sold merchandise by the respondents' agents, representatives and employees, and at all times herein mentioned have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the respondents' business, and for the purpose of inducing the purchase of respondents' merchandise, respondents' agents, representatives and employees have made, and are now making, numerous statements and representations, directly or by implication, to prospective customers that:

Respondents are conducting a market survey for future potential buying in the area.

Prospective customers have won a prize by correctly answering a simple question.

Prospective customers are especially selected.

Customers are receiving a special introductory price.

Customers are receiving additional merchandise at no additional cost.

The respondents' purpose is to introduce and make known in the area the EMDEKO brand name in preparation for the placing of EMDEKO products in local retail stores.

PAR. 5. In truth and in fact:

1. The respondents are not conducting a market survey. Respondents are only seeking information about a person's appliance needs and credit rating to determine whether an attempt should be made to sell merchandise to that person.

2. Persons do not win a prize by correctly answering a simple question, but are so notified because such persons appear to be good prospects for the sale of merchandise. The awarding of a prize to all persons who appear to be good credit risks is the means used to induce prospective customers to make an appointment with respondents' agents, representatives and employees.

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3. Respondents' customers are not especially selected. On the contrary, said merchandise is available to anyone with the money or credit rating to buy it.

4. Respondents' customers do not receive a special introductory price but are offered merchandise at prices which are higher than those charged for comparable merchandise in the respondents' trade area.

5. Respondents' customers do not receive additional merchandise at no additional cost, but the price of any additional items of merchandise is included in the price that such customers pay for the major, or principal, item selected, and the major item selected has never been sold separately in substantial quantities at the price being asked for such major item.

6. The respondents' true purpose is to sell merchandise to the public at a profit. EMDKO brand products are not sold in regular retail stores, but are sold only by methods similar to those used by the respondents.

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

PAR. 6. In the course and conduct of the respondents' business, and for the purpose of inducing in prospective buyers the belief that said prospective buyers would receive a special introductory price in return for the rendering of a valuable advertising service to the respondents and to National Housewares, respondents' agents, representatives and employees have solicited from prospective buyers:

1. Written promises that said prospective buyers will write testimonial letters concerning merchandise they purchase from respondents.

2. Oral promises that said prospective buyers will not sell or give away, during the following year, merchandise they purchase from respondents.

PAR. 7. In truth and in fact all respondents' customers have been required to make such promises as part of a sales scheme and such customers do not receive a special introductory price.

PAR. 8. The aforesaid solicitations set forth in Paragraph Six hereof had, and now have, the capacity and tendency to deceive, and have in fact deceived, members of the purchasing public into believing that they were receiving a special introductory price in return for the rendering of a valuable advertising service.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing prospective customers to visit respondents' place of business, respondents operated, or pretended to operate, various

lotteries in which valuable merchandise was allotted by lot or chance for consideration, the consideration being the prospective customer's visit to respondents' place of business.

PAR. 10. The uses by the respondents of the aforesaid lotteries, or pretended lotteries, were, and are, all to the prejudice and injury of the public and of respondents' competitors.

PAR. 11. In the course and conduct of their business, respondents, in the operation of a lottery, have represented that they were giving away \$12,500 in sample products, from the EMDEKO brand name product line, to include major and minor sales items.

PAR. 12. In truth and in fact:

1. The respondents did not give away \$12,500 in sample products in the aforesaid lottery.

2. Most of the sample products listed to be given away were not given away in the aforesaid lottery.

3. Those items of lesser value which were given away in aforesaid lottery were not part of the EMDEKO brand name product line in that they were never offered for sale by the respondents.

Therefore, the representations set forth in Paragraph Eleven hereof were, and are, false, misleading and deceptive.

PAR. 13. In the course and conduct of respondents' business, and for the purpose of inducing the purchase of respondents' merchandise, respondents' agents, representatives and employees have made, and now make, numerous statements and representations, directly or by implication, to prospective customers that said prospective customers:

1. Have a gift waiting for them at respondents' "office."

2. Are invited to listen to and evaluate a presentation of the EMDEKO marketing program.

3. Will be entered in an EMDEKO contest.

PAR. 14. The respondents, when making such statements and representations as shown in Paragraph Thirteen have failed to disclose to said prospective customers the following material facts:

1. Respondents' agents, representatives and employees will attempt to sell respondents' merchandise to persons who arrive at respondents' place of business to pick up a gift.

2. Respondents' agents, representatives and employees will attempt to sell respondents' merchandise to persons who listen to a presentation of the EMDEKO marketing program upon completion of the presentation.

3. It is necessary for a person to listen to a presentation of the EMDEKO marketing program in order to be eligible to enter the EMDEKO contest.

Therefore, the statements and representations set forth in Paragraph Thirteen hereof were, and are, deceptive.

PAR. 15. In the course and conduct of the respondents' business, and for the purpose of inducing the purchase of respondents' merchandise, the respondents' agents, representatives and employees have made numerous statements and representations to prospective buyers with respect to the "value" or "comparative value" of respondents' merchandise.

PAR. 16. By and through the use of said statements and representations, respondents have represented, and are now representing, directly or by implication, that said "values" or "comparative values" are not appreciably in excess of the prices at which substantial sales of comparable merchandise have been made in the recent regular course of business in the trade area where such representations were made.

PAR. 17. In truth and in fact:

The aforesaid stated "values" or "comparative values" appreciably exceeded the prices at which substantial sales of comparable merchandise have been made in the recent regular course of business in the trade area where such representations were made.

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

PAR. 18. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of household appliances, books, tools and other merchandise of the same general kind and nature as that sold by respondents.

PAR. 19. The use by the 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' products by reason of said erroneous and mistaken belief.

PAR. 20. The aforementioned acts and practices of the 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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington Area Field Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Grayel Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 6600 York Road, Baltimore, Maryland.

Respondents Grayson W. Foster and Elinor O'Connor Foster are individuals and officers of Grayel Enterprises, Inc., and they formulate, direct and control the acts and practices of said corporation, including the acts and practices hereinafter set forth. 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

I

It is ordered, That respondents Grayel Enterprises, Inc., a corporation, and its officers, and Grayson W. Foster and Elinor O'Connor

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Foster, 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 advertising, offering for sale, sale or distribution of household appliances, books, tools 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:
 - (a) Respondents are conducting a market survey for future potential buying in the area.
 - (b) Prospective customers have won a prize by correctly answering a simple question.
 - (c) Prospective customers are especially selected.
 - (d) Customers are receiving a special introductory price.
 - (e) Customers are receiving additional merchandise at no additional cost.
 - (f) The respondents' purpose is to introduce and make known in the area the EMDEKO brand name in preparation for the placing of EMDEKO products in local retail stores.
2. Soliciting in any manner:
 - (a) Testimonials, or promises of future testimonials, from a buyer concerning the merchandise being offered for sale, prior to the consummation of any sales transaction, or prior to the termination of any period for rescission available to the buyer, whichever is later.
 - (b) Promises from a buyer that said buyer will not sell or give away merchandise being offered for sale, except where necessary to protect a security interest.
3. Operating a lottery.
4. Failing to disclose to all persons contacted for the purpose of selling respondents' merchandise to them that:
 - (a) Respondents' agents, representatives and employees will attempt to sell merchandise to persons invited to respondents' place of business to pick up a gift.
 - (b) Respondents' agents, representatives and employees will attempt to sell respondents' merchandise to persons who are invited to listen to, and evaluate, a presentation of the EMDEKO marketing program.
 - (c) It is necessary for a person to listen to a presentation of the EMDEKO marketing program in order to be eligible to enter the EMDEKO Sweepstakes Contest, provided that the EMDEKO Sweepstakes Contest has been brought to the attention of said person.

5. Using the words "value" or "comparative value," or words of similar import and meaning, to refer to any price amount which is appreciably in excess of the prices at which substantial sales of comparable merchandise have been made in the recent, regular course of business in the trade area where such words are used and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which merchandise has been sold in any trade area.

6. Representing, in any manner, that by purchasing respondents' merchandise, customers are afforded savings amounting to:

(a) The difference between respondents' stated price and the respondents' former price unless such merchandise has been sold, or offered for sale in good faith, at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) The difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) The difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5-7 of this order are based, and (b) from which the validity of any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5-7 of this order can be determined.

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9. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

It is further ordered, That the respondents herein shall, in connection with the offering for sale, sale or distribution of respondents' products or services, incorporate the following statement on the face of all contracts executed by respondents' customers with such conspicuousness and clarity as is likely to be observed, read and understood by the purchaser:

Important Notice

If you are obtaining credit in connection with this contract, you will be required to sign a promissory note. This note may be purchased by a bank, finance company or any other third party. If it is purchased by another party, you will be required to make your payments to the purchaser of the note. You should be aware that if this happens you may be required to pay the note in full to the new owner of the note even if this contract is not fulfilled.

II

It is further ordered, That the respondents herein shall, in connection with the offering for sale, sale or distribution of respondents' products or services, forthwith cease and desist from:

1. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

2. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note or other instrument executed by the buyer with such conspicuousness and clarity as is likely to be observed and read by such buyer, that the buyer may rescind or cancel the sale by directing or mailing a notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale. Upon such cancellation the burden shall be on respondents to collect any goods left in buyer's home and to return any payments received

from the buyer. Nothing contained in this right-to-cancel provision shall relieve buyers of the responsibility for taking reasonable care of the goods prior to cancellation and during a reasonable period following cancellation.

3. Failing to provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

4. Negotiating any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the date of execution by the buyer.

Provided, however, That nothing contained in Part II of this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon proper showing, shall make such modifications as may be warranted in the premises.

III

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 respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, or sale of any product or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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.

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.

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IN THE MATTER OF

THE ELMO COMPANY, INC.

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

Docket 5959. Complaint, Feb. 28, 1952—Decision, Mar. 18, 1971

Order granting complaint counsel's motion that the complaint in this matter,
48 F.T.C. 1379, be dismissed without prejudice.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

Complaint counsel, by motion filed December 2, 1970, having requested that the complaint in this matter be dismissed without prejudice, and respondent not having filed an answer to said motion;

It is ordered, That complaint counsel's motion, filed December 2, 1970, be, and it hereby is, granted.

IN THE MATTER OF

NORFOLK-HILL, LTD., ET AL.

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

Docket C-1879. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

Consent order requiring an inactive corporation now located in East Orange, N.J., which formerly sold MEMOCORD tape recorders, books, automatic coin banks, painting sets and other articles to cease failing to make proper refunds, failing to clearly reveal the nature of deductions from refunds, making deceptive guarantees, failing to make shipment of merchandise within ten days of receipt of order and misrepresenting the length of continuous operation of its tape recorders.

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 Norfolk-Hill, Ltd., a corporation, and Norman Eisner and Richard A. Jasper, 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 preceeding by it in respect thereof