

Complaint

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sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

NELSON JAMES, INC., DOING BUSINESS AS SPECTRUM  
PENS, ETC.

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

*Docket C-1967. Complaint, July 7, 1971—Decision, July 7, 1971*

Consent order requiring a San Mateo, Calif., corporation engaged in the advertising and selling of distributorships to sell pens to cease understating the amount of money required for its distributorships, exaggerating profits to prospective buyers, failing to disclose in its advertising that it is subject to an FTC consent order, exaggerating the consumer demand for its pens, and misrepresenting that the franchises are limited in number or that the pens are easy to sell; respondents must also disclose to future investors in any business venture for ten (10) years the amount of their unpaid debts, and notify the Commission of plans to enter any contemplated business.

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 Nelson James, Inc., a corporation, doing business as Spectrum Pens, Nelson James Division of R. B. Springer & Co., Inc., a copartnership, Tiffany Writing Instruments, Inc., a corporation, and Glen M. Nelson and James R. DeGraw, individually and as officers of said corporations and as copartners in Nelson James Division of R. B. Springer & Co., Inc., 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 Nelson James, Inc., doing business under the name of Spectrum Pens, is a California corporation with its principal office and place of business formerly located at 2075 Pioneer Court, San Mateo, California.

Respondent Nelson James Division of R. B. Springer & Co., Inc., also doing business as Nelson James, is a copartnership, formerly

doing business with its principal office and place of business formerly at 2075 Pioneer Court, San Mateo, California.

Respondent Tiffany Writing Instruments, Inc., is a California corporation with its principal office and place of business formerly located at 2075 Pioneer Court, San Mateo, California.

Respondent Glen M. Nelson is an individual and is an officer of Nelson James, Inc., and Tiffany Writing Instruments, Inc., and a copartner of the Nelson James Division of R. B. Springer & Co., Inc. He resides at 1256 Edgewood Road, Redwood City, California.

Respondent James R. DeGraw is an individual and is an officer of Nelson James, Inc., and Tiffany Writing Instruments, Inc., and a copartner of the Nelson James Division of R. B. Springer & Co., Inc. He resides at 364 Malcolm Avenue, Belmont, California.

Respondents Nelson and DeGraw have been and are primarily responsible for establishing, supervising, directing, and controlling the acts and practices of each of said corporate respondents. They originally engaged in the business activities alleged herein under the name of corporate respondent Nelson James Division of R. B. Springer & Co., Inc., and said activities were transferred to, and have been continued under, the names of corporate respondents Nelson James, Inc., and Tiffany Writing Instruments, Inc.

The aforementioned individual respondents cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents engaged in the advertising and selling of distributorships to sell writing instruments (pens).

Respondents have sold lists of names of potential customers to persons desiring to be distributors. These persons invest substantial sums of money, in return for which each receives the mailing list, sample writing instruments, and promotional and advertising material. Each distributor must mail sample pens and promotional material to each account on the mailing list once every three months and must pay for postage. These mailings include incentives, such as S & H Green Stamps and a sweepstakes contest. When a distributor receives orders from persons to whom he has sent respondents' materials, the orders are sent to respondents' San Mateo, California, address; and the orders are then filled and sent to the consumer. The consumer sends a check to the distributor, who forwards it, in its entirety, to respondents. The distributor receives a commission of twenty-five percent (25%) on all sales. The shipment of pens to consumers is done by respondents' pen suppliers.

PAR. 3. In the course and conduct of their business, respondents were causing their advertising matter to be published in newspapers

of interstate circulation and their sales and promotional materials to be mailed or otherwise conveyed from their place of business in the State of California to persons in various other States of the United States. Included among these materials are advertising matter, applications, distributorship contracts and supply orders, and pens. Letters, checks, and other written instruments and communications have been sent and have been received between the respondents at their place of business in California, and persons in various other States of the United States.

As a result of said interstate advertising, promotion, and sales, and as a result of said transmission and receipt of said written instruments and communications, respondents have maintained a substantial course of trade in said distributorships and pens in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of their business, and the purpose of inducing prospective distributors to invest in their operations, respondents and their agents have made, directly or by implication, numerous false and misleading statements and representations, concerning the investment to be made, the investor's earnings potential, and various aspects of the operation itself.

PAR. 5. Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

*CASH BY MAIL*

How can you get rich some day? Make a hit record \* \* \* a killing on the stock market \* \* \* or invent a gadget like the hula hoop? For most of us, these are just dreams. But have you ever stopped to think that there *is* a way to get rich—possibly only one sure way? Most fortunes, as you know, are made by people who own their own business \* \* \* The business is Mail Order—and it's fabulous. Come up with a "hot" new item \* \* \* and WHAM! It strikes like a bolt of lightning! Suddenly, you are deluged with cash orders from all over the country \* \* \* MORE MONEY than you could make in a lifetime! \* \* \* There is no other business where you can make a fortune so quickly!

\* \* \* \* \*

The secret in Mail Order lies in financial leverage. It's a little-known, almost secret method. Repeat orders alone, just from mailing, could bring you a steady income for the rest of your life! \* \* \* Now, with the help and backing of SPECTRUM PENS, you can follow the same proven steps to Mail Order success—using the "secret" of financial leverage!

\* \* \* \* \*

Projected Sales—1000 Computer Selected Accounts—Example: Banks, Offices, Stores, Contractors, Suppliers, Schools, Manufacturers, Governmental, Auto, Trailer Dealers, Hotels, Motels, All Rental Agencies, Travel/Employment Agencies. Projected orders received per 1000 accounts: 23 \* \* \* Distributor's Projected Net Profit: \$432.26.

6,000 Accounts Projected Net to Distributor \* \* \* \$2,593.56. 12,000 Accounts  
Projected Sales—1000 Computer Selected Accounts—Example: Banks, Offices,  
\* \* \* \* \*

Revenue to Associate on projected order is calculated at \$30.62.  
\* \* \* \* \*

#### *DISTRIBUTOR INVESTMENT*

Distributor is required to put up his share of first mailing supply cost plus  
his one time investment for lifetime exclusive computerized account opera-  
tional and maintenance agreement. This totals \$424.25 *FOR EVERY 1000 AC-  
COUNTS.*

\* \* \* \* \*  
An investment of \$1,697.00 to \$4,487.00 for supplies is required.  
\* \* \* \* \*

Your account list stays up-to-date by avoiding individual names.  
\* \* \* \* \*

You're in business with your first mailing.  
\* \* \* \* \*

You're backed by Tiffany's successful marketing program.  
\* \* \* \* \*

Depression-proof business.  
\* \* \* \* \*

Your accounts are qualified prospects \* \* \* right in your own area of the  
country!

\* \* \* \* \*  
From your 25% you pay only supplies and postage. All The Rest Is Profit!  
\* \* \* \* \*

Several hundred associates are into their third and fourth mailings and are  
making good profits. An average order is \$122.00, and the average return is  
from 10 to 12 percent.  
\* \* \* \* \*

There is no doubt whatsoever that you will get your money back in 90 days,  
*plus* enough profit to pay for the second mailing.  
\* \* \* \* \*

Every quarterly mailing makes a new impression.  
\* \* \* \* \*

Now let me tell you about Tiffany. First, for competitive reasons, we can't  
reveal our unique marketing strategy to just anyone, or would you please read  
and sign this information waiver before I tell you more.  
\* \* \* \* \*

Then I can determine if you are qualified for this distributorship.  
\* \* \* \* \*

Mr. Nelson did 600 million in total sales, nation's leader in all sales of writ-  
ing instruments.

PAR. 6. By making statements and representations in Paragraph  
Five, and others similar thereto but not expressly set out herein, and  
in the course of oral sales presentations by respondents' agents, rep-  
resentatives, and employees, respondents represent, and have repre-  
sented, directly or by implication, that:

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(1) An investment of from \$1,697 to \$4,487 is the total amount required of distributors, and there is no requirement for additional future investments.

(2) A distributor's initial investment will pay for the cost of repeat mailings, at least for the rest of his first year of operation.

(3) Distributors will earn at least enough in commissions from the first mailing to recoup their initial investments.

(4) National figures show that each 1,000 accounts on a distributor's mailing list will spend \$300,000 per year for respondents' products, of which the distributor would earn \$75,000 in commissions.

(5) Out of each 1,000 Spectrum Pen accounts, the average amount of return on the initial mailing is \$1,729.04, of which the distributor would earn \$432.26 in commissions. The average profit on each order is \$30.62.

(6) A distributor can make a great deal of money in a very short period of time, and repeat business will provide a steady income for the rest of his life.

(7) Several hundred distributors have made three or four mailings and are receiving an average return in orders of ten to twelve percent.

(8) Because everybody uses pens, respondents' pens will be very easy to sell by mail.

(9) Respondents' mail-order operation uses "secret" or otherwise unique methods which make it more successful than other mail-order sales operations.

(10) Persons answering respondents' advertisements were sent a letter of reference signed by Republic Corporation which described respondents' program as "unique and successful."

(11) All accounts on distributors' mailing lists are fairly substantial businesses or institutions which will need and order pens in great quantity.

(12) Respondents use widespread national advertising to promote the sale of their products, and consumer demand has been created for said products.

(13) Respondents offer only a limited number of distributorships, and only to qualified individuals, who are chosen on the basis of their merit as businessmen.

(14) Distributors receive lists of accounts located in their own geographical areas, for which they will be the exclusive distributors.

PAR. 7. In truth and in fact:

(1) A distributor's investment of from \$1,697 to \$4,487 is only an initial investment. The "associate distributor" contract requires this

investment, plus an investment of an amount equal to one-half of the distributor's initial investment, payable once every three months for an indefinite period of time. These facts are not disclosed to prospective investors in respondents' advertising or sales presentation materials.

(2) A distributor's initial investment will not pay for the cost of repeat mailings; additional investments for supplies are required for each mailing. This fact is not disclosed to prospective investors in respondents' advertising or sales presentation materials.

(3) Distributors do not earn enough money in commissions from the first mailing to recoup their initial investments. The average earned commissions per distributor from the first mailing was less than \$50.

(4) National figures do not show that each 1,000 accounts on a distributor's mailing list will spend \$300,000 per year for respondents' products, nor do they show that the distributor would earn \$75,000 in commissions. The "national figures" used in respondents' advertising and promotional materials reflect monies spent for all kinds of pens, and not just respondents'.

(5) Out of each 1,000 Spectrum Pen accounts, the average amount of return on the initial mailing is not \$1,729.04, and the distributor does not earn \$432.26 in commissions. The average profit on each order is not \$30.62.

(6) A distributor cannot make a great deal of money in a very short period; no distributor recouped his initial investment. Repeat business will not provide a distributor with a steady income for the rest of his life; in all instances, distributors have received very minimal incomes or none at all.

(7) The average return in orders for those distributors making more than one mailing has been less than one-half of one percent.

(8) Respondents' pens are not easy to sell by mail, regardless of the fact that everybody uses pens.

(9) Respondents' mail-order operation does not use "secret" or otherwise unique methods which make it more successful than other mail-order sales.

(10) Respondents' program was not unique or successful.

(11) Many accounts on distributor mailing lists are very small businesses, such as dry cleaners, restaurants, and service stations, which do not need or order pens in great quantity. In addition, many entries on the mailing lists are individuals, and the lists contain numerous incomplete names or addresses.

(12) Respondents do not use national advertising to promote the

sale of their products, and there is little, if any consumer demand for those products. Respondents' advertising and promotional efforts are directed almost exclusively to prospective distributors.

(13) Respondents do not limit the number of distributorships offered, and they do not screen prospects on the basis of merit or of their qualifications as businessmen. The sole requirement for acceptance as a distributor is the investment of money in a distributorship.

(14) In a substantial number of instances, distributors have received mailing lists covering geographical areas far from their own, often in different states. Exclusive distributorships for particular areas are not given.

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

PAR. 8. It was an unfair and deceptive practice for respondents to sell distributorships in the manner set forth in Paragraphs Five and Six when they knew, or reasonably prudent businessmen should have known, that distributors would not receive the results that were represented.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were true and into investing substantial sums of money in becoming distributors in respondents' mail-order sales operation by reason of said erroneous and mistaken belief.

PAR. 10. The foregoing acts and practices of respondents were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### 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 San Francisco 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 Nelson James, Inc., is a California corporation, with its office and principal place of business formerly located at 2075 Pioneer Court, San Mateo, California.

Respondent Nelson James Division of R. B. Springer & Co., Inc., is a copartnership, with its office and principal place of business formerly located at 2075 Pioneer Court, San Mateo, California.

Respondent Tiffany Writing Instruments, Inc., is a California corporation with its office and principal place of business formerly located at 2075 Pioneer Court, San Mateo, California.

Respondents Glen M. Nelson and James R. DeGraw are copartners in said copartnership and are officers of said corporations. They formulate, direct, and control the policies, acts, and practices of said copartnership and of said corporations. Glen M. Nelson formerly resided at 1256 Edgewood Road, Redwood City, California; James R. DeGraw resides at 364 Malcolm Avenue, Belmont, California.

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 Nelson James, Inc., a corporation, Nelson James Division of R. B. Springer & Co., Inc., a copartnership, Tiffany Writing Instruments, Inc., a corporation, and Glen M. Nelson and James R. DeGraw, individually and as copartners in said copartnership and as officers in said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offer-

ing for sale, or sale of Spectrum Pen or Tiffany Pen distributorships or any other distributorships, franchises, or investment opportunities, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or by implication, from:

(1) Representing that any certain amount of money required is the total amount required, when additional sums of money are necessary.

(2) Representing or projecting returns or profits to investors that are not the actual average returns or profits of all investors for the preceding twelve-month period.

(3) Offering such distributorships, franchises, or other investment opportunities for sale without disclosing in all advertisements and sales presentations that respondents are subject to a Federal Trade Commission Consent Order Agreement, and affording an opportunity to each investor to read the Agreement, with the proposed complaint attached prior to entering into any agreements or accepting any money from them.

(4) Misrepresenting that there is a consumer demand for their products or services, or misrepresenting the character or extent of advertising used to promote a demand for respondents' products or services.

(5) Representing that distributorships, franchises, or investment opportunities are limited in number, or that the applicant must have qualifications other than financial, or that exclusive geographical areas are granted.

(6) Representing that their method of operation is unique or secret, or that their products or services are easy to sell.

*It is further ordered that respondents:*

(7) Disclose to any prospective investors in future business ventures which respondents may enter into for the next ten years that they left an aggregate of \$277,768 in unpaid debts as a result of the Spectrum and Tiffany operations.

(8) When entering into any business in a financial, managerial, or sales capacity, involving mail-order sales, door-to-door sales, or other forms of direct selling, or any business involving the sale of distributorships, franchises, memberships, or services, or any business utilizing multi-level sales or marketing techniques, during the ten years following the date of this order, notify the Commission of their plans and intentions before entering into the contemplated business endeavor.

(9) Notify the Commission at least 30 days prior to any

proposed change in the corporate respondents, such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of this order.

(10) Distribute a copy of this Consent Order Agreement to each advertising agent or agency with which they do business, directly or indirectly, and do likewise with any such person or organization with which it does business in the future, immediately upon beginning such undertaking.

(11) 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.

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