

Docket C-2055. Complaint, Sept. 30, 1971—Decision, Sept. 30, 1971

Consent order requiring a Kansas City, Mo., seller of vacuum cleaners, electrical appliances, soaps and group purchasing memberships to cease misrepresenting the advantages of its group buying program, that members of such programs have been selected by computer, that respondent will provide money to purchase goods for members at lower prices than at local retail outlets, that goods will be delivered in two or three days, that members will have little or no difficulty in buying or shipping from local merchants, that pur-

chasers of electrical appliances will receive a free supply of soap, and that members are entitled to a ten-year membership on their initial contract; respondents are also forbidden to sell customers' notes without transferring all defenses against respondents which shall appear as a "Notice" printed on all contracts, make any contract binding on buyer prices to midnight of the third day, disclose to buyers that contracts are cancellable up to the third day, and fail to refund monies paid on cancelled contracts.

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 Compact Vacuum Centers, Inc., a corporation, and Argo O. Weissenbach, 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 Compact Vacuum Centers, Inc., is a corporation organized under and by virtue of the laws of the State of Missouri. It existed and did business with its principal office and place of business located at 6122 Troost Avenue, in the city of Kansas City, State of Missouri.

Respondent Argo O. Weissenbach is an individual and officer of said corporation. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 3515 East 61st Street North, Kansas City, Missouri.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of electric vacuum cleaners and other electric appliances, and soaps, and memberships in group purchasing programs to the public.

PAR. 3. In the course and conduct of their business as aforesaid, 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 Missouri to purchasers thereof located in various other States of the United States, and 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, and for the purpose of inducing the purchase of their products, respondents have made, and are now making, through their salesmen and represent-

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atives, numerous statements and representations with respect to the nature of their offer and the savings available through the use of their services.

Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

Your name has been selected from an IBM system in New York.

You can purchase household products for a discount of 40 percent to 80 percent.

You can purchase anything through our program except groceries, liquor, and Volkswagens.

We will give you \$300 worth of soap for free.

You will receive a ten year membership in Family Shoppers Union.

You will be furnished all catalogues necessary to enjoy savings in purchasing the various items.

PAR. 5. Through the use of the statements and representations set forth above, and others similar thereto but not specifically set out herein, and through said statements orally made by respondents, their employees, agents, and representatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Members of respondents' group buying program will enjoy substantial savings in the purchase of all products with the exception of groceries, liquors, and certain types of automobiles.

2. Members of respondents' group buying program will be furnished by respondents all catalogues through which the savings are made available.

3. Purchasers of respondents' soap or electrical appliances or other goods or products, or a membership in respondents' group buying program will receive a free gift consisting of some appliance or other item.

4. The offer of the free gift or of other goods or services of respondents is limited as to time.

5. Potential customers of respondents' group buying program and other services and products have been specially selected by computer.

6. Respondents' program is being offered on a promotional or trial basis and will be available at a later time but at a much higher price.

7. If a member of respondents' group buying program cannot purchase a particular item at a reduced price through respondents' program, respondents will provide the means to purchase the item at a local retail outlet.

8. Respondents will pay the member of respondents' group buying program twice the amount of the difference in price if the member can-

not purchase an item at a reduced price through respondents' program.

9. Merchandise or products ordered through respondents' group buying program will be delivered in two or three days following such order.

10. There is little or no difficulty in acquiring the identification number of various items of merchandise from retail merchants for the purpose of using such number in ordering the particular item through respondents' buying program.

11. The cost of shipping goods purchased through respondents' buying program is minimal or will be paid for by respondents.

12. Purchasers of memberships in respondents' group buying program or purchasers of electrical appliances or other goods from respondent will receive soap or detergent valued at \$300, absolutely free, or will receive a two years' supply of soap or detergent absolutely free.

13. Payment on the initial contract entitles the purchaser to a membership in respondents' group buying program for ten years.

PAR. 6. In truth and in fact:

1. Purchasers of memberships in respondents' group buying program will not enjoy substantial savings in the purchase of goods and products.

2. Members of respondents' group buying program will not be furnished all catalogues through which purchases may be made and savings result.

3. Members of respondents' group buying program do not receive a free gift consisting of an appliance or other item; all items received by such purchasers are more than compensated for by payment on the initial contract.

4. The offer of the free gift is not limited as to time because there is no free gift, and memberships in respondents' buying program and whatever item of merchandise available to purchasers of such program are available on a regular basis to members of the public.

5. Potential purchasers of memberships in respondents' group buying program have not been specially selected by computer, but most of these potential purchasers are contacted as a direct result of referrals from friends or acquaintances.

6. Respondents' program is not being offered on a promotional or trial basis but is available to all members of the public at an established price.

7. Respondents do not as a matter of course provide any payment for the purpose of purchasing goods for their customers.

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8. Respondents as a matter of course do not pay members of their group buying program twice the amount of the difference in price if a member cannot purchase an item at a reduced price through respondents' program.

9. Orders for merchandise placed through respondents' program will not be delivered in two or three days but, rather, delivery may take a matter of weeks.

10. There may be a great deal of difficulty in acquiring the identification number of various items of merchandise from retail merchants for the purpose of using such number in ordering the particular item through respondents' buying program.

11. The cost of shipping goods purchased through respondents' group buying program is never paid for by respondents and in many cases such cost is much greater than any savings which might be realized through the use of respondents' program.

12. Members of respondents' group buying program or purchasers of respondents' electric appliances or other goods do not receive \$300 worth of soap or detergent or a one year's supply of soap or detergent, but rather the amount of soap provided by respondents may last only a few weeks, and its value is less than \$300.

13. Payment on the initial contract does not entitle the purchaser to a ten-year membership in respondents' group buying program, but rather a yearly fee is necessary for the membership to be kept active.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their products and services, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading, and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, may cut off various personal defenses, otherwise available to the obligor, arising out of respondents' failure to perform or out of other unfair, false, misleading or deceptive acts and practices on the part of respondents.

2. In a substantial number of instances, through the use of the false, misleading and deceptive statements and representations set out

in Paragraphs Four and Five above, respondents have been able to induce customers into signing a contract with the respondents on the respondents' initial contact with the customer. In such situation, it is highly improbable that the customer was able to seek out advice or make an independent decision on whether or not he should enter into the contract and, therefore, had to rely heavily on the advice and information given to him by respondents.

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 electric vacuum cleaners and other electrical appliances, group buying programs, soap, and other products of the same general nature and kind as that 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' products and services by reason of such mistaken and erroneous 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 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 Bureau of Consumer Protection 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 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 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 Compact Vacuum Centers, Inc., is a corporation organized under and by virtue of the laws of the State of Missouri. It was existing and doing business with its office and principal place of business located at 6122 Troost Avenue, Kansas City, Missouri.

Respondent Argo O. Weissenbach is an individual and officer of Compact Vacuum Centers, Inc. He formulates, directs, and controls the acts and practices of said corporation and his address is 3515 East 61st Street North, Kansas City, Missouri.

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, Compact Vacuum Centers, Inc., a corporation, and its officer, Argo O. Weissenbach, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution of vacuum cleaners or other electrical appliances, soap or detergent or memberships in group purchasing programs or other products or services, 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 members of respondents' group buying program will enjoy substantial savings in the purchase of all products except groceries, liquors, and certain types of automobiles.

2. Representing directly or by implication that members of respondents' group buying program will enjoy substantial savings in the purchase of any products or goods unless it is shown that such a savings as represented will actually result after the inclusion of shipping charges and service charges and whatever other charges, fees or costs which may accrue to the transaction or misrepresenting in any manner the savings available to members of respondents' group buying program.

3. Representing directly or by implication that members of respondents' group buying program will be furnished by respondents, free of charge, all catalogues through which the savings are made available.

4. Misrepresenting directly or by implication that purchasers of memberships in respondents' group buying program or purchasers of goods or products from respondents will receive any free gift or misrepresenting the nature or value of such gift.

5. Representing directly or by implication that respondents' offer of a free gift or offer of sale of any service or product is limited as to time.

6. Representing directly or by implication that potential purchasers of respondents' goods or services or memberships in respondents' group buying program have been and are being specially selected by computer.

7. Representing directly or by implication that respondents' program is being offered on a promotional or trial basis and that it will be available at a later time but at a much higher cost.

8. Representing directly or by implication that respondents will provide money to purchase goods for members of respondents' group buying program if such members cannot purchase a given item through respondents' program at a savings from that which such member would pay for such item at a local retail outlet.

9. Representing directly or by implication that respondents will pay a member of respondents' group buying program twice the amount of the difference in price if such member cannot purchase an item through respondents' program at a price that is less than the price offered to such member at a particular local retail outlet.

10. Representing directly or by implication that merchandise or products ordered through respondents' group buying program will be delivered in two or three days following such order, or misrepresenting in any manner the length of time necessary for delivery of such merchandise or product.

11. Representing directly or by implication that a member of respondents' group buying program will have little or no difficulty in acquiring the identification numbers of various items of merchandise from retail merchants for the purpose of using such number in ordering the particular item through respondents' buying program.

12. Representing directly or by implication that the cost of shipping goods purchased through respondents' buying program is minimal or will be paid for by respondents, or misrepresenting

in any manner the cost involved in paying shipping charges for the goods purchased through respondents' group buying program.

13. Representing directly or by implication that purchasers of memberships in respondents' group buying program or purchasers of electric appliances or other products from respondents will receive, free of charge, a quantity of soap or detergent valued at \$300, or will receive, free of charge, a one year supply of soap or detergent, or misrepresenting in any manner the value of any gift provided by respondents to such purchasers.

14. Representing directly or by implication that members of respondents' group buying program are entitled to a ten-year membership in such program merely on the basis of payment on the initial contract or misrepresenting in any manner the extent of the membership granted.

It is further ordered, That respondents:

A. Cease and desist from assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other such documents evidencing the indebtedness.

B. Include the following statement clearly and conspicuously on the face of any note, contract or other evidence of indebtedness executed by or on behalf of respondents' customers:

NOTICE

Any holder of this instrument takes it subject to all rights and defenses which would be available to the purchaser in any action arising out of the contract or transaction which gave rise to the debt evidenced hereby, notwithstanding any contractual provisions or other agreement waiving said rights or defenses.

C. Cease and desist from contracting for any sale which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of consummation of the transaction.

D. Disclose, orally prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument executed by the buyer with such conspicuousness and clarity as 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 the buyer of the responsibility for taking reasonable care of the goods prior to cancellation and during a reasonable period following cancellation.

E. Provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

F. Refund immediately all monies to customers who have requested contract cancellation in writing within three (3) days from the execution thereof.

G. Shall forthwith distribute a copy of this order to each of its present and future salesmen and representatives and other persons engaged in the sale and/or distribution of respondents' goods or services and to secure from each such salesman, representative or other person a signed statement acknowledging receipt of said order.

H. Notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, merger or sale resulting in the emergence of a successor, or any other change in the corporation which may affect compliance obligations arising out of the order.

I. 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

AMERICAN MODELS SERVICE, INC., ET AL.

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

Docket C-2056. Complaint, Sept. 30, 1971—Decision, Sept 30, 1971

Consent order requiring an Elmwood Park, Ill., seller and distributor of photographs and television tapes of clients to a single model agency to cease using its present trade name unless it also states that it is not a model agency, misrepresenting to prospective clients that they have acting or modeling