
IN THE MATTER OF
PUBLIX CIRCULATION SERVICE, INC., ET AL.

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

Docket C-2149. Complaint, Feb. 14, 1972—Decision, Feb. 14, 1972

Consent order requiring a Little Rock, Ark., solicitor and seller of magazine subscriptions through sales agents to cease failing to reveal all aspects of the job when recruiting prospective solicitors, misrepresenting that such solicitors will be engaged in contests for college and other awards, misrepresenting the terms and conditions of soliciting subscriptions, deceptively guaranteeing the delivery of the magazines, fostering sympathy appeals by its solicitors, failing to refund monies promptly, and failing to notify subscribers of their rights-to-cancel subscription contract, within 3 days. The respondent is also required to deliver a copy of the decision and order to its sales agents and representatives.

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 Publix Circulation Service, Inc., a corporation, and James H. Riley, individually and

Complaint

80 F.T.C.

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 Publix Circulation Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its principal office and place of business located at 9219 New Benton Highway in the city of Little Rock, State of Arkansas.

Respondent James H. Riley is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are engaged in the sale of magazine subscriptions and other publications to the purchasing public by either of two methods which are commonly referred to as "cash subscription" and "two-payment."

Respondents enter into business arrangements with certain publishers or distributors of magazines and other publications whereby the publishers or distributors agree to accept and fill orders for designated magazines or other publications sold by respondents. The publishers or distributors generally require that the magazines or other publications be sold for a designated amount and that respondents forward an agreed upon amount to the publisher or distributor thereof.

Pursuant to such arrangements the respondents solicit and sell to the purchasing public subscriptions to such magazines.

PAR. 3. In the course and conduct of their business of selling magazine subscriptions pursuant to subscription contracts, as aforesaid, respondents have entered into contractual arrangements with publishers or distributors of magazines whereby respondents are authorized to sell certain magazine subscriptions at designated selling prices and to pay designated amounts to said publishers or distributors as payment for said subscriptions. Respondents are thereby given authority to sell subscriptions to some but not all magazines and other publications.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents enter, and have entered, into agreements with individuals known as "crew managers" who in turn employ or hire "sales agents," "solicitors," or other representatives to sell said magazines.

Acting through their said crew chiefs and solicitors, respondents

place into operation and, through various direct and indirect means and devices, control, direct, supervise, recommend and otherwise implement sale methods whereby members of the general public are contacted by door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts with respondents which provide for the purchase of magazines or other publications and payment therefor usually on a cash or two-payment basis.

Respondents also provide crew managers with credentials, sales contract forms, magazine lists and other printed materials some of which bear the name and address of the corporate respondent. Said printed materials are placed in the hands of respondents' sales solicitors for use in the solicitation of magazine subscriptions.

The subscription contracts, when signed by the subscriber, are thereafter returned by the sales solicitor and the crew manager to the respondents who place subscription orders with the appropriate publishers and distributors for magazines and other publications respondents are authorized to sell.

In the manner aforesaid, respondents, directly or indirectly, through said crew managers, control, furnish the means, instrumentalities, services and facilities for, condone, approve and accept the pecuniary benefits flowing from the acts, practices and policies hereinafter set forth, of said crew managers and sales solicitors, hereinafter collectively referred to as respondents' representatives or solicitors.

PAR. 5. In the course and conduct of their business and in the manner aforesaid, respondents through their representatives or solicitors, who travel from one area to another, solicit subscriptions for magazines in various States of the United States. Respondents transmit and receive in commerce the aforementioned printed materials used in the solicitation and sale of magazine subscriptions. The subscription contracts and money are sent by said representatives or solicitors from various states to respondents' place of business in the State of Arkansas and are then forwarded by respondents to various publishers or distributors, many of whom are located in states other than the State of Arkansas. Respondents thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondents, in the course and conduct of their business as aforesaid, have disseminated, and now disseminate or cause to be disseminated, classified advertisements in newspapers of general and

Complaint

80 F.T.C.

interstate circulation and in newspapers throughout the United States and have made statements and representations respecting pay and working conditions, designed and intended to induce individuals to apply as representatives or solicitors to sell magazine subscriptions on the behalf of respondents.

Among and typical of such representations, but not all inclusive thereof, are the following:

1. Must be free to travel USA, Hawaii with guaranteed return.
2. Chaperoned group.
3. * * * expense account * * *
4. New car furnished.
5. * * * \$500 and up monthly.

In the aforesaid manner, the respondents have represented, and are now representing directly or by implication, that:

1. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will travel on a planned itinerary throughout the United States and to Hawaii and return.

2. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will be chaperoned while traveling for or on behalf of respondents.

3. Respondents will pay the expenses of persons who answer respondents' advertisements and who become representatives or solicitors for respondents.

4. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will be furnished new cars while traveling for or on the behalf of respondents.

5. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents will earn \$500 per month.

PAR. 7. In truth and in fact:

1. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents do not travel on a planned itinerary throughout the United States and to Hawaii and return.

2. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents are not chaperoned while traveling for or on the behalf of respondents.

3. Respondents do not pay the expenses of persons who answer respondents' advertisements and who become representatives or solicitors for respondents.

4. Respondents do not furnish their representatives or solicitors with new cars.

5. Persons who answer respondents' advertisements and who become representatives or solicitors for respondents do not earn \$500 per month.

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

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their magazine subscriptions, respondents and respondents' representatives or solicitors have represented, and now represent, directly or by implication, that:

1. Respondents are authorized to sell subscriptions for and are able to deliver or cause the delivery of all magazines for which they sell subscriptions and accept payments.

2. Respondents' representatives or solicitors are participants in a "contest" working for prizes and awards and are not solicitors working for money compensation.

3. Respondents' representatives or solicitors are employed by or for the benefit of a charitable or non-profit organization.

4. Respondents' representatives or solicitors are employed by or affiliated with programs sponsored by a government agency, the purpose of which is to provide assistance to underprivileged groups or persons.

5. Respondents' representatives or solicitors are competing for college scholarship awards.

6. Respondents' representatives or solicitors are college students working their way through school.

7. Respondents' representatives or solicitors are "bonded" and that such "bonding" insures their honesty and integrity.

8. Respondents have a bond on deposit with Central Registry which guarantees fulfillment of all magazine subscription orders sold on their official receipts.

9. Respondents guarantee the delivery of magazines for which they sell subscriptions and accept payments.

10. The money paid by the subscriber to the respondents' representative or solicitor at the time of the sale is the total cost of the subscription.

11. Magazines purchased by subscribers will be distributed to various schools and institutions as gifts or contributions.

PAR. 9. In truth and in fact:

1. Respondents are not authorized to sell subscriptions for and are not able to deliver or to cause the delivery of all magazines for which their representatives or solicitors sell subscriptions and accept payments. In many instances, respondents' representatives or solici-

Complaint

80 F.T.C.

tors sell subscriptions for magazines which respondents are not authorized by the publisher or distributor thereof to sell, and consequently, respondents are unable to deliver or to cause the delivery of these magazines, for which they have accepted payments from subscribers.

2. Respondents' representatives or solicitors work for money compensation and are not participants in a "contest" working for prizes and awards. The use by respondents and their representatives or solicitors of credentials and promotional materials identifying such representatives or solicitors as participants in a contest is a spurious device which enables their representatives or solicitors to utilize a personal sympathy appeal in the sale of subscriptions.

3. Respondents' representatives or solicitors are not employed by or for the benefit of a charitable or non-profit organization.

4. Respondents' representatives or solicitors are not employed by or affiliated with programs sponsored by a government agency, the purpose of which is to provide assistance to underprivileged groups or persons.

5. Respondents' representatives or solicitors are not competing for college scholarship awards.

6. In a substantial number of instances, respondents' representatives or solicitors are not college students working their way through college.

7. Respondents' representatives or solicitors are not "bonded;" and there is no assurance for their honesty and integrity.

8. The bond which respondents have deposited with The Central Registry of the Magazine Publishers Association does not guarantee the fulfillment of each and every magazine subscription sold by respondents' representatives or solicitors.

9. Respondents do not guarantee the delivery of magazines for which they sell subscriptions and accept payments and, once the order is submitted to the publisher or distributor, no further effort is made by respondents to insure such delivery.

10. In a substantial number of instances, the money paid by the subscriber to the respondents' representative or solicitor at the time of the sale is not the total cost of the sale, and the subscriber is required to pay an additional sum of money before his subscription will be entered.

11. Magazines purchased by subscribers are not distributed to various schools and institutions as gifts or contributions.

Therefore, the representations, acts and practices as set forth in Paragraph Eight hereof, were, and are, false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business as aforesaid, where respondents have received payment for subscriptions to magazines they are not authorized to sell and are not able to deliver or cause to be delivered, they have also, in many instances:

1. Failed to notify subscribers, after subscription orders have been received at their principal office and place of business, that said magazines cannot be delivered.

2. Required purchasers to subscribe to substitute magazines without offering them the option to receive a full refund of the money paid for the initial subscription.

3. Failed to refund to subscribers the money they have paid for subscriptions to such magazines.

4. Failed to answer, or to answer promptly, inquiries by or on behalf of subscribers concerning non-delivery of such magazines.

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

PAR. 11. In the further course and conduct of their business as aforesaid, where respondents have received payment for subscriptions to magazines they are in fact authorized to sell and are able to deliver or cause to be delivered, they have, in many instances, failed to deliver or cause to be delivered such magazines within a reasonable period of time.

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

PAR. 12. In the further course and conduct of their business as aforesaid, in instances where the respondents' representatives or solicitors have appropriated money paid by subscribers to their own use, respondents have either failed to refund to subscribers the money said subscribers have paid for subscriptions to magazines or have failed to enter the subscription as ordered by said subscribers.

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

PAR. 13. In the further course and conduct of their business as aforesaid, respondents, through their representatives and solicitors, have misrepresented, and are now misrepresenting, the cost, number of issues and duration of magazine subscriptions.

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

PAR. 14. 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 magazine subscriptions.

Decision and Order

80 F.T.C.

PAR. 15. By and through the use of the aforesaid acts and practices, respondents place in the hands of the crew managers, sales agents, representatives and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 16. The use by respondents of the aforesaid false, misleading, deceptive and unfair representations, acts 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 a substantial number of magazine subscriptions from respondents.

PAR. 17. 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 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 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 the 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

187

Decision and Order

Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Publix Circulation Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 9219 New Benton Highway in the city of Little Rock, State of Arkansas.

Respondent James H. Riley is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 Publix Circulation Service, Inc., a corporation, and its officers and James H. Riley, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, successors and assigns directly or through any corporate or other device, in connection with the advertising, offering for sale, or distribution of magazines, magazine subscriptions or other products or the sale, solicitation or acceptance of subscriptions for magazines or other publications or monies paid therefor, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, to prospective solicitors and solicitors that they will travel on a planned itinerary throughout the United States and to Hawaii and return; or misrepresenting in any manner, the travel opportunities available to their representatives or solicitors.

2. Representing, directly or by implication, to prospective solicitors and solicitors that they will be chaperoned while traveling for or on the behalf of respondents; or misrepresenting, in any manner, the supervision that respondents' solicitors will receive while traveling.

3. Representing, directly or by implication, to prospective solicitors or solicitors that respondents will pay the expenses of such solicitors unless such is the fact; or misrepresenting, in any manner, the terms or conditions of employment as a solicitor for respondents.

4. Representing, directly or by implication, to prospective solicitors and solicitors that they individually will be furnished new cars while traveling for or on the behalf of respondents, unless such is the fact.

5. Representing, directly or by implication, to prospective solicitors or solicitors that they will earn \$500 per month, or any other stated or gross amount; or representing, in any manner, the past earnings of respondents' representatives or solicitors, unless in fact the past earnings represented have actually been received by a substantial number of respondents' representatives or solicitors and accurately reflect the average earnings of such representatives or solicitors.

6. Representing, directly or by implication, to prospective solicitors and solicitors that they will serve in any capacity other than as subscription solicitors selling magazines and other publications on a door-to-door basis; or misrepresenting, in any manner, the terms, conditions, or nature of such employment, or the manner or amount of payment for such employment.

7. Failing clearly and unqualifiedly, to reveal during the course of any contact or solicitation of any prospective employee, sales agent or representative, whether directly or indirectly, or by written or printed communications, or by newspaper or periodical advertising, or person-to-person, that such prospective employee, sales agent or representative will be employed to solicit the sale of magazine subscriptions.

8. Soliciting or accepting subscriptions for magazines or other publications which respondents have no authority to sell or which respondents cannot promptly deliver or cause to be delivered.

9. Representing, directly or by implication, to subscribers that respondents' representatives or solicitors are participants in a contest working for prize awards and are not solicitors working for money compensation; or misrepresenting, in any manner, the status of their sales agents or representatives or the manner or amount of compensation they receive.

10. Representing, directly or by implication, that respondents' representatives or solicitors are employed by or for the benefit of any charitable or non-profit organization; or misrepresenting in any manner, the identity of the solicitor or of his firm or of the business they are engaged in.

11. Representing, directly or by implication, that respondents' representatives or solicitors are employed by or affiliated with

programs sponsored by a government agency, the purpose of which is to provide assistance to underprivileged groups or persons.

12. Representing, directly or by implication, that respondents' representatives or solicitors are competing for college scholarship awards.

13. Representing, directly or by implication, that respondents' representatives or solicitors are college students working their way through school, unless the representative or solicitor is enrolled in college at the time of the representation.

14. Representing, directly or by implication, that respondents' sales agents or representatives have been or are bonded or making any references to bonding, unless such sales agents or representatives have been bonded by a recognized bonding agency, and any payments made pursuant to such bonding arrangement would accrue directly to the benefit of subscribers ordering subscriptions from respondents' representatives or solicitors; or misrepresenting, in any manner, the nature, terms or conditions of any such bond.

15. Representing, directly or by implication, that respondents have a legal arrangement with any independent third party which insures the placement and fulfillment of each and every magazine subscription order unless such is the fact; or misrepresenting, in any manner, the nature, terms and conditions of any such arrangement.

16. Representing, directly or by implication, that respondents guarantee the delivery of magazines for which they sell subscriptions and accept payments, without clearly and conspicuously disclosing the terms and conditions of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

17. Representing, directly or by implication, that the money paid by a subscriber to the respondents' representative or solicitor at the time of the sale is the total cost of the subscription in instances where the subscriber will be required to remit an additional amount in order to receive the subscription as ordered.

18. Representing, directly or by implication, that magazines purchased by subscribers will be distributed to various schools and institutions as gifts or contributions.

19. Misrepresenting the number and name(s) of publications being subscribed for, the number of issues and duration of

Decision and Order

80 F.T.C.

each subscription and the total price for each and all such publications.

20. Utilizing any sympathy appeal to induce the purchase of subscriptions, including but not limited to: illness, disease, handicap, race, financial need, eligibility for benefit offered by respondents, or other personal status of the solicitor, past, present or future; or representing that earnings from subscription sales will benefit certain groups of persons such as students or the under-privileged, or will help charitable or civic groups, organizations or institutions.

21. Failing to answer and to answer promptly inquiries by or on behalf of subscribers regarding subscriptions placed with respondents.

22. Failing within thirty days from the date of sale of any subscription to enter each magazine subscription with publishers for magazines which respondents are authorized by the publisher or distributor thereof to sell: *Provided; however*, in those sales in which an additional payment is required, the subscription shall be entered within 14 days of the receipt of the final payment, but in no event shall any subscription be entered later than 60 days from the date of sale.

23. Failing within thirty days from the date of sale of any subscription to notify a subscriber of respondents' inability to place all or a part of a subscription and to deliver each of the magazines or other publications subscribed for; and to offer each such subscriber the option to receive a full refund of the money paid for such subscription or part thereof which respondents are unable to deliver or to substitute other publications in lieu thereof.

24. Failing within fourteen days from the receipt of notification of a subscriber's election as provided in Paragraph 24 hereof, to make the required refund or to enter the subscription with publishers, as elected by the subscriber.

25. Failing to refund to subscribers the money said subscribers have paid for subscriptions to magazines or, at the election of the subscriber, to enter the subscription as originally ordered in instances where the respondents' representatives or solicitors have appropriated such money to their own use and have failed to enter the subscriptions as ordered by said subscribers, within fourteen days of notice thereof.

26. Failing to give clear and conspicuous oral and written notice to each subscriber that upon written request said sub-

scriber will be entitled to a refund of all monies paid if he does not receive the magazine or magazines subscribed for within 120 days of the date of the sale thereof.

27. Failing to refund all monies to subscribers who have not received magazines subscribed for through respondent within 120 days from the date of the sale thereof upon written request for such refund by such subscribers.

28. Failing to arrange for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance.

29. Failing to furnish to each subscriber at the time of sale of any subscription a duplicate original of the contract, order or receipt form showing the date signed by the customer and the name of the sales representative or solicitor together with the respondent corporation's name, address and telephone number and showing on the same side of the page the exact number and name(s) of the publications being subscribed for, the number of issues and duration of each subscription and the total price for each and all such publications.

30. Failing to:

(a) Inform orally all subscribers and to provide in writing in all subscription contracts that the subscription may be cancelled for any reason by notification to respondents in writing within three business days from the date of the sale of the subscription.

(b) Refund immediately all monies to (1) subscribers who have requested subscription cancellation in writing within three business days from the sale thereof, and (2) subscribers showing that respondents' solicitations or performance were attended by or involved violation of any of the provisions of this order.

31. Furnishing, or otherwise placing in the hands of others, the means or instrumentalities by or through which the public may be misled or deceived in the manner or as to the things prohibited by this order.

It is further ordered, That:

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future crew managers, and other supervisory personnel engaged in the sale or supervision of persons engaged in the sale of respondents' products or services;

Decision and Order

80 F.T.C.

(b) Respondents herein require each person so described in Paragraph (a) above to clearly and fully explain the provisions of this decision and order to all sales agents, representatives and other persons engaged in the sale of the respondents' products or services;

(c) Respondents provide each person so described in Paragraphs (a) and (b) above with a form returnable to the respondents clearly stating his intention to be bound by and to conform his business practices to the requirements of this order;

(d) Respondents inform each of their present and future crew managers, sales agents, representatives and other persons engaged in the sale of respondents' products or services that the respondents shall not use any third party, or the services of any third party if such third party will not agree to so file notice with the respondents and be bound by the provisions of the order.

(e) If such third party will not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not use such third party, or the services of such third party to solicit subscriptions;

(f) Respondents inform the persons described in Paragraph (a) and (b) above that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

(g) Respondents institute a program of continuing surveillance adequate to reveal whether the business operations of each said person described in Paragraphs (a) and (b) above conform to the requirements of this order;

(h) Respondents discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance, who continue on their own the deceptive acts or practices prohibited by this order; and that

(i) Respondents upon receiving information or knowledge from any source concerning two or more bona fide complaints prohibited by this order against any of their sales agents or representatives during any one-month period will be responsible for either ending said practices or securing the termination of the employment of the offending sales agent or representative.

It is further ordered. That respondents herein shall notify the Commission at least 30 days prior to any proposed change in the structure of the corporate respondent such as dissolution, assignment

187

Complaint

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 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 the respondent corporation shall forth