

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 forthwith distribute a copy of this order to each of its operating divisions.

IN THE MATTER OF

GULF COAST DISTRIBUTORS & ACCEPTANCE
CORPORATION, ET AL.

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

Docket C-2152. Complaint, Feb. 15, 1972—Decision, Feb. 15, 1972

Consent order requiring a Kenner, La., seller and distributor of various books, including two encyclopedias, to cease misrepresenting that it is distributing free merchandise, that it represents a school board or is taking a survey, that it is offering its books at reduced prices, failing to disclose that certain of its books are old editions, failing to notify customers that notes may be sold to a finance company and using any sales contract which shall become binding prior to the third day after execution.

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 Gulf Coast Distributors & Acceptance Corporation, a corporation, and Maurice Charest, 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. Gulf Coast Distributors & Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business formerly located at 2404 Airline Highway, and presently located at 712 Faye Street, in the city of Kenner, State of Louisiana.

Respondent Maurice Charest, is an individual and an officer of the corporate respondent. He formulates, directs and controls the

Complaint

80 F.T.C.

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 now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various books, including encyclopedias named "The New Standard Encyclopedia," the "Negro Heritage Library" and other products to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now distribute and for some time in the last past have distributed said books, including the "New Standard Encyclopedia," the "Negro Heritage Library," and other products, when sold, to purchasers residing in various States of the United States, and maintain and have maintained a substantial course of trade in said books and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents now are, and at all times mentioned herein have been, engaged in substantial competition with corporations, firms and individuals in the sale of books and other products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of the aforesaid business respondents sell said books and other products, at retail to the general public. Sales are made by respondents' sales representatives who contact prospective purchasers in their homes.

Respondents have formulated, developed and carried out a plan for the purpose of inducing the sale of said books and other products and have trained their sales representatives to use a sales presentation and materials in connection therewith and instruct them to use and follow same.

In the course of said sales presentation respondents and their sales representatives have made certain oral statements and representations concerning the newness, quality, and price of said books and other products. In addition to the foregoing, respondents and their sales representatives, prior to and during said sales presentations utilize or display certain materials furnished, approved, or ratified by the respondents, for the purpose of obtaining sales leads and inducing the purchase of said books and other products.

Typical and illustrative of materials used by respondents in order to obtain sales leads is a 3" x 5" cardboard card which respondents cause to be disseminated in grammar schools and other public places

229

Complaint

where they are filled out by children and other members of the general public. Said forms contain the following:

EDUCATIONAL MATERIALS
FREE REGISTRATION

NAME _____ AGE _____
 ADDRESS _____
 CITY _____ PHONE _____
 HUSBAND'S _____ AGES OF CHILDREN _____
 OCCUPATION _____ Encyclopedia. Year _____
☐ I DO own _____
☐ I do not own a good set of encyclopedias.
☐ I would like free information on the New Standard Encyclopedia.
☐ I would like free information on the Science Encyclopedia.
☐ I would like free information on the "Negro Heritage Library."
☐ I am active in all P.T.A. work. Yes _____ No _____
 * * * * *

Typical and illustrative of materials shown to prospective purchasers, as aforesaid, is a printed sheet purporting to be an authorized or official survey form which has the following heading printed in bold type:

NATIONAL COUNCIL
WASHINGTON, D.C.

YOUR ASSIGNMENT IS TO CONTACT THE FAMILIES IN SELECTED AREAS WITH PRE-SCHOOL AND ELEMENTARY SCHOOL CHILDREN TO ASSIST IN AN ANALYSIS OF CURRENT AND FUTURE PAROCHIAL AND PUBLIC SCHOOL REQUIREMENTS.

During their sales presentations, respondents' sales representatives utilize an installment contract. In the upper right hand corner of said contract, across from the words "Authorized distributor for the New Standard Encyclopedia," appears a simulated ribbon badge. Inscribed therein and displayed to prospective purchasers are the words: "commended by Parents Magazine as advertised therein."

PAR. 6. Through the use of said materials and others similar thereto but not specifically set forth herein, separately or in connection with the oral sales presentation used variously by their sales representatives, said respondents now represent, and have represented directly or by implication:

- (1) That they are taking a survey for the "National Council, Washington, D. C." a governmental agency or educational group.
- (2) That respondents are conducting bona fide drawings and bona fide contests to determine the identity of persons eligible to receive books and other products as prizes.

Complaint

80 F.T.C.

(3) That the New Standard Encyclopedia is presently "Commended by Parents Magazine."

PAR. 7. In truth and in fact:

(1) Respondents have not been commissioned by any governmental agency or educational group to take an educational survey. "National Council" is a fictitious name used by respondents to gain entrance into prospective purchasers' homes for the purpose of selling them books and other products.

(2) Respondents do not conduct bona fide drawings or bona fide contests to determine the identity of persons eligible to receive merchandise as prizes. Respondents' purpose in conducting said drawings and contests is to obtain leads as to prospective purchasers for said books and other products.

(3) The New Standard Encyclopedia does not presently bear the commendation of Parents Magazine. Said commendation was revoked in February of 1968.

Therefore, the statements and representations referred to in Paragraphs Five and Six hereof, were and are false, misleading and deceptive.

PAR. 8. As part of their sales presentation in connection with the use of materials as aforesaid, respondents and their sales representatives have made and are now making the following additional oral representations:

(1) That they are authorized representatives of one or another public bodies, including the State Board of Education, or the Municipal School Board, or that they have been sent to the prospective purchaser's house by the principal or the teacher of the school attended by said prospective purchaser's children.

(2) That the offer of said books and other products is at a special introductory or reduced price, not being made to the public generally; and that it is being offered only to a specially selected group of people, *i.e.*, students and young newly-weds.

(3) That certain books or other products are given to the purchaser free of cost, or at a specially reduced price, as the case may be, with the purchase of an encyclopedia such as "The New Standard Encyclopedia."

(4) That the price, terms and conditions of the offer are limited to the time of call on the prospective purchaser.

PAR. 9. In truth and in fact:

(1) Respondents are not authorized representatives of any public body, including any State Board of Education or Municipal School Board, nor have they been sent by the principal or the teacher of the school attended by said prospective purchaser's children.

(2) Respondents' offer of said books and other products is not a special introductory or reduced price, nor is it limited to any selected group, *i.e.*, students. To the contrary, it has been offered and is being offered to the general public in the regular course of respondents' business.

(3) Certain of the books and other items included with the sale of an encyclopedia to purchasers are not free of cost, or at a specially reduced price, or the case may be. To the contrary, the cost of all such items is included in the contract price. Further, purchasers pay the full price for all books purchased from the respondents.

(4) The price, terms and conditions of said offers are not limited to the time when the call is made on the prospective purchaser.

Therefore, the statements and representations referred to in Paragraph Eight hereof, were and are false, misleading and deceptive.

PAR. 10. In the further course and conduct of their business, respondents, in an attempt to collect what they elected to treat as delinquent accounts, respondents have represented directly or by implication, that the failure of a customer to remit payment will result in legal action by respondents' attorney.

PAR. 11. In truth and in fact, respondents rarely, if ever, in the normal course of their business, forward accounts to an attorney for the purpose of instituting legal proceedings.

Therefore, respondents' statements and representations referred to in Paragraph Ten hereof, were and are false, misleading and deceptive.

PAR. 12. In the further course and conduct of their business and in furtherance of their purpose of inducing the purchase of said books and other products by the general public, respondents and their sales representations have engaged in the following additional acts and practices.

In a substantial number of instances, the books and other products offered for sale and sold by respondents, have been used editions, old editions, or editions no longer in print. In such instances, respondents and their sales representatives, have represented, directly or by implication, that said books and other products were new, or were the latest editions, and have failed to disclose the material fact that said books and encyclopedias were used, or were old editions, or were no longer in print, as the case may be. The aforementioned books and other products shown to prospective customers have the appearance of being new. When represented to be new, or in the absence of a disclosure that they were used, the said books are

readily accepted by the public as being new, a fact of which the Federal Trade Commission takes official notice.

The Commission also takes official notice of the fact that there is a preference by the purchasing public for new books over used books.

Therefore, respondents' statements, representations, acts and practices, and their failure to disclose material facts, as set forth herein were, and are, unfair, false, misleading, and deceptive acts and practices.

PAR. 13. The use by respondents and their sales representatives, of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, 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 complete, and into the purchase of substantial quantities of said books and other products by reason of said erroneous and mistaken belief, and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have incurred.

PAR. 14. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury to 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

Decision and Order

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has 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 hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gulf Coast Distributors & Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business formerly located at 2404 Airline Highway, and presently at 712 Faye Street, in the city of Kenner, State of Louisiana.

Respondent Maurice Charest is an officer of said corporation and his 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

It is ordered, That respondents Gulf Coast Distributors & Acceptance Corporation, a corporation, and Maurice Charest, individually and as an officer of said corporation, and respondents' representatives, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of books or other products, or in the attempted collection of delinquent or other accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication that a drawing or contest is being conducted to determine a winner or winners of free merchandise or other prizes unless such contest or drawing is in fact designed to select a winner or winners of free merchandise or other prizes, and unless said prizes are actually awarded to such winners.

2. Representing, directly or by implication, that respondents are authorized representatives of one or another public bodies, including the State Board of Education, or the Municipal School Board, or that they have been sent to the prospective purchaser's house by a principal, teacher or any other educator

Decision and Order

80 F.T.C.

or official, or that the purpose of the call or interview is other than to sell books or other products in connection therewith.

3. Representing, directly or by implication, that they are taking a survey for any organization, real or fictitious, when their purpose is to obtain sales leads or to gain entrance into the homes of prospective purchasers.

4. Misrepresenting, directly or by implication, that the New Standard Encyclopedia is "Commended by Parents Magazine."

5. Representing, directly or by implication, that the price at which books or other products are offered for sale is a special or reduced price, unless such price constitutes a substantial reduction from the price at which such books or other products were sold in substantial quantities for a reasonably substantial period of time by the respondents in the recent regular course of their business; or representing that any price is an introductory price.

6. Representing, directly or by implication, that any offer is not available to the public generally, or is limited to a specially selected group.

7. Failing to clearly reveal to prospective purchasers that certain books or other products being offered for sale or sold by respondents are old editions, or editions no longer in print, when said books are in fact old editions, or editions no longer in print, as the case may be.

8. Representing, directly or by implication, that certain books or other products offered for sale or sold by respondents are new, when in fact, said books are repossessed, exchanged, previously owned, out of print, or old editions, as the case may be.

9. Failing to clearly reveal to prospective purchasers that books or other products which have been repossessed, exchanged, previously owned, out of print, or old editions are in fact repossessed, exchanged, previously owned, out of print, or old editions, as the case may be.

10. Representing, directly or by implication, that any books or other products offered for sale bear the commendation, approval or sanction, of any publication or organization, unless said sanction, approval or commendation is in full force and effect at the time of said offer or sale.

11. Representing, directly or by implication, that delinquent accounts will be turned over to an attorney for collection, or that suit will be filed, unless such actions are in fact taken in the ordinary course of respondents' business.

Decision and Order

12. Misrepresenting, directly or by implication, that savings are available to purchasers or prospective purchasers of books or other products; or misrepresenting, in any manner, the amount of savings to purchasers or prospective purchasers thereof.

13. Failing to disclose orally prior to the time it is signed by the purchaser, that an instrument of indebtedness executed by a purchaser may, at respondents' option and without notice to the purchaser be discounted, negotiated or assigned to a finance company or other third party to which purchaser will thereafter be indebted and against which the purchaser's claim or defenses may not be available.

14. Failing to 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 other third party. If it is purchased by another party, you will be required to make your payments to the purchaser of this note. You should be aware that if this happens you may have to pay the note in full to the new owner of the note even if this contract is not fulfilled.

15. Contracting for any sale, whether in the form of a 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 date of execution.

16. Furnishing to others any means or instrumentalities whereby they may mislead purchasers or prospective purchasers as to any of the matters or things prohibited by this order.

It is further ordered, That the respondents herein shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of merchandise, products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondents shall notify the Commission at least thirty (30) days prior to any proposed change in their business organization such as dissolution, assignment, incorporation or sale resulting in the emergence of a successor corporation or partnership or any other change which may effect compliance obligations arising out of this order.