
IN THE MATTER OF
MULTI-STATE DISTRIBUTING, INC., ET AL.

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

Docket C-2213. Complaint, May 4, 1972—Decision, May 4, 1972

Consent order requiring an Anaheim, Calif., seller and distributor of vending machines and merchandise sold therein to cease misrepresenting the profits to be realized from its vending machines, failing to maintain adequate records, misrepresenting the quality of the locations of its machines and the products sold therein, making false guarantees, failing to disclose that it is primarily interested in selling the merchandise, not the machines, and misrepresenting that the owner of the vending machines can easily sell his machines or routes at a profit. It is further ordered that customers' contracts may be cancelled within three days for any reason.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority in it by said Act, the Federal Trade Commission having reason to believe that Multi-State Distributing, Inc., a corporation, and Stewart Z. Weinstein, individually and as an officer of said corporation, and Robert D. Butler, 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

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be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Multi-State Distributing, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. The respondent corporation maintains its office and principal place of business at 1681 West Broadway, Anaheim, California.

Respondent Stewart Z. Weinstein is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is 10092 Suntan Circle, Huntington Beach, California.

Respondent Robert D. Butler is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is 1408 West Whittier, Brea, California.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of vending machines and merchandise sold in vending machines 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, vending machines and merchandise, when sold to be shipped or delivered from their place of business in the State of California to purchasers thereof located in other States of the United States and have been and now are engaged in causing to be disseminated in newspapers of interstate circulation and by the United States mails, advertisements designed and intended to induce sales of vending machines and merchandise, and thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in said vending machines and merchandise 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 vending machines and merchandise, respondents have made, and are now making, numerous statements and representations in newspapers and promotional material regarding the great earning potential available to persons who own and operate vending machines sold by respondents.

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

CANDY AND SNACKS SUPPLY. WE ESTABLISH ALL ROUTES. (no selling involved). CASH REQUIRED.

Plan One.....	\$975
Plan Two.....	\$1,625
Plan Three.....	\$3,250

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Excellent income for a few hours weekly work. (Days and Evenings). Refilling and collecting money from coin operated dispensers within a qualified area. (Handles name brand candy and snacks).

Qualified individual will be selected by Multi-State, Inc. to devote 4 to 6 hours per week to supply established business with finest AAA-1 National Product (candy and snacks). \$1,625.00 cash required.

LOCATIONS * * * In order to realize immediate profit, however, it is necessary that the route be established in as short a time as is feasible while securing the best possible locations. That is why we offer the service of providing starting locations. The faster you start selling merchandise through your machines, the faster we start selling you replacement merchandise.

SERVICE—There is no single word in the dictionary that is so vital to your success in this business. (By "service" we do not refer to mechanical service which is negligible; these machines are so constructed that you can expect a life-time of virtually trouble-free operation).

MECHANISM—Mechanically, your equipment is smooth-operating, efficient and extremely simple in design. Greatest wear is on the coin mechanism which is fully guaranteed against defects by the manufacturer. Separate parts are available if needed.

VARIETY OF PRODUCTS—As wholesalers of vending machine merchandise, our selection is complete and our prices are kept lowest by our policy of large sales volume on a strictly cash basis.

RESALE OF YOUR ROUTE—As everyone knows, a going, profitable business has a resale value well above the net worth of the actual equipment and inventory and this company is well aware of the fact we cannot prevent you from selling your route at a profit—that is the privilege that goes with owning your own business.

PAR. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of vending machines and merchandise, respondents have made, and are now making, numerous statements and representations, orally, regarding the great earning potential available to persons who own and operate vending machines sold by respondents.

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

Vending machines sold by respondents earn \$1.50 net profit per machine per day.

Respondents obtain excellent locations for vending machines such as factories where there is a lot of foot traffic.

Respondents make most of their money by supplying candy and snacks and not by selling vending machines.

Respondents give exclusive rights to a territory if a large purchase of vending machines is made.

Respondents' candy will cost between three (3) and three and one-half ($3\frac{1}{2}$) cents apiece.

PAR. 6. By and through the use of the statements and representations set forth in Paragraph Four and others of similar import but

not specifically set out therein, and through said oral statements set forth in Paragraph Five, and others of similar import but not specifically set forth therein 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. Persons owning and operating vending machines sold by respondents will realize an excellent income.
2. The respondents' offer to sell vending machines is limited to persons who possess certain qualifications beyond having the necessary capital.
3. Respondents will obtain top sales producing locations for the placement of vending machines purchased from them.
4. Vending machines sold by respondents are of excellent quality and durability.
5. The coin mechanism in vending machines sold by respondents is fully guaranteed against defects by the manufacturer.
6. Respondents are primarily interested in selling candy and snacks to vending machine operators and only secondarily interested in selling vending machines.
7. Respondents will honor exclusive territorial agreements with their purchasers of vending machines.
8. Most top name brand candies and snacks can be vended through vending machines sold by respondents.
9. Purchasers of vending machines sold by respondents can obtain a large variety of candy and snacks from respondents at the "lowest prices."
10. That a purchaser of vending machines sold by respondents can easily sell his route at a profit because it is a "going business" or respondents will sell the machines on his behalf.

PAR. 7. In truth and in fact:

1. Excellent income will not be realized by persons owning and operating vending machines sold by respondents. In fact, such persons generally received little or no net profit.
2. Respondents take no steps to check the qualifications of a potential purchaser who possesses the necessary capital beyond one personal interview.
3. Respondents do not obtain top income producing locations, but place most of the vending machines in establishments which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable and unprofitable.
4. Vending machines sold by respondents are of inferior quality and durability.

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5. A very limited guarantee is given and only with respect to defects existing at the time of shipment.

6. Respondents are primarily interested in selling vending machines and only secondarily interested in selling candy and snacks.

7. Respondents do not honor exclusive territorial agreements with their purchasers of vending machines.

8. Most top name brand candies and snacks cannot be vended through vending machines sold by respondents. Only a limited selection of candies and snacks can be vended through vending machines sold by respondents.

9. Prices charged by respondents for their candy and snacks are no lower than prices charged by other wholesalers of such candies and snacks.

10. Purchasers of vending machines sold by respondents do not easily sell their routes at a profit and respondents do not sell the machines for them.

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

PAR. 8. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been and are now, in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of vending machines and merchandise sold in vending machines of the same kind and nature of those 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 the vending machines, and merchandise offered by respondents by reason of said erroneous and mistaken 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 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 heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 upon 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 Multi-State Distributing, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. The respondent corporation maintains its office and principal place of business at 1681 West Broadway, Anaheim, California.

Respondent Stewart Z. Weinstein is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is 10092 Suntan Circle, Huntington Beach, California.

Respondent Robert D. Butler is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is 1408 West Whittier, Brea, 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 Multi-State Distributing, Inc., a corporation, its successors and assigns, and its officers, and Stewart

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Z. Weinstein, individually and as an officer of said corporation, and Robert D. Butler, individually and as an officer of said corporation, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale or distribution of vending machines, merchandise sold in vending machines, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any representations regarding the amount of earnings, profit or compensation which might be realized as the result of purchasing and operating vending machines sold by respondents when said amounts represented exceed the average earnings, profits or compensation of all current owners and operators of vending machines sold by respondents.

2. Failing to maintain adequate records

- (a) which disclose the facts upon which any representations of the type described in Paragraph 1 of this order are based, and

- (b) from which the validity of any representations of the type described in Paragraph 1 of this order can be determined.

3. Representing, directly or by implication, that an offer of any product or service is restricted or limited to qualified individuals unless such represented restrictions or limitations are actually in force and adhered to in good faith.

4. Representing, directly or by implication, that respondents will obtain excellent locations for vending machines where there is a lot of foot traffic; or misrepresenting, in any manner, the quality of locations to be provided by respondents.

5. Representing, directly or by implication, that vending machines or any other products sold by respondents are of excellent quality or durability or misrepresenting, in any manner the nature, character, performance or efficacy of respondents' vending machines or any other products sold by respondents.

6. Representing, directly or by implication, that vending machines or other products are guaranteed unless the nature, extent and duration of their guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents do in fact perform each of their obligations directly or impliedly represented under the terms of such guarantee or guarantees.

7. Representing, directly or by implication, that respondents are primarily in the business of selling merchandise sold in vending machines and not in the business of selling vending machines; or misrepresenting in any manner the true nature of respondents' business activities.

8. Representing, directly or by implication, that a purchaser will receive an exclusive sales territory.

9. Representing, directly or by implication, that most top name brand candies and snacks can be vended through vending machines sold by respondents; or misrepresenting, in any manner, the type of merchandise which can be vended through vending machines sold by respondents.

10. Representing, directly or by implication, that any price charged for respondents' merchandise is a lower price than available from competing suppliers, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents' competing suppliers; or misrepresenting, in any manner, the prices charged by respondents or their competitors.

11. Failing to maintain adequate records

(a) which disclose the facts upon which comparative pricing claims are based, and

(b) from which the validity of any savings claims, including comparative pricing claims, can be determined.

12. Representing, directly or by implication, that an owner and operator of vending machines sold by respondents can easily sell his route at a profit or that respondents will resell the machines on his behalf; or misrepresenting, in any manner, the resale value of a vending machine route or resale assistance to be provided to owners and operators by respondents.

It is further ordered, That respondents:

a. Inform orally all prospective customers and provide in writing in all contracts that (1) the contract may be cancelled for any reason by notification to respondents in writing within three days from the date of execution and that (2) the contract is not final and binding until respondents have completely performed their obligations thereunder by placing the vending machines in locations satisfactory to the customer and said customer has thereafter signed a statement indicating his satisfaction.

b. Refund immediately all monies to (1) prospective customers who have requested contract cancellation in writing

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within three days from the execution thereof and to (2) prospective customers who have refused to sign statements indicating satisfaction with respondents' placement of the machines, and (3) prospective customers showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order.

It is further ordered, That corporate respondent shall forthwith distribute a copy of this order to each of its operating subsidiaries and divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries which may affect compliance obligations arising out of the order, or any other change in the corporation which may affect compliance obligations arising out of the 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.

IN THE MATTER OF

RINDGE INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE