

Complaint

IN THE MATTER OF

NEIGHBORHOOD PERIODICAL CLUB, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2246. Complaint, July 11, 1972—Decision, July 11, 1972.*

Consent order requiring a Cincinnati, Ohio, seller and distributor of magazines and periodicals to cease, among other things, representing salesmen were conducting surveys or representing bona fide non-commercial organizations, when in fact, they were selling magazine subscriptions; representing publications and gift subscriptions as being free, when in fact, their cost was included in the price of the subscription contract; failing to cancel, upon request, a contract when representation has been made that the contract will be cancellable; misrepresenting the nature, kind or legal characteristics of any document; representing that any price is a special or reduced price unless it constitutes a significant reduction from respondent's established selling price; misrepresenting the action to be taken to effect payment of any alleged debt; and failing to disclose on any sales contract, adjacent to the customer's signature, the total cash price, the downpayment, the unpaid balance and the number or period of payments scheduled.

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 Neighborhood Periodical Club, Inc., a corporation, hereinafter referred to as respondent, has 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. Neighborhood Periodical Club, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New York, with its office and principle place of business located at 733 Washington Road, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is engaged in the business of selling and distributing magazines and periodicals to the general public through its franchisees and sub-franchisees, sometimes referred to as Regional Franchise Operators (RFOs) and Local Franchise Operators (LFOs). Subscription contracts are sold on an installment basis (PDS) for a large number of publications through telephone and door-to-door solicitations. Respondent authorizes the use of four trade names under which subscriptions can be solicited and written: Premium Readers?

Service, QM Readers' Service, Neighborhood Periodical Club, and Neighborhood Readers' Service.

PAR. 3. In the course and conduct of its business of selling magazines and distributing periodicals, respondent has entered into franchise agreements with various individuals and firms, and through representatives engaged by or through franchisees and sub-franchisees, have induced members of the general public to subscribe to various publications.

Respondents, through its said franchisees, sub-franchisees, and representatives engaged by or through said franchisees and sub-franchisees, place into operation and, through various direct and indirect means and devices, control, direct and implement sales methods whereby members of the general public are contacted by telephone calls and door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts purporting to list publications of the purchasers' choice, a stated subscription period for each, and the terms and conditions for payments by installments for the purchase price.

The executed subscription contracts are thereafter forwarded through various representatives engaged by or for the franchisees and sub-franchisees to respondent for processing in the usual course of respondents' business. Respondent accepts the revenues flowing from said circulation, sale and distribution of the various publications offered.

In the manner aforesaid, respondent dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts, practices and policies hereinafter set forth of the franchisees, sub-franchisees, and their representatives engaged by or through said franchisees and sub-franchisees, hereinafter referred to as respondent's representatives.

PAR. 4. In the course and conduct of its business as aforesaid, respondent through its representatives, solicit subscriptions for magazines in the various States of the United States. Respondent now, and for some time last past, has transmitted and received, and caused to be transmitted and received, during the course of selling subscriptions, contracts, checks, collection notices and various other kinds of commercial paper and documents in commerce. The subscription contracts sold by respondents' representatives are sent from various states to respondent's place of business in the State of Pennsylvania and are then forwarded by respondent to various publishers, many of whom are located in states other than the State of Pennsylvania. Respondent thereby maintains, and at all times mentioned herein has maintained, a sub-

stantial course of trade in the sale of magazine subscriptions in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business as aforesaid, and for the purpose of inducing members of the general public to sign subscription contracts, respondent and its representatives utilize or display sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondent. In conjunction therewith, respondent and its representatives have made oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of the solicitor. In the foregoing manner, respondent and its representatives have represented, directly or indirectly:

(a) That they are primarily conducting or participating in bona fide surveys, quizzes or contests.

(b) That their offers are being made only to specially selected persons.

(c) That they represent, or are performing services for bona fide non-commercial organizations.

(d) That publications or other products will be given free, or for the cost of mailing, handling, editing or printing said publications, or at special or reduced prices.

(e) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

(f) That a free gift subscription to a publication will be sent to a subscriber's friend or relative.

PAR. 6. In truth and in fact:

(a) Said representatives were not primarily conducting or participating in bona fide surveys, quizzes or contests, but to the contrary, were, and are, engaged in inducing the general public to sign subscription contracts in the manner aforesaid.

(b) Respondent's said offers were not being made only to specially selected persons, but to the contrary, were made to numerous members of the general public through frequent solicitations of broad segments thereof.

(c) Said representatives neither represented nor performed services for bona fide non-commercial organizations, but to the contrary, represented or performed services for respondent in the manner aforesaid.

(d) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing or printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondent's regular or prevailing subscription contract prices.

(e) On a substantial number of occasions subscribers were not allowed to cancel their subscription contracts or were only allowed to do so after extended delay.

(f) Gift subscriptions to a person designated by the subscribers were not given free, but to the contrary, the cost of said gift subscriptions were included within the price of the subscription contract.

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

PAR. 7. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of and payment for said publications by the general public, respondent and its representatives, directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis in conjunction with statements of typical subscription periods as, for example, a cost of "50 cents per week" and a period of 60 months. Respondent and its representatives falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances they have induced customers to sign a subscription contract by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, or a document of an import or nature other than a subscription contract.

(c) In their efforts to collect what respondent and its representatives elect to treat as delinquent accounts of customers who have been induced to sign subscription contracts, they have resorted to telephone calls at unreasonable hours and other forms of harassment, by means of which they have unfairly, falsely and deceptively represented, directly or indirectly:

(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made;

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment; and

(3) That the failure of a customer to remit money to respondent will result in said customer's account being turned over to a bona fide, independent collection agency for collection.

In truth and in fact, respondent and its representatives seldom, if ever, take any action, including legal action or referral of said accounts to a bona fide, independent collection agency, which adversely affects the general or public credit rating of such subscribers.

(d) In a substantial number of instances, respondent has substituted publications for those originally contracted for by subscribers without first giving the subscriber an option to choose the substituted magazine or other publication, or to receive a full return with respect to the pro rata portion of the contract price representing the price of the undelivered issues of that magazine or other publication.

(e) In a substantial number of instances, respondent and its salesmen and solicitors have induced persons to sign subscription contracts without clearly, conspicuously, and adequately designating and disclosing:

- (1) the total cash price,
- (2) the downpayment,
- (3) the unpaid balance of the cash price,
- (4) the number, amount, and due dates or period of payments scheduled to satisfy the payment of the contract.

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

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondent has engaged in door-to-door solicitations of magazines subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazine subscriptions, and without either:

(a) Affirmatively stating and affording such purchasers the right to cancel any resulting subscription contract for a period of not less than 72 hours, or

(b) By refusing to honor any such right purportedly given either orally or in writing, or thwarting the exercise of any right so given. The solicitation of a subscription sale without permitting cancellation within a reasonable time constitutes an unfair, false, misleading and deceptive practice where such sale involves long term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

Therefore, respondent's acts and practices as set forth herein were,

and are, unfair, false, misleading and deceptive acts and practices.

PAR. 9. By and through the use of the aforesaid acts and practices, respondent places in the hands of 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. 10. In the course and conduct of their business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by respondent.

PAR. 11. The use by respondent of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and its 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 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 done.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's 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 respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, and 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 Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Neighborhood Periodical Club, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Fourth and Walnut Streets, Cincinnati, Ohio.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Neighborhood Periodical Club, Inc., a corporation and its officers, representatives, employees, successor or assigns, franchisees, sub-franchisees, salesmen, agents or solicitors, and the men, agents or solicitors engaged by or through respondents' franchisees or sub-franchisees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of magazines or any other publications or merchandise, or subscription to purchase any such magazines or services, or in the collection or attempted collection of any delinquent or other subscription contract or other account, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondents are primarily conducting or participating in any survey, quiz or contest, or primarily are engaged in any activity other than soliciting business; or misrepresenting, in any manner, the purpose of the call or solicitation.
2. Representing, directly or indirectly, that any offer to sell said products or services is being made only to specially selected persons; or misrepresenting, in any manner, the persons or class of persons afforded the opportunity of purchasing respondents' products or services.
3. Representing that any sale or service is being performed for any organization, individual or firm other than one engaged in soliciting magazine subscriptions; or misrepresenting, in any

manner, the identity of the solicitor or of his firm and of the business they are engaged in.

4. Representing, directly or indirectly, that any merchandise or service is free, or is provided as a gift to either the subscriber or a person designated by him, or without cost or that any merchandise or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase any merchandise, or combination of merchandise or service, unless the stated price of the merchandise or service or combination thereof required to be purchased in order to obtain such free merchandise or gift is the same or less than the customary and usual price at which such merchandise or service or combination thereof required to be purchased has been sold separately from such free or gift item, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

5. Representing that any price is a special or reduced price unless it constitutes a significant reduction from respondent's established selling price at which such product or service has been sold in substantial quantities in the recent and regular course of trade; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers, or that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost.

6. Refusing or failing upon request to cancel a contract when the representation has been made, either directly or indirectly, that the contract will be cancellable.

7. Failing, clearly and unqualifiedly, to reveal at the initial contact or solicitation, and at all subsequent contacts or solicitations, of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, written or printed communication, or person-to-person, that the purpose of such contact or solicitation is to sell publications, products or services, as the case may be, which purpose shall be identified with particularity at the time of each such contact or solicitation.

8. Making any reference or statement concerning "50¢ per week," "60 months," or any other statement as to a sum of money or duration or period of time in connection with a subscription contract or other purchase agreement which does not in fact provide, at the option of the purchaser, for the payment of the stated sum, at the stated interval, and over the stated duration or period

Decision and Order

of time; or misrepresenting, in any manner, the terms, conditions, method, rate or time of payment actually made available to purchasers or prospective purchasers.

9. Representing, directly or indirectly, that a subscription contract or other purchase agreement is a "preference list," "guarantee" "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or legal characteristics of any documents.

10. Failing, clearly and unqualifiedly, to reveal orally to each purchaser or prospective purchaser before execution, and in writing on each document, the identity and nature of any document, such as a "contract" they are requested or required to execute in connection with the purchase of any product or service; and orally that the terms of any such document are binding on the parties to the document.

11. Harassing customers in order to effect payment of any account by any means, including the following:

(a) Repeated telephone calls within the same day or week, abusive telephone calls, or telephone calls at unreasonable hours.

(b) The use of forms or any other items of printed or written matter purporting to be legal documents or process.

(c) Representations, direct or indirect, that in the event of non-payment or delinquency of any account or alleged debt arising from any subscription contract or other purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless respondents refer the information concerning such delinquency to a bona fide credit reporting agency.

(d) Representing that legal action may be instituted unless it is intended in good faith that such legal action be instituted; or misrepresenting in any manner the action to be taken or results of any action which may be taken to effect payment of any such account or alleged debt.

12. Contracting for any sale in the form of a subscription contract or other purchase agreement which shall become binding on the purchaser prior to a period of time not less than 72 hours after the date of signing by the purchaser.

13. Failing to disclose orally prior to the time of sale, and in writing on any subscription contract or other agreement with such conspicuousness and clarity as will be likely to be observed and read by such purchaser, that the purchaser may rescind or

Decision and Order

81 F.T.C.

and cancel the sale by directing or mailing a notice of cancellation to the respondent's or seller's address prior to 72 hours after the date of signing by the purchaser.

14. Failing to provide either on the contract or on a separate sheet a clearly understandable form which the purchaser may use as a notice of cancellation.

15. If coupon books are used, failing to include with each coupon book furnished to a subscriber:

(a) a legend, on the cover, stating "check the number of coupons in this book and their amounts against your original subscription contract: (See Page 1)."

(b) a statement, on the first separate inside page, showing the total number of coupons in the book, the dollar amount of each coupon and the total dollar amount of all such coupons;

(c) the address, on the cover or first separate inside page, of respondent, its successors, assigns or seller of the products.

16. Failing to furnish to each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing the exact number and name of the magazines or other publications to which the purchaser is subscribing, the number of issues for each, and the total price for each magazine subscription and for all such magazines; *Provided, however*, as an alternative, the total price for each magazine subscription may be furnished on a separate schedule attached to each of said contracts.

17. Cancelling a subscription contract for any reason other than a breach by the subscriber without either arranging 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.

18. In the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications, or the extension of subscription periods of magazines already selected.

19. Failing or refusing to cancel, at the subscriber's request all or any portion of a subscription contract whenever respondent in good faith finds that any misrepresentation prohibited by this order has been made.

20. Failing to clearly, conspicuously, and adequately designate and disclose both orally, and in writing on the subscription con-

tract on the same side of the page and above or adjacent to the place for the customer's signature:

- (a) the total cash price,
- (b) the downpayment,
- (c) the unpaid balance of the cash price,
- (d) the amount financed, if any,
- (e) the rate of the finance charge, if any, expressed as the annual percentage rate, and
- (f) the number, amount, and due dates or period of payments scheduled to satisfy the payment of the contract.

21. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner or by the acts and practices prohibited by this order.

It is further ordered:

(a) That respondent herein deliver, or have delivered, a copy of this order, or the contents of this order, to each of its present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order.

(b) That respondent herein deliver or have delivered to each person so described in Paragraph (a) above a form clearly stating such person's intention to be bound by and to conform his business practices to the requirements of this order, a copy of which shall be forwarded to the respondent.

(c) That respondent inform or have informed all such present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, or other representatives who sell, promote or distribute the products or services included in this order that the respondent shall not use any third party, or the services of any third party for the solicitation of magazine subscriptions unless such third party agrees that it will be bound by the provisions contained in this order and the respondent is so informed.

(d) If such third party will not so agree the respondent shall not use such third party or the services of such third party to solicit subscriptions.

(e) That respondent so inform or have informed the persons so engaged that the respondent is obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order.

(f) That respondent institute a program of continuing surveillance to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order; and

(g) That respondent upon receiving information or knowledge from any source concerning two or more bona fide complaints prohibited by this order against any franchisee, his employees or agents during any one-month period will be responsible for either ending said practices or securing the termination of the franchisee or the employment of the offending employee or agent.

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

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth the manner and form in which it has complied with this order.