

Complaint

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IN THE MATTER OF

STEVEN LEWIS, DOING BUSINESS AS THE STEVEN LEWIS
COMPANY, ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2286. Complaint, Sept. 19, 1972—Decision, Sept. 19, 1972.*

Consent order requiring two former Hollywood, California, franchisors of distributorships for cologne and other products and their successor firm, among other things to cease representing the past earnings of distributors or franchisees unless past earnings represent a substantial number of distributors or franchisees; misrepresenting the amount of time and effort respondents will spend to obtain accounts for their distributors or franchisees; misrepresenting the prior experience or necessary training required by distributors or franchisees; misrepresenting the prior experience or necessary training required by distributors or franchisees in order to operate successfully; and misrepresenting the nature, character, performance or efficacy of any product. Respondents are further required to furnish all prospective franchisees with a written statement giving, among other things, rights and obligations of all parties, complete financial details of the agreement, and a list of previous purchasers. Also, franchisees must be allowed five days in which to cancel the contract for any reason with a refund of all monies by respondent.

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 Steven Lewis, an individual formerly trading and doing business as the Steven Lewis Company, a sole proprietorship; Twenty First Century Industries, Inc., a corporation; and Steven Lewis, individually and as an officer of said corporation, herein 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 Steven Lewis is an individual formerly trading and doing business as The Steven Lewis Company with its principal office and place of business formerly located at 6565 Sunset Boulevard, Hollywood, California.

Respondent Twenty First Century Industries, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of California, with its principal office and

place of business formerly located at 6565 Sunset Boulevard, Hollywood, California. Respondent Twenty First Century Industries, Inc., was the successor in interest to the business of the Steven Lewis Company having purchased all of the assets of said company on or about March 31, 1969.

Respondent Steven Lewis is president and majority stockholder of the corporate respondent. He formulated, directed and controlled the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His present address is 205 Third Avenue, New York, New York.

PAR. 2. Prior to the corporate respondents' purchase of the assets of the Steven Lewis Company, the respondent Steven Lewis, trading and doing business as the Steven Lewis Company had been engaged in the advertising, offering for sale, sale and distribution of men's cologne and greeting cards and in the advertising, offering for sale, and sale of distributorships or franchises for said products to members of the public.

Respondent Twenty First Century Industries, Inc., was, and for some time in the past had been, engaged in the offering for sale, sale and distribution of men's cologne, Ronson products and Life Breathers and in the advertising, offering for sale, and sale of distributorships or franchises for said products to members of the public.

PAR. 3. In the course and conduct of their business respondents caused, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of California and their suppliers' places of business in the State of California, and other states, to purchasers thereof located in various other States of the United States. In addition, in the course and conduct of their business, respondents have disseminated and caused to be disseminated in newspapers of interstate circulation, advertisements designed to be read by persons residing outside the State of California and intended to induce such persons to enter into contractual agreements with respondents to purchase distributorships or franchises and products from respondents. Respondents also introduced into interstate circulation, through the instrumentality of the United States mails, promotional material, circulars, business papers and contracts with the resultant effect that members of the public residing outside the State of California did in fact purchase respondents' distributorships or franchises and products utilizing the instrumentality of the United States mails to consummate said contractual agreements and purchases, thereby placing respondents in business in commerce within the intent and meaning of Section 5 of the Federal Trade Commis-

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sion Act. Respondents have maintained, and at all times mentioned herein maintained, a substantial course of trade in products, distributorships or franchises, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their distributorships or franchises and products, respondents have made numerous statements and representations in promotional material and in newspaper advertisements.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following:

Distributor wanted. Income potential \$15,000 possible. Part or full time. Join a manufacturer of nationally advertised name brand men's products, which are to be sold through established retail stores in your area. You will be trained and guided to take care of all reorders, deliveries, and collect high cash profits. An investment of \$2,940 can put you into this booming money making industry.

No experience required, can be handled from home, spare time, and built into a full time lucrative business of your own with a \$15,000-\$20,000 potential without sacrificing present income.

Immediate Cash Income! Spare time—No selling. We seek reliable persons of good standing to own a business of their own and spend 6-8 hours a week collecting cash and refilling merchandise from company established accounts in their own area.

The appointed person will receive intensive field training and aid from a company executive.

Join a nationally advertised manufacturer of name brand toiletries. This is one of the nations leading growth industries, and you will service and collect high cash profits from leading stores in your community turned over to you by the company.

Restore the breath of life with the Life Breather. Every year, thousands of men, women and children die due to asphyxiation. Drowning, heart attack, electrical shock, smoke and poison gas inhalation are the major causes. These fatalities might have been prevented by use of General Medical Devices' dramatic new resuscitator, the Life Breather.

The Life Breather quickly clears the victim's air passages and gets him breathing free and easy.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented directly or by implication:

A. That persons who purchase a distributorship or franchise from respondents can earn \$15,000 to \$20,000 a year in their spare time or full time.

B. That said earnings projections are the earnings made by a significant number of persons who have purchased and operated respondents' distributorships or franchises.

C. That respondents will secure profitable customers for purchasers of respondents' distributorships or franchises.

D. That prior business experience is neither required nor necessary to operate and maintain the distributorship or franchise successfully.

E. That purchasers of respondents' distributorships or franchises will not be required to sell products or engage in sales activities with potential customers in order to operate and maintain the distributorship or franchise successfully.

F. That purchasers of respondents' distributorships or franchises will be trained in the operation of their distributorship or franchise by respondents.

G. That respondents' Life Breather product is an effective device for the prevention of death or injury from asphyxiation due to drowning, heart attack, electrical shock, poisonous gas inhalation or other causes.

PAR. 6. In truth and in fact:

A. Relatively few, if any, persons who purchased a distributorship or franchise from respondents earned \$15,000 to \$20,000 a year in their spare time or full time.

B. Respondents' claimed earnings projections are far in excess of the earnings of any person or persons who purchased and operated respondents' distributorships or franchises.

C. In the vast majority of instances, respondents did not secure profitable customers for purchasers of respondents' distributorships or franchises.

D. Prior business experience is necessary in order for purchasers of respondents' distributorships or franchises to operate and maintain the distributorship or franchise successfully.

E. Purchasers of respondents' distributorships or franchises are required to sell products and engage in sales activities with potential customers in order to operate and maintain the distributorship or franchise successfully.

F. Respondents did not provide purchasers of their distributorships or franchises with the training necessary for the operation of their distributorship or franchise.

G. Respondents' Life Breather product is not an effective device for the prevention of death or injury from asphyxiation due to drowning, heart attack, electrical shock, poisonous gas inhalation and other causes.

Said statements and representations were therefore, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their dis-

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tributorships or franchises and products, respondents, their agents, representatives or employees, or any of them, have made oral statements and representations.

Among and typical of the statements and representations made by respondents, their agents, representatives or employees, or any of them, but not all inclusive thereof are the following:

A. That respondents will initially provide a specific number of customers or accounts for each distributor or franchisee and will obtain initial orders for merchandise from said customers or accounts on an open account basis with payment to be remitted directly to the distributor or franchisee.

B. That merchandise and/or sales aids purchased from respondents by respondents' distributors or franchisees will be delivered to said distributors or franchisees on or before a particular date or within a specified time period.

C. That respondents will provide its distributors or franchisees with sales and promotional literature relating to the products said distributors or franchisees purchase from respondents.

D. That respondents will provide instruction manuals and/or guarantee forms with certain products purchased from respondents by respondents' distributors or franchisees.

E. That respondents will provide national and local advertising of the products purchased by their distributors or franchisees.

PAR. 8. In truth and in fact:

A. In a substantial number of instances, respondents did not secure the agreed upon number of customers or accounts for a distributor or franchisee and in a substantial number of instances the customers or accounts respondents did obtain, did not order or receive initial deliveries of merchandise on an open account basis with payment to be remitted directly to the distributor or franchisee but instead accepted the merchandise conditionally on a consignment basis.

B. In a substantial number of instances, respondents did not deliver, to distributors or franchisees, the merchandise and/or sales aids purchased from respondents by said distributors or franchisees on or before the date specified or within the time period specified.

C. In a substantial number of instances, respondents failed to provide distributors or franchisees with the sales and promotional literature relating to the products purchased from respondents by respondents' distributors or franchisees.

D. In a substantial number of instances, respondents failed to provide distributors or franchisees with instruction manuals and/or guarantee forms for certain products purchased from respondents by respondents' distributors or franchisees.

E. Very few, if any, local or national advertisements, or advertisements of any kind, were published or disseminated by respondents for products purchased from respondents by respondents' distributors or franchisees.

Said statements and representations were, therefore, false, misleading and deceptive.

PAR. 9. In the further course and conduct of their business and in furtherance of their purpose of inducing the purchase of, and payment for distributorships, franchises and products, respondents falsely and deceptively failed to disclose to prospective purchasers of respondents' distributorships, franchises and products prior to the consummation of any contract between respondents and any such prospective distributor or franchisee certain material facts which would assist such prospects in evaluating the probabilities of their success as distributors or franchisees and which would lessen the potential for deception, including: a detailed explanation of the rights and obligations of the parties under the distributor or franchise agreement; the financial details pertaining to the distributor or franchise agreement including the amount to be paid by the distributor or franchisee for the distributorship or franchise, the amount to be paid for any services to be rendered by respondents and the amount to be paid for any merchandise offered for sale or sold thereunder; as well as significant information relating to the success or failure and business experience of prior purchasers of respondents' distributorships or franchises.

PAR. 10. The use by respondents of the aforesaid unfair and false and misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, has had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of respondents' distributorships or franchises and products by reason of said erroneous and mistaken belief and unfairly into the assumption of obligations and the payment of monies which they might otherwise not have incurred.

PAR. 11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of distributorships or franchises and products of the same general kind and nature as those sold by respondents.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted 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 New York Regional Office 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 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 Steven Lewis is an individual formerly trading and doing business as the Steven Lewis Company with its office and principal place of business formerly located at 6565 Sunset Boulevard, Hollywood, California.

Respondent Twenty First Century Industries, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of California, with its office and principal place of business formerly located at 6565 Sunset Boulevard, Hollywood, California.

Respondent Steven Lewis is an officer of the corporate respondent. He formulated, directed and controlled the policies, acts and practices of said corporation. His address is 205 Third Avenue, New York, New York.

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, Steven Lewis, an individual formerly trading and doing business as the Stevens Lewis Company, and Twenty First Century Industries, Inc., a corporation and its officers, and Steven Lewis, individually and as an officer of said corporation, their successors and assigns, and respondents' officers, agents, representatives and employees, directly or through any corporate or other device or through any distributor or franchisee, in connection with the advertising, offering for sale, sale or distribution of men's cologne, Ronson products, Life Breathers, greeting cards or any other products or of distributorships or franchises in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or by implication:

A. Representing that distributors or franchisees will earn or can reasonably expect to earn or receive any stated or gross or net amount of earnings or profits; or representing, in any manner, the past earnings of distributors or franchisees unless in fact the past earnings represented are those of a substantial number of distributors or franchisees and accurately reflect the average earnings of said distributors or franchisees under circumstances similar to those of the person to whom the representation is made.

B. Representing that respondents, their agents, representatives or employees will secure profitable customers or accounts for purchasers of respondents' distributorships or franchises or misrepresenting, in any manner, the amount of time and effort respondents will spend in attempting to obtain such customers or accounts for their distributors or franchisees.

C. Representing that purchasers of respondents' distributorships or franchises will not be required to sell products or engage in sales activities with potential customers in order to operate and maintain the distributorship or franchise successfully or misrepresenting, in any manner, the amount and type of work required of distributors or franchisees in order to operate and maintain the distributorship or franchise successfully.

D. Representing that prior business experience is not required of purchasers of respondents' distributorships or franchises in order to operate and maintain the distributorship or franchise successfully or misrepresenting, in any manner, the prior experience required of distributors or franchisees in order to operate and maintain the distributorship or franchise successfully.

E. Representing that purchasers of respondents' distributorships or franchises will be trained in the operation of their distributorship or franchise or misrepresenting, in any manner, the quality, amount or nature of respondents' contribution to the training of their distributors or franchisees.

F. Representing that respondents' Life Breather product is an effective device for the prevention of death or injury from asphyxiation or otherwise misrepresenting, in any manner, the nature, character, performance or efficacy of any product.

2. Representing that respondents will secure cash sale or open account sale customers or accounts, for each distributor or franchisee, or will obtain orders for merchandise for each distributor or franchisee from customers or accounts with payment to be remitted directly to the distributor or franchisee or misrepresenting, in any manner, the number or type of customers or accounts respondents will secure or the selling services or assistance that respondents will provide their distributors or franchisees.

3. Representing that any product or products or sales aids, offered for sale or sold by respondents to their distributors or franchisees, will be delivered to said distributors or franchisees on or before a particular date, or within a specified time period, unless respondents have available, or in stock, all such products or sales aids in quantities sufficient to meet all reasonably anticipated orders.

4. Representing that respondents will provide their distributors or franchisees with sales literature, promotional literature, instruction manuals, guarantee forms or any other material relating to products offered for sale or sold by respondents to their distributors or franchisees unless respondents have on hand or in stock all such literature, manuals, forms or such other material in quantities sufficient to meet the reasonable requirements of the distributors or franchisees to whom such representations are made or misrepresenting, in any manner, the amount and type of additional materials respondents will provide their distributors or franchisees along with the products offered for sale or sold by respondents to their distributors or franchisees.

5. Representing that respondents will provide national and local advertising of the products offered for sale or sold by respondents to their distributors or franchisees or misrepresenting, in any manner, the extent, type and method of promotion and services provided by respondents in connection with the advertising of products offered for sale or sold by respondents to their distributors or franchisees or misrepresenting, in any manner, the media in which said advertising has appeared or will appear.

6. Failing to furnish any prospective distributor or franchisee, in a separate written statement in a clear and concise manner, prior to the consummation of any contract between respondents and any such prospective distributor or franchisee:

A. A detailed statement setting forth all the rights and obligations of the parties under the distributor or franchise agreement.

B. Complete financial details pertaining to the distributor or franchise agreement including the amount to be paid by the distributor or franchisee for the distributorship or franchise, the amount to be paid for any services to be rendered by respondents and the amount to be paid for any merchandise offered for sale or sold thereunder.

C. A list of the names and addresses of all persons who, in the two calendar years immediately preceding, purchased a distributorship or franchise, for products or product lines similar to, or the same as, those being offered by respondents to any prospective distributor or franchisee, and the gross dollar volume of purchases of such products from respondents, by each such distributor or franchisee, in each of said calendar years, exclusive of the dollar amount of merchandise purchased and paid for at the time of the purchase of the distributorship or franchise.

7. Failing to disclose, in each contract for the sale of a distributorship or franchise, to those prospective distributors or franchisees whose accounts will be obtained on a consignment basis, that said accounts will not be cash sale or open account sale customers or accounts, but will be consignment accounts and that merchandise so placed or delivered may be returned to the distributor or franchisee.

It is further ordered, That respondents:

1. Inform all prospective purchasers of distributorships, franchises or merchandise, orally and provide in writing in all contracts that, (1) the contract may be cancelled for any reason by

mailing a notice of cancellation to respondents' business address prior to midnight of the fifth day following the date upon which the purchaser signed the distributor or franchise agreement.

2. Promptly refund all monies to distributors, franchisees or customers who have requested contract cancellation in accordance with the provisions of Paragraph One above.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

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

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' distributorships, franchises or products or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the corporate respondent distribute a copy of this order to each of its operating divisions or departments.

It is further ordered, That the 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.

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IN THE MATTER OF

CREDIT BUREAU OF LORAIN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FAIR CREDIT REPORTING ACTS

Docket C-2287. Complaint, Sept. 19, 1972—Decision, Sept. 19, 1972.

Consent order requiring a Lorain, Ohio, credit bureau among other things to cease violating the Fair Credit Reporting Act by failing to require users of consumer reports to identify themselves and certify in writing the purpose for which the information is sought and not used for any other purpose; failing to incorporate in "Membership Contracts" that information will be requested only for the members' exclusive use in connection with the extension of credit, employment, insurance, governmental use, or other legitimate business transaction involving the consumer; failing to require non-consumer credit customers to furnish required information; failing to forbid employees to obtain reports on themselves or associates; and failing to cease doing business with any user of the reports who does not follow the procedures specified by this order.

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Credit Bureau of Lorain, Inc., a corporation, and Harry C. Koller, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Credit Bureau of Lorain, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 314 9th Street, Lorain, Ohio.

Respondent Harry C. Koller is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for sometime in the past have been, for monetary fees and/or dues, regularly engaged in the practice of assembling or evaluating information on consumers for the purpose of furnishing to third parties consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act. Re-