

IN THE MATTER OF
ESTELLE COHEN, TRADING AS INCOME TAX PREPARATION
CO., ET AL.

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

Docket C-2326. Complaint, Dec. 1, 1972—Decision, Dec. 1, 1972

Consent order requiring a New York City personal income tax preparation service, among other things to cease misrepresenting the terms and conditions of any guarantees; representing that respondent will reimburse customers for any additional payments because of mistakes made on tax returns; failing to disclose respondents' responsibility for, or obligation resulting from, errors attributable to respondents' preparation of tax returns; and misrepresenting the training, competence, or ability of respondents' tax-preparing personnel.

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 Estelle Cohen, an individual trading and doing business as Income Tax Preparation Co., and Leonard Cohen, individually, and as manager of said company 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 Estelle Cohen is an individual trading and doing business as Income Tax Preparation Co. Respondent Leonard Cohen is her husband, and as manager of said company he formulates, directs and controls its policies, acts and practices. Their address, and that of the office and principal place of business of the company, is 146 East 46th Street, New York, New York.

PAR. 2. Respondents are now, and for some time last past, have been engaged in the advertising, offering for sale and sale of personal income tax preparation services.

Respondents and their employees sell their aforesaid services directly to the public during the tax season at 40 different locations.

PAR. 3. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said income tax preparation services by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said income tax preparation services.

PAR. 4. Among the advertisements disseminated in the aforesaid manner, are certain newspaper and classified telephone directory insertions. These advertisements contain certain statements and representations respecting a guarantee, and the expertise of their employees. Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

a. Newspaper:

PREPARED BY EXPERTS

All returns prepared by us are guaranteed for Accuracy and Correctness. We will pay cost of any penalties arising from guarantee.

b. Classified telephone directory:

INCOME TAX PREPARATION CO.

Our professional know-how will get you all of your deductions.

* * * * *

Complaint

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ALL TYPES TAX RETURNS for INDIVIDUALS, COMPANIES and CORPORATIONS Prepared Quickly, Accurately, Efficiently, Confidentially
We Represent You At Audits & Examinations.

OUR PLEDGE:

All returns prepared by us are checked for accuracy and correctness. Based upon information supplied, we will pay cost of any penalty arising from this statement.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. Respondents will reimburse taxpayers for all payments the taxpayers are required to make in addition to their initial tax payments, if the additional payments result from an error made by respondents and their employees in the preparation of tax returns.

2. Respondents' tax preparers are specially trained and unusually competent in preparing tax returns and giving tax advice, and that they have the ability and capacity to prepare complex tax returns and give advice regarding complex and detailed income tax returns.

PAR. 6. In truth and in fact:

1. Respondents reimburse taxpayers only for penalties and interest assessed against them by the Internal Revenue Service. Respondents do not pay the additional tax that taxpayers may have to pay as a result of errors committed by them or their tax preparers.

2. Many of respondents' tax preparers are seasonal employees, who are not specially trained or unusually competent in preparing tax returns and giving tax advice, and such tax preparers do not have the ability and capacity to prepare complex tax returns and give advice regarding complex and detailed income tax returns.

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

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of income tax preparation services of the same general kind and nature.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations, and unfair acts and practices, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 9. 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 have 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 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 Section 5 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 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 on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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 Estelle Cohen is an individual trading and doing business as Income Tax Preparation Co. Respondent Leonard Cohen is her husband, and as manager of said company he formulates, directs and controls its policies, acts and practices. Their address, and that of the office and principal place of business of the company, is 146 East 46th Street, 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, Estelle Cohen, an individual trading and doing business as Income Tax Preparation Co., and Leonard Cohen, individually, and as manager of said company, their successors and assigns, and their agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in or in connection with the advertising, offering for sale, and sale of income tax preparation services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any guarantee without clearly and conspicuously disclosing the terms, conditions and limitations of any such guarantee; or misrepresenting, in any manner, the terms and conditions of any guarantee.

2. Representing, directly or by implication, that respondents will reimburse their customers for all payments the customers may be required to make in addition to their initial tax payments, in instances where the additional payments result from an error by respondents in the preparation of the tax return; *Provided, however,* nothing herein shall prevent truthful representations that respondents will reimburse their customers for penalty or interest payments resulting from respondents' error.

3. Failing to disclose, clearly and conspicuously, whenever respondents make any representation, directly or by implication, as to their responsibility for, or obligation resulting from, errors attributable to respondents in the preparation of tax returns, that respondents will not assume the liability for additional taxes assessed against the taxpayer.

4. Representing, directly or by implication, that respondents' tax-preparing personnel are specially trained or unusually competent in the preparation of tax returns and the giving of tax advice: or that they have the ability and capacity to prepare and give advice concerning complex and detailed income tax returns; or misrepresenting, in any manner, the competence or ability of respondents' tax-preparing personnel.

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.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the respondents such

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