

Order

82 F.T.C.

typewritten pages and to participate in the oral argument before the Commission.

Commissioner Jones dissenting and Commissioner Dixon filing a separate statement.

IN THE MATTER OF
SUCCESS MOTIVATION INSTITUTE, INC., ET AL.

Docket C-1768. Order, Feb. 16, 1973.

Order denying respondents' petition to reopen the proceeding for the purpose of modifying Paragraph 4 of the order to cease and desist to permit compilation of required information only with respect to "full-time active" franchisees; reopening the proceeding for the purpose of modifying Paragraph 4 of the order to cease and desist; and modifying Paragraph 4 of the order to read as set forth.

ORDER

This matter is before the Commission on a petition to reopen filed on November 24, 1972, by Success Motivation Institute, Inc. and Paul J. Meyer pursuant to Section 3.72 (b) (2) of the Commission's Rules of Practice. Petitioners claim that changed conditions of fact and considerations of the public interest require that the order to cease and desist entered against them on July 14, 1970 [77 F.T.C. 943, 946], be altered and modified. The petition relates to Paragraph 4 of said order which requires disclosure of statistical information to prospective franchisees and distributors of petitioners. Specifically, the petition requests (1) that the requirement that information be compiled on a calendar year basis be modified to permit compilation on a fiscal year basis, and (2) that the requirement that information be compiled with respect to all franchisees and distributors be modified to permit compilation only with respect to "full-time active" franchisees and distributors. The Acting Director of the Bureau of Consumer Protection has filed an answer opposing only the second requested modification.

Upon consideration of the grounds given in support of the first modification sought by petitioners it would appear that the requirement that information be compiled on a calendar year basis would be unduly burdensome and that the modification requested would not effect a significant change in the order.

With respect to the second requested modification, petitioners allege that, unless notified, they have no way of knowing when a

franchisee or distributor may become inactive. They further allege that, as a consequence, the data required to be disclosed by subparagraphs 4(a) and 4(b) of the order is distorted by the inclusion of such inactive distributors.

The Commission finds petitioners' contention to be wholly without merit. The purpose of the order provisions under consideration is to prevent misrepresentations as to the probability of a prospective franchisee achieving success in the distribution of petitioners' product, including representations that petitioners' franchisees are uniformly successful and all enjoy substantial incomes from their distributorship. Elimination of all but full-time active franchisees from a statistical summary showing median and mean gross sales to franchisees and distributors and the turnover in such distributors would defeat this purpose.

For the foregoing reason, the Commission is of the opinion that petitioners have failed to establish that changed conditions of fact or law or public interest considerations warrant reopening of this proceeding for the purpose of altering or modifying the order to cease and desist to allow the data required to be disclosed to prospective franchisees and distributors by subparagraphs 4(a) and 4(b) to be computed on the basis of "full-time active" franchisees and distributors only. The Commission has determined, however, that Paragraph 4 of the order should be modified by changing "calendar year" to "fiscal year" and that it would be in the public interest to reopen the proceeding for that purpose.

Accordingly, it is ordered, That petitioners' request that the proceeding be reopened for the purpose of modifying Paragraph 4 of the order to permit compilation of required information only with respect to "full-time active" franchisees and distributors be, and it hereby is, denied.

It is further ordered, That this proceeding be reopened for the purpose of modifying Paragraph 4 of the order to cease and desist to permit compilation on a fiscal year basis of the information required to be disclosed thereby.

It is further ordered, That Paragraph 4 of the order to cease and desist in this matter be, and hereby is, modified to read as follows:

- (4) Failing to furnish to prospective franchisees or distributors reasonably prior to such persons agreeing to become franchisees or distributors, a written tabulation or statistical summary showing, on an accumulative and com-

Order

82 F.T.C.

parative basis for each fiscal year, beginning with the fiscal year 1966, for each of the corporate respondents' operating divisions the following information:

- (a) The median and mean gross sales to respondents' franchisees or distributors exclusive of initial inventories sold to new franchisees or distributors during the fiscal year.
- (b) The number of franchisees or distributors at the beginning of the fiscal year, the number appointed during the year, the number terminated during the year, the number retained at the end of the year, and the length of time that those retained at the end of the year have been respondents' franchisees or distributors.
- (c) The foregoing information shall be tabulated as a running 4 years analysis so that prospective franchisees or distributors will be furnished such information for the 4 fiscal years immediately preceding the year in which the information is to be furnished; *Provided, That*, the information for the fiscal year most recently completed prior to the year in which the information is to be furnished will be made available within 45 days of the close of that fiscal year.

IN THE MATTER OF

CONSOLIDATED SYSTEMS, INC., ET AL.

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

Docket 8867. Complaint, Oct. 19, 1971—Decision, Feb. 22, 1973.

Consent order requiring a Wawaka, Indiana, correspondence and in-residence school for truck driver training, among other things to cease misrepre-