

Complaint

IN THE MATTER OF

J. D. GRAMM, INC., ET AL.

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

Docket C-2363. Complaint, March 14, 1973—Decision, March 14, 1973.

Consent order requiring a Hialeah, Florida, personal income tax preparation service, among other things to cease representing that each customer's tax return carries an unconditional or unlimited guarantee of accuracy; misrepresenting the training and ability of respondent's employees; representing that respondent offers an auditing service; and representing that respondent's representatives are engaged in the income tax business on a full time, year round basis.

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 J.D. Gramm, Inc., a corporation, and David Goldberg and Virginia M. Goldberg, individually and as officers 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 be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent J.D. Gramm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 461 Hialeah Drive, Hialeah, Florida.

Respondents David Goldberg and Virginia M. Goldberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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 to the general public.

Respondents sell their aforesaid tax preparation services directly and through various affiliates and franchisees, hereinafter referred to for convenience as respondents' representatives.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, monies, contracts, business forms and other income tax preparation services, to be sent by United States mail from respondents' place of business in the State of Florida to their local offices and franchises and purchasers of respondents' tax preparation services located in various other States of the United States, and maintain and at all times mentioned herein have maintained a substantial course of trade in said services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents and their representatives 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. 5. In the course and conduct of respondents' business and for the purpose of inducing the purchase of said income tax preparation returns or services, respondents have made or caused to be made numerous statements and representations in newspaper and television advertisements.

Typical and illustrative of said statements made in respondents' newspaper and television advertisements, but not all inclusive thereof, are the following:

We do all the figuring. Fill in all your forms with guaranteed accuracy at the lowest possible tax.

He makes sure there are no mistakes—in fact, he guarantees it. Accuracy and satisfaction guaranteed as on all Gramm returns.

\$2.50 will put the income tax expert on your side.

Your return will be prepared by a highly experienced member of our audit staff.

Visit one of the many J. D. Gramm offices near you. It's their business all year long.

Mr. Gramm is around all year. 49 Great Offices to serve you throughout Florida.

Gramm's full time year round business is income tax.

PAR. 6. 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 and their representatives have represented, and are now representing, directly or by implication, that:

1. Each customer's tax return prepared by respondents or their representatives carries a guarantee of accuracy without conditions or limitations.

2. Respondents' and their representatives' tax preparing personnel are specially trained and are unusually competent in the preparation of all tax returns, or that they have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Respondents offer an auditing service and have on their staff tax preparing personnel who verify tax information submitted by their customers for tax preparation purposes.

4. All of respondents' representatives are engaged in the income tax business full time on a year round basis.

PAR. 7. In truth and in fact:

1. Each customer's tax return prepared by respondents or their representatives does not carry a guarantee of accuracy without conditions or limitations.

2. Respondents' and their representatives' tax preparing personnel are not specially trained and are not unusually competent in the preparation of all tax returns and they do not have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Respondents do not offer an auditing service nor do they have on their staff tax preparing personnel who verify tax information submitted by their customers for tax preparation purposes.

4. All of respondents' representatives are not engaged in the income tax business full time on a year round basis. Many of respondents' representatives are engaged in the income tax business full time only from January 1 to April 15 of each year.

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

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents and their representatives

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. 9. The use by respondents and their representatives 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' and their representatives' income tax preparation services by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondents and their representatives as herein alleged, were and are all to the prejudice and injury of the public and of respondents' and their representatives' 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta 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 J.D. Gramm, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 461 Hialeah Drive, Hialeah, Florida.

Respondents David Goldberg and Virginia M. Goldberg are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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 J.D. Gramm, Inc., a corporation, its successors and assigns and its officers, and David Goldberg and Virginia M. Goldberg, individually and as officers, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device or through their franchisees or licensees, in connection with the preparation of income tax returns, or other services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any customer's tax return prepared by respondents or respondents' representatives is guaranteed, unless the true nature, extent and duration of the 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; or making any representation that such returns are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

2. Representing, directly or by implication, that respon-

dents' and their representatives' tax preparing personnel are specially trained and are unusually competent in the preparation of all tax returns, or that they have the ability and capacity to prepare and give advice concerning unusually complex and detailed income tax returns.

3. Representing, directly or by implication, that respondents offer auditing services or that respondents verify tax information submitted by their customers for tax preparation purposes.

4. Representing, directly or by implication, that all respondents' representatives are engaged in the income tax business full time on a year round basis.

It is further ordered, That:

a. Respondents herein deliver a copy of this decision and order to each of their present and future employees, agents, representatives, franchisees or licensees and any other persons, partnerships or corporations authorized by respondents to engage in the commercial preparation of income tax returns.

b. Respondents inform each such person so described in paragraph a above that respondents are obligated by the terms of this order to notify the Commission of persons who continue on their own the deceptive practices prohibited by this order.

c. Respondents, in their continuing business dealings with each said person described in paragraph a., take note of any failure to observe the requirements of this order and advise the Federal Trade Commission of such failure.

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

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of their operating divisions.

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.