

Complaint

82 F.T.C.

IN THE MATTER OF
INTERNATIONAL MARKETING CORPORATION, ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2367. Complaint, Mar. 21, 1973—Decision, Mar. 21 1973.

Consent order requiring an Oklahoma City, Oklahoma, distributor and seller of personal improvement courses, among other things to cease misrepresenting that no special ability or aptitude is required to become a successful distributor; distributors will have no difficulty in selling respondents' products; and respondents' distributors are uniformly successful and enjoy substantial incomes. The order further requires respondent to administer a personality evaluation test and to evaluate the personal history of the prospect to determine his ability to be as successful as others have and to provide each prospect with the results reasonably in advance of the execution of a contract. Further, prospects must be given a three-day "cooling-off" cancellation period.

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 International Marketing Corporation, a corporation, and Charles M. Bisbee, individually and as an officer 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 International Marketing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas with its principal office and place of business located at 5900 Mosteller Drive, Suite 310, in the city of Oklahoma City, State of Oklahoma.

Respondent Charles M. Bisbee 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 the acts and practices hereinafter set forth. His 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, sale and distribution to retail distributors for resale to the purchasing

public of personal improvement courses consisting of printed matter and recordings.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Oklahoma to purchasers thereof 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents have engaged in, and now engage in, a continuing program of recruiting retail distributors or franchisees to sell respondents' products. Those persons who are successfully recruited by respondents are required to invest a substantial sum of money as a condition to being granted a franchise or distributorship to distribute respondents' products. The monies paid respondents include an amount to cover the cost of initial inventory of respondents' products.

Respondents solicit the sale of their distributorships or franchises in the following manner and by the following means. Respondents publish, or cause to be published, in magazines and newspapers of regional and national circulation, advertisements inviting inquiries from persons interested in becoming distributors. To persons who respond to such invitations, respondents send through the mail advertising and promotional material containing many statements and representations regarding respondents' products and the financial and other benefits to be enjoyed by persons who become franchisees or distributors of respondents' products. Persons, who express further interest, are mailed additional advertising and promotional material, and may receive a telephone sales presentation by one of respondents' sales representatives and may, in some instances, be invited to visit respondents' place of business.

PAR. 5. By and through the means of the statements and representations contained in the advertising and promotional material referred to in Paragraph Four hereof and statements and representations made by respondents' sales representatives during the course of oral sales presentations to prospective distributors, or franchisees, respondents, for the purpose of induc-

ing the sale of distributorships, or franchises, represent to such prospective distributors or franchisees:

(1) That no special ability or aptitude is required to become a successful distributor or franchisee other than the desire to succeed.

(2) That distributors or franchisees will encounter no difficulty in selling respondents' products.

(3) That respondents' distributors or franchisees are uniformly successful and all enjoy substantial income from their distributorships or franchises.

PAR. 6. In truth and in fact,

(1) The desire to succeed is not the only prerequisite to success as a franchisee or distributor of respondents' products.

Respondents' personal improvement courses and other products are intangibles and only persons who have the appropriate personality and verbal communications skills and other attributes of a successful intangible salesman in addition to the desire to succeed can be expected to become successful franchisees or distributors of respondents' products.

During the course of soliciting the purchase of a franchise or distributorship by a prospective franchisee or distributor, respondents make no bona fide effort to determine whether the prospective purchaser possesses the appropriate personality, verbal communications skills, and other attributes which would indicate that he possesses the potential of becoming a successful distributor or franchisee.

(2) Respondents' products are difficult to sell because of the intangible nature of such products.

(3) Respondents' franchisees or distributors are not uniformly successful and all do not enjoy a substantial income. While among respondents' franchisees or distributors may be some who achieve success and substantial income, there are a substantial number who do not achieve either. Further, respondents failed to disclose to prospective franchisees or distributors relevant information which would assist prospective franchisees or distributors in evaluating the probabilities of their success including, among other things, the median and mean gross sales to respondents' distributors or franchisees during the previous twelve-month period and the median and mean length of time that their franchisees or distributors have been associated with respondents.

Therefore, respondents' statements, representations, acts and practices as set forth above were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals in the sale of franchises or distributorships to persons interested in establishing their own businesses.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous mistaken belief that said statements and representations were and are true and in investing substantial sums of money in becoming franchisees or distributors of respondents' products, including the purchase of substantial quantities of respondents' products.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged, were and are all to the prejudice and injury of the public and of respondents' 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 New Orleans 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, International Marketing Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 5900 Mosteller Drive, Suite 310, Oklahoma City, Oklahoma.

Respondent, Charles M. Bisbee, is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

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 International Marketing Corporation, a corporation, and Charles M. Bisbee, individually and as an officer of said corporation, its successors and assigns, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or sale of franchises, licenses or distributorship to sell personal improvement courses, books, phonograph records, or any other product, or of the books, phonograph records, supplies or equipment for use in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that:

(a) No special ability or aptitude is required to become a successful franchisee or distributor of respondents' products; misrepresenting, directly or indirectly,

the experience, background, aptitudes or abilities required to become a successful franchisee, or distributor of respondents' products.

(b) Franchisees or distributors will encounter no difficulty in selling respondents' products; misrepresenting, directly or indirectly, the degree of effort required to sell respondents' products.

(c) Respondents' franchisees or distributors are uniformly successful and all enjoy substantial income; misrepresenting, directly or indirectly, the degree of success or amount of income realized by respondents' franchisees or distributors.

(d) Franchisees or distributors of respondents' products will earn or receive any stated or gross or net amount of earnings or profits; or representing, directly or indirectly, the past earnings of franchisees or distributors unless in fact the past earnings represented are those of a substantial number of franchisees or distributors in the community or geographical area in which such representations are made and accurately reflect the average earnings of these franchisees or distributors under circumstances similar to those of the prospective franchisee or distributor to whom the representation is made.

2. Using any deceptive scheme, device or plan to obtain leads to prospective franchisees or distributors or to induce persons to become franchisees or distributors.

3. (a) Failing to determine in good faith, prior to having a prospective franchisee or distributor enter into an agreement to become a franchisee or distributor of respondents' products, through the evaluation of the personal history of the prospect and the administration of personality evaluation tests, whether the prospect possesses the aptitude and abilities necessary to successfully sell respondents' products and to recruit other persons to sell respondents' products.

(b) Failing to inform prospective franchisees or distributors of the results of such evaluation and testing reasonably in advance of the execution of the agreement to become a franchisee or distributor.

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 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 12-month period preceding the month in which the information is to be furnished.

(b) The number of franchisees or distributors at the beginning of the 12-month period, the number appointed during the 12-month period, the number terminated during the 12-month period, the number retained at the end of the 12-month period, and the median and mean length of time that those retained at the end of the 12-month period have been respondents' franchisees or distributors.

5. Using any program which fails to:

(a) Inform each person orally before entering into any contract to participate in such program and disclose clearly and conspicuously in such written contract entered into with him that he may cancel for any reason by notification to respondents in writing within three business days from the date of execution of such contract.

(b) Refund immediately all monies to persons who:

(1) Cancel their contracts in accordance with paragraph (a); or

(2) Show that respondents' contract solicitation or performance were attended by or involved violation of any of the provisions of this order; *Provided, however*, That subpart (2) hereof shall not apply to such contracts entered into before the date of this order, nor shall the payments of refunds hereunder be construed as an admission that this order or any part thereof has been violated.

6. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the advertising or sale of franchises or distributorships to sell respondents' products, and failing to secure from each salesman or other person a signed statement acknowledging receipt of said order.

7. Furnishing others any means or instrumentalities, services or facilities, which are calculated to mislead participants or prospective participants as to any of the matters or things prohibited by this order.

It is further ordered, That:

(A) Respondents immediately obtain from each person described in Paragraph 6 above a signed statement setting forth his intention to conform his business practices to the requirements of this order.

(B) Respondents advise each such present and future salesman, agent, solicitor, independent contractor, distributor or any person engaged in the promotion, sale or distribution of any of respondents' franchises or distributorships, that respondents will not engage or will terminate the engagement or services of any said person, unless such person agrees to and does file a notice with the respondents that he will be bound by the provisions contained in this order.

(C) If such party will not agree to so file notice with the respondents and be bound by the provisions of the order, the respondents shall not use such third party, or the services of such third party to promote, sell or distribute any of respondents' franchises or distributorships.

(D) That respondents so inform the persons so engaged that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own any of the deceptive acts or practices prohibited by this order.

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

(F) That respondents discontinue dealing with the persons so engaged, revealed by the aforesaid program or surveillance, who continue on their own, in any act or practice prohibited by this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in respondents' business such as dissolution, assignment or sale resulting in the emergence of a successor business, corporation,

or otherwise, the creation of subsidiaries, or any other change which may affect compliance obligations arising out of this order.

It is further ordered, That respondents 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 the order to cease and desist contained herein.