

FEDERAL TRADE COMMISSION ACT

Docket 8832. Complaint, January 15, 1971—Decision, June 19, 1973.*

* Complaint reported on page 218 herein.

Consent order requiring a New York City magazine subscription firm and its wholly-owned subsidiary located in Sandusky, Ohio, among other things to cease misrepresenting the purpose of the call or solicitation; misrepresenting the consumers or class of consumers afforded the opportunity of purchasing respondent's products or services; representing that any merchandise or service is free or that any merchandise is available for a price less than customary or regular; misrepresenting the savings accorded purchasers; failing to cancel subscriptions when representations have been made that said subscriptions are cancellable; misrepresenting the terms or conditions of payments; misrepresenting the nature, kind or legal characteristics of any document; attempting to harass or intimidate customers allegedly delinquent in their payments; failing to inform customers of their right to cancel their contract within three business days; misrepresenting respondent's intention to institute legal proceedings; failing to disclose to customers certain information regarding credit transactions; and furnishing means and instrumentalities of misrepresentation or deception. Respondents are further ordered to cease making sales solicitations through third parties who do not agree to be bound by the order; dealing with any who continue on their own the prohibited practices; and must institute a program of continuing surveillance to determine dealer compliance.

DECISION AND ORDER

The Commission having issued its complaint on May 27, 1970, charging the consenting parties named in the caption hereof with violation of the Federal Trade Commission Act; and the consenting parties having been served with a copy of the complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver of the provisions of Section 2.34(d) of its rules which provides that the consent order procedure shall not be available after issuance of complaint; and

The consenting parties and counsel for the Commission having executed an agreement containing a consent order, an admission by consenting parties of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by consenting parties that the law has been violated as set forth in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, and having accepted same,

and the agreement containing consent order having been placed 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 makes the following jurisdictional findings, and enters the following order:

1. The Hearst Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 959 Eighth Avenue, in the city of New York, State of New York.

Periodical Publishers' Service Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One North Superior Street, in the city of Sandusky, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the consenting parties and the proceeding is in the public interest.

ORDER

I

It is ordered, That the Hearst Corporation, a corporation, and Periodical Publishers' Service Bureau, Inc., a corporation, consenting parties herein, their successors or assigns, and said consenting parties' respective officers, representatives, employees, salesmen, agents or solicitors, licensees or franchisees, as each, directly or through any corporate device may from time to time be engaged in connection with the advertising, offering for sale or sale of magazine subscriptions, or a combination of magazine subscriptions and a book or books (hereinafter sometimes referred to as products or services) to consumers (as "consumer" is hereinafter defined) by subscriptions to purchase such products or services through a "paid-during-service" plan, or through a "cash sale" plan (as "paid-during-service" and "cash sale" are hereinafter defined), or in the collection of any delinquent paid-during-service or cash sale subscription account, obtained through door-to-door mail or telephone solicitation, 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 consenting party is primarily engaged in conducting a survey, quiz or contest, or any other activity other than the soliciting of a

paid-during-service plan or a cash sale plan; or misrepresenting in any manner the purpose of the solicitation.

2. Representing, directly or indirectly, that any offering of either the paid-during-service or cash sale plan is being made only to specially selected consumers by a consenting party unless such is a fact; or misrepresenting, in any manner, the consumers or class of consumers being offered the opportunity to purchase said plans.

3. Representing, directly or indirectly, that any parts or components of either plan are free or without cost, or are provided as a gift(s) to either the consumer, or a person or persons designated by such consumer, or without cost or charge in connection with the purchase of either plan unless the stated price of the parts and/or components required to be purchased in order to obtain such free part(s) or gift(s) is the same or less than the customary and usual price at which such parts and/or components required to be purchased have been sold separately from such free part(s) or gift(s), and in the same combination if more than the said parts or components are required to be purchased for a substantial period of time, in the consenting parties' recent and regular course of business in the area in which the offering is made; provided that nothing herein shall prevent the offering of "split orders" as part of the offer of either plan, pursuant to which the consumer designates and/or selects one or more of the magazine subscriptions in either plan to be directed and sent to a third-party consumer, without such third-party consumer paying any part of the price or cost of the plan.

4. Representing, directly or indirectly, that the price or cost of either plan covers only the cost of mailing, handling, editing, printing or any other element of the cost, or is at or below such element of cost; or that any price is a special or reduced price unless it constitutes a significant reduction from the consenting parties' established selling price at which such products or services have been sold in substantial quantities for the offering in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to the consumer; however, nothing herein shall prohibit the making of truthful comparisons with newsstand or other prices.

5. Refusing or failing, upon request, to cancel or terminate a consumer's paid-during-service plan if it has been repre-

sented, directly or indirectly, that such plan is cancellable at any time.

6. Representing, directly or indirectly, that the paid-during-service plan cannot be cancelled on the ground that the subscriptions in the agreement have been forwarded to the publishers of the selected magazines and that there is a financial commitment to such publishers for the term of the subscriptions; or refusing to cancel a consumer's agreement for future payments for any other deceptive reasons.

7. Failing, clearly, at the time of initial consumer sales contact and at each subsequent consumer sales contact up to verification, either in person or by telephone, to disclose at the outset thereof, either orally or in writing, and after the initial greeting, the name of the individual representative, the applicable consenting party's name, its local town location, that the purpose of such sales contact is to offer for sale the paid-during-service and/or cash sale plan; or misrepresenting, directly or indirectly, the purpose of any contact with a prospective consumer.

8. Making any reference or statement concerning "50 cents a week," "60 months," or any other statement as to the sum of money or duration or period of time in connection with a solicitation for a paid-during-service plan which plan does not in fact provide, at the option of the consumer, for the payment of the stated sum at the stated duration or period of time; or misrepresenting, in any manner, the terms, conditions, methods, rate or time of payment actually made available to the consumer.

9. Representing, directly or indirectly, that the contract or agreement to purchase the plan is only a "preference list," "guarantee," or "route slip," or any kind of document other than a contract or agreement; or misrepresenting in any manner the nature, kind or import of any document purporting to bind the consumer: *Provided, however*, That when such contract or agreement includes a guarantee of service to the consumer, nothing shall prohibit reference to such guarantee in a form such as "agreement and guarantee" or "contract and guarantee."

10. Failing, clearly, to reveal orally and in writing to each consumer before the signing of any agreement for either the paid-during-service or cash sale plan, that the document to be

signed by the consumer will become, after three (3) business days, binding on the consumer.

11. Harassing consumers who are allegedly delinquent in their payments due, pursuant to the sale of either a paid-during-service or cash sale plan, through repeated daily telephone contacts, or telephone contacts at unreasonable hours, or by use of abusive language, or by improperly contacting third parties and disseminating defamatory information about such consumers to such parties, or by any other similar means.

12. Representing, directly or indirectly, in the event of alleged nonpayment or alleged delinquency by a consumer arising out of his alleged purchase of either a paid-during-service or cash sale plan, that such consumer's general or public credit rating may be adversely affected, unless the information concerning the consumer's alleged delinquency or alleged nonpayment is referred to a bona fide credit agency.

13. Failing, clearly, in the event any reference is made to referral to a collection agency of the consumer's account, arising out of the sale of either a paid-during-service or cash sale plan, or of a contact from a collection agency, to disclose in each such contact that such collection agency is an operating division of the applicable consenting party, if such is the fact; or representing that such collection agency is an independent bona fide collection agency unless such is the fact.

14. Representing that legal action may be instituted, unless there is a good-faith intention to institute legal action against each alleged delinquent consumer to whom such representation is made; or misrepresenting, in any manner, the action or results of any action which may be taken to effect payment of such debt; provided that nothing herein contained shall preclude the right of the applicable consenting party to retain counsel and to utilize the services of counsel to protect its interest and such counsel shall not in any respect be prohibited from collecting amounts due from consumers.

15. Failing, in connection with the allowing of a consumer to sign an agreement for the purchase of the products and services described herein, to provide, both orally and in writing, as part of such agreement, a statement that the consumer may cancel such agreement within three (3) business days by directing and mailing postpaid a notice of intent to cancel, in

any form, including the return of the agreement, to the consenting party's address set forth on such agreement.

16. Failing to furnish each consumer, at the time of his signing of the agreement to purchase either a paid-during-service or cash sale plan of a consenting party, a duplicate of the original of the agreement setting forth the names of the magazines being subscribed to and the total cost to the consumer, and at the same time failing to furnish such consumer, either as a part of said agreement or separately, with a document setting forth the number of issues of each magazine per year and the respective price of each magazine subscription contained in the agreement.

17. Failing, in the event a coupon book is used, after the paid-during-service plan ordered has been orally verified with the consumer as to the months of service, selection of magazines and the payment program, to use a coupon book containing the number of coupons in the amounts called for in the duplicate original agreement provided to the consumer in accordance with Paragraph 16 hereof, which coupon book shall contain:

(a) on an inside cover, or other conspicuous place, a statement setting forth the number of coupons, the amount of each coupon, and the total amount represented by coupons; and

(b) a legend asking the consumer to verify the number of coupons against said consumer's original agreement.

18. Failing, after verification (as defined in Paragraph 17 hereof), in the event any magazine subscription set forth in the original plan agreement (provided the consumer in accordance with Paragraph 16 hereof) is changed or altered for any reason, before any coupon book is sent to the consumer, to send the consumer a new agreement reflecting such change or alteration.

19. Failing or refusing to cancel all or any portion (at the consumer's option) of a consumer's agreement to purchase a paid-during-service or cash sale plan offered by a consenting party hereunder when said consenting party has, in good faith, determined that a misrepresentation prohibited by this order has been made to such consumer, *Provided, however*, That the sole fact of such good-faith determination shall not be admissible against a consenting party in any proceeding

brought to recover penalties for the alleged violation of any paragraph of this order.

20. Failing, clearly and conspicuously, to designate in writing and disclose orally at or before the signing by the consumer of an agreement to purchase the products or services described herein, on the same side of the page as, and above or adjacent to, the place for the consumer's signature:

- (a) the total cash price;
 - (b) the down payment;
 - (c) the unpaid balance of the cash price;
 - (d) the number, amount, and due dates or period of payments scheduled to satisfy the payments of the agreement;
- and, if all or any portion of the purchase price is being financed:
- (e) the amount financed; and,
 - (f) the rate of the finance charge, if any, expressed as the annual percentage rate.

21. In the event of the discontinuance of publication, or other unavailability of any magazine subscribed for, at any time during the life of the agreement, failing to offer the subscriber the right to substitute one or more magazines or other publications, or any other arrangement which shall be satisfactory to the consumer.

22. Placing in the hands of consenting parties' employees, or other authorized representatives offering either the paid-during-service or cash sale plans to consumers, the means and instrumentalities, by and through which consumers may be misled or deceived in the manner or by the acts and practices prohibited by this order.

II

It is further ordered, That the Hearst Corporation, through Periodical Publishers' Service Bureau, Inc., and Periodical Publishers' Service Bureau, Inc., or any future subsidiary:

- (a) (1) Deliver by hand or by registered mail a copy of this decision and order to the executive personnel of the operating divisions of a consenting party selling or promoting the products or services by and through the plans included in this order; (2) deliver by hand or registered mail a copy of this decision and order to each of the branch managers and their

employees, salesmen, agents and solicitors, and present and future franchisees and licensees of a consenting party, who may from time to time be so engaged; and (3) require the applicable consenting party's present and future licensees and franchisees to deliver a copy of this decision and order to each of said licensees' and franchisees' employees, agents, salesmen, solicitors, independent contractors, and other representatives so engaged.

(b) Require persons described in (a) (1) and (2) heretofore to sign a form returnable to the applicable consenting party clearly stating such person's intention to conform his business practices to the requirements of this order.

(c) Inform each person so described in Paragraph (a) (1) and (2) hereof that such consenting party shall not contract with any such persons for the solicitation of the magazine subscription selling plans described herein, unless such person agrees to and does file notice with the applicable consenting party that it will conform its business practices to the provisions contained in this order.

(d) Shall not use the services of such persons described in (a) (1) and (2) above to solicit the subscription offerings described herein, if such person will not agree to so file such notice and conform his business practices to the provisions of this order.

(e) So inform such persons described in Paragraph (a) (1) and (2) above that such consenting party is obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order.

(f) Initiate a program of continuing supervision of the activities of the applicable consenting party's branches, licensees and franchisees, provided that such consenting party shall not be required to initiate any program of supervision of franchisees or licensees which would contravene the antitrust or any other laws.

(g) Terminate the authority of any such persons described in Paragraph (a) (1) or (2) above, who are revealed by the aforesaid program of supervision or otherwise, to be continuing on their own to engage in the acts or practices prohibited by this order, to the extent that said order applies to such persons, provided that such violations of any terms of this order by any such present or future licensees, franchisees,

representatives or employees will not be deemed a violation of this order by the consenting parties, unless the applicable consenting party fails to terminate or cancel the authority of such persons within a reasonable time of determining, in good faith, a violation of this order.

III

It is further ordered, That the consenting parties herein shall notify the Commission at least thirty (30) days prior to any proposed change in the structure of either of the corporate consenting parties, 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 respective corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the consenting parties 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.

As used in this order, the term "consumer" is defined as the party who is a natural person to whom the applicable consenting party offers to sell or sells magazine subscriptions, or a combination of magazine subscriptions and a book or books, the subject of the transaction and of the paid-during-service or cash sale plan, on its subscription agreement forms primarily for personal, family or household purposes.

As used in this order, the term "cash sale" shall mean the sale to a consumer by the applicable consenting party of magazine subscriptions, or a combination of magazine subscriptions and a book or books, by means of a consenting party's original subscription agreement, obtained by that category of sales personnel referred to in the trade as "field representatives" or "traveling crews," who sell such agreements during the course of door-to-door solicitations in consideration of one immediate full payment or two payments, as contrasted with the more numerous products or payments involved in paid-during-service plans.

As used in this order, the term "paid-during-service" shall mean the sale by an applicable consenting party to a consumer of two or more magazine subscriptions, or a combination of magazine subscriptions and a book or books, by its door-to-door, mail or telephone solicitation, and subsequent signing of a consenting party's

original subscription plan agreement at the consumer's home, office or at an exhibit (*i.e.*, a temporary booth in space leased by a consenting party at a fair, store exhibit or like facility, wherein and whereby the plans described herein are offered to consumers) or confirming any renewal thereof, the cost of which subscriptions is paid or payable in equal, successive payments over a period of two or more successive months, or sooner, at the option of the consumer.

As used in this order, the phrase "door-to-door, mail or telephone solicitation" of a consenting party's subscription agreements relates only to such solicitation of consumers used by the applicable consenting party to initiate or effect sales or collections pursuant to a paid-during-service plan or a cash sale plan.