

IN THE MATTER OF
FASHION TWO TWENTY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2474. Complaint, Nov. 5, 1973—Decision, Nov. 5, 1973

Consent order requiring an Aurora, Ohio, manufacturer, purchaser, distributor and seller of cosmetics, toiletries, skin care and associated items commonly sold through a party-plan merchandising program, among other things to cease certain anticompetitive selling practices and agreements.

Appearances

For the Commission: *Joseph S. Brownman.*

For the respondents: *Donald T. Goldman of Kottler & Danzig, Cleveland, Ohio.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C., Section 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties listed in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Fashion Two Twenty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Prior to approximately Dec. 10, 1968, the corporate name of respondent corporation was Maw-Vack, Inc. Respondent Fashion Two Twenty, Inc., maintains its home office and principal place of business at 14 Hudson Road, Aurora, Ohio.

PAR. 2. Respondent Vernon G. Gochneaur is chairman of the board of

directors of respondent corporation and is also its chief executive officer and largest stockholder, with a holding of approximately 48.7 percent of the common stock. Together with others, Mr. Gochneaur has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of respondent corporation. Mr. Gochneaur's office address is the same as that of respondent corporation.

Respondent Roger V. Gochneaur is the president of corporate respondent and is also a director and member of its executive committee. Together with others, Mr. Gochneaur has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of respondent corporation. Mr. Gochneaur's office address is the same as that of respondent corporation.

PAR. 3. Respondents are engaged in the manufacture, purchase, distribution, offering for sale and sale of cosmetics, toiletries, skin care and associated items which are marketed under the name Fashion Two Twenty Cosmetics, to distributors located throughout the United States. Respondent corporation's product sales volume is approximately nine (9) million dollars per year. The sales of respondent corporation's products at retail is approximately thirty (30) million dollars per year.

PAR. 4. In the course and conduct of its business of manufacturing and distributing Fashion Two Twenty Cosmetics, the respondents ship or cause such products to be shipped from the state in which they are warehoused to distributors located in various other States throughout the United States who engage in resale to other distributors and to members of the general public. There is now and has been for several years a constant, substantial and increasing flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondents' distributors and dealers, in the course and conduct of their business in distributing, offering for sale and selling of Fashion Two Twenty Cosmetics are in substantial competition in commerce with one another, and corporate respondent and its distributors are in substantial competition in commerce with other firms or persons engaged in the manufacture or distribution of similar products.

PAR. 6. Respondents have formulated a distribution system involving four levels of distributors or dealers. The respondent corporation sells its products directly to "Directors," the highest level in the distribution network. Directorships are sold by the respondent corporation for a fee of approximately \$10,000. For this fee the director is allotted and

restricted to a territory covering approximately 250,000 people, and the agreement of respondent corporation that it will not establish another distributorship in that area, or authorize the establishment or maintenance of a cosmetics studio therein by anyone other than the contracting director. Respondent corporation sells its cosmetic products to directors at approximately a 70 percent discount off the retail prices.

The level of distributor below director is that of "Associate Director." An associate director pays a fee of approximately \$1,400 to \$8,000 for his distributorship, which fee is split equally between respondent corporation and the sponsoring director. The director resells the cosmetic products to his associate director at discounts ranging approximately from 62 percent to 66 percent of the retail list price, which figure includes additional discounts, depending on the associate director's monthly volume of sales.

The associate director (or director if there is no associate director in a given area) then resells the cosmetic products to "Managers" or "Beauty Consultants," which are the two lowest levels in the distribution network. The participants at these lower levels are recruited by the director or associate director. The associate director (or director) for the area in which a particular manager or beauty consultant operates sells the cosmetic products at discounts ranging from approximately 35 percent to 49 percent off the list price, including additional discounts. A beauty consultant who achieves a certain qualifying volume may become a manager, and purchase the cosmetic products at discounts ranging from approximately 50 percent to 56 percent off the list price, including additional discounts, depending upon the volume purchased.

Beauty consultants, managers and associate directors all sell respondent corporation's products at retail to the ultimate consumer. While directors for the most part sell only at wholesale, they do occasionally sell to the ultimate consumer as well. The method by which the beauty consultant normally sells respondent corporation's cosmetics products to the public is the "party plan." Under this plan, the beauty consultant arranges with various women to serve as hostesses for beauty shows given in their homes. During such home beauty shows or parties, the beauty consultant, using one of the guests as a model, demonstrates the procedures and techniques for the proper use of respondent corporation's products, and following such demonstration, seeks to sell the company's products.

PAR. 7. All distributors or dealers are independent contractors; they are required to abide by all the rules and regulations of respondents, agree to do so and are threatened with termination for failure to do so. Certain of those are the following:

1. Associate directors and directors enter into franchise agreements

with respondents which provide in part that respondents will not establish another distributorship in the area described therein, or permit the establishment or maintenance of a cosmetics studio therein by any one other than the contracting distributor.

2. A sponsored associate director must obtain respondent corporation's approval for a franchise, and if the franchised area is within an area franchised to an existing director, the sponsored associate director must also obtain the approval of said director.

3. Beauty consultants agree not to recruit and sign up as a consultant under their sponsorships a persons who is either a customer of another beauty consultant, or someone who is already a beauty consultant.

4. Other cosmetics companies' distributors may not be sponsored into respondents' program.

5. All purchases of respondents' products by any distributor or dealer must be made from the sponsoring manager, associate director, or director.

6. Respondents' products may not be sold in retail stores or beauty salons.

7. Directors are required to sell respondents' cosmetic products to their associate directors at approximately a 62 percent discount, f.o.b. the directors' place of business.

8. Directors agree to pay their associate directors their share of additional discounts on a monthly basis, with payment within thirty (30) days of the end of the month in which the associate directors qualified for such additional discount.

9. Directors, associate directors and managers must pay refund bonuses (based upon monthly volume) to consultants by the fifth day of the following month, and directors and associate directors must pay refund bonuses to managers by the tenth day of the following month.

10. All beauty consultants must buy respondents' products from their managers, associate directors or directors at wholesale prices established by the respondents, and distributors or dealers are required to sell to the consuming public at the resale prices published and established on respondents' price schedules.

11. Directors agree to maintain accurate monthly records of purchases of products by their associate directors, and to promptly report these purchases to respondent corporation no later than the tenth day of the following month.

12. Associate directors agree to keep accurate and complete monthly records of sales of all products and make same available to respondent corporation.

13. Associate directors and directors must pay refund bonuses due a

consultant of manager within ten (10) days of the date of termination of a consultant's agreement.

14. Respondent corporation agrees to pay refund bonuses earned if it is unsuccessful in attempting to cause distributors to pay bonuses due.

15. Beauty consultants must send copies of their retail orders directly to respondent corporation after a sale is made.

16. All distributors or dealers are required to buy from and sell to one another on a cash basis.

17. Beauty consultants are not permitted to advance monies to their managers, associate directors or directors, to be held on deposit in anticipation of future deliveries.

18. Directors and associate directors may distribute or deal in no products or merchandise other than that manufactured, sold or distributed by respondent corporation.

19. Beauty consultants may not enter into or engage in any similar or competitive business.

20. All distributors agree not to develop or create advertising literature or sales aids without the prior authorization of respondent corporation.

21. Distributors who are separated are required to refrain from engaging in similar business activities throughout the United States for a period of three (3) years.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 8. The allegations of Paragraphs One through Seven are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 9. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of the allocation of the territories in which various of respondents' distributors or dealers may resell their products or otherwise engage in legitimate selling activities.

Said acts, practices, and methods of competition, engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting or likely to result therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 10. The allegations of Paragraphs One through Seven are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 11. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, restricting the customers to whom respondents' distributors or dealers may sell their products, restricting the sources from which respondents' distributors or dealers obtain their products, and restricting and preventing distributors or dealers from reselling or allowing their products to be sold in retail stores or beauty salons.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting or likely to result therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 12. The allegations of Paragraphs One through Seven are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 13. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents and to the prejudice of the public because of their dangerous tendency to, and the actual practice of, fixing, maintaining or otherwise controlling the prices and terms or conditions of sale at which respondents' products are sold, in both the wholesale and retail markets; and fixing, maintaining or otherwise controlling various fees, discounts or rebates required to be paid by one distributor or dealer to another distributor or dealer.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting or likely to result therefrom constitute unreasonable restraints of trade and unfair methods of competition in commerce

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within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 14. The allegations of Paragraphs One through Seven are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 15. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents and to the prejudice of the public because the selling of products and the granting of distributorships or dealerships is on the condition, agreement or understanding that said distributors or dealers shall not use, sell or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor of respondent corporation, or of another supplier.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 16. The allegations of Paragraphs One through Seven are incorporated by reference in Count V as if fully set forth verbatim.

PAR. 17. The acts, practices, and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents and to the prejudice of the public because of their dangerous tendency to, and the actual practice of restricting or prohibiting distributors or dealers from advertising their products or services in a manner which they may unilaterally deem to be in their best interests, and restricting distributors as to the financial and marketing arrangements which they may choose to enter into with businesses or individuals of their choice.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade

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and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

COUNT VI

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 18. The allegations of Paragraphs One through Seven are incorporated by reference in Count VI as if fully set forth verbatim.

PAR. 19. The acts, practices, or methods of competition engaged in, pursued, followed or adopted by respondents, and the combination, conspiracy, agreements or common understanding entered into or reached between and among the respondents or others not parties hereto are unfair methods of competition and to the prejudice of the public because of their dangerous tendency to, and the actual practice of restricting or prohibiting competition by former distributors in the same or similar type of business.

Said acts, practices, and methods of competition engaged in, pursued, followed or adopted by respondents, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

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 Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of Section 5 of the Federal Trade Commission Act, as amended; 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 said complaint, and waivers and other provisions as required by the Commission's rules;

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

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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 Fashion Two Twenty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at Route 43, Aurora, Ohio.
2. Respondent Vernon G. Gochneaur is chairman of the board of directors, a member of the executive committee, chief executive officer and largest shareholder of Fashion Two Twenty, Inc. Together with others, he formulates, directs and controls the policies, acts and practices of said corporation and his business address is the same as that of said corporation.
3. Respondent Roger V. Gochneaur is the president, a member of the executive committee, and a director of Fashion Two Twenty, Inc. Together with others, he formulates, directs and controls the policies, acts and practices of said corporation, and his business address is the same as that of said corporation.
4. 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

I

It is ordered, That respondent Fashion Two Twenty, Inc., a corporation, its officers, agents, representatives, employees, successors and assigns, and respondents Vernon G. Gochneaur and Roger V. Gochneaur, as officers and directors of Fashion Two Twenty, Inc., their agents, representatives or employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, or distribution of goods or commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Requiring, coercing, contracting or entering into an agreement with any distributor or dealer to refrain from selling or sales activities in any geographic area of his choosing; *Provided, however*, That the definition of sales activities shall not include the establishment of a place of business as a physical entity.

2. Requiring or coercing any distributor or dealer into obtaining the approval of any other distributor or dealer as a prerequisite for engaging in any business activities.

3. Requiring, agreeing with or coercing any distributor or dealer to refrain from selling any merchandise in any quantity to or through any specified person, class of persons, business or class of business.

4. Requiring, agreeing with or coercing any distributor or dealer into purchasing product needs only from those persons who sponsored or recruited him into respondents' program, or into whose organizations they have been assigned.

5. Requiring, agreeing with or coercing any distributor or dealer into obtaining the approval or permission of any other distributor or dealer prior to sponsoring another person into the sales organization of the recruiting distributor.

6. Requiring, agreeing with or coercing any distributor or dealer to refrain from sponsoring or recruiting persons who are customers of other distributors or dealers.

7. Fixing, establishing, maintaining or otherwise controlling the prices, discounts, rebates, overrides or terms or conditions of sale upon which goods or commodities may be resold.

8. Requiring, agreeing with or coercing any distributor or dealer to pay a refund, bonus or other consideration or thing of value to any other distributor or dealer, or require any such payment by a specified date or time period.

9. Requiring, agreeing with or coercing any distributor or dealer into making pricing information available either to respondents or to any other distributor or dealer.

10. Requiring, agreeing with or coercing any distributor or dealer into forwarding retail orders or copies thereof to respondents.

11. Requiring, agreeing with or coercing any distributor or dealer to refrain from advancing monies to other distributors or dealers.

12. Requiring, agreeing with or coercing any distributor or dealer to buy from or sell to any other distributor or dealer on a cash basis only.

13. Requiring, agreeing with or coercing any distributor or dealer to refrain from purchasing merchandise or equipment or contracting for services with persons of his own choosing.

14. Requiring, agreeing with or coercing any distributor or dealer to refrain from distributing or dealing in the products of a competitor of respondents, or of another cosmetic company, so long

as such competitor or other cosmetic company does not falsely represent respondents as the source of its products.

15. Requiring, agreeing with or coercing any distributor or dealer to refrain from recruiting distributors or dealers of other cosmetic companies.

16. Requiring, agreeing with or coercing any distributor or dealer to refrain from developing or creating any advertising literature or sales aids which he may choose to; *Provided, however*, That respondents may require submission thereof and approval by respondents prior to their use; *And provided further* That respondents may not require that the material submitted include territorial references and price quotations, and respondents may not withhold approval of such material because such information is lacking.

17. Requiring, agreeing with or coercing any terminated, former or separated distributor or dealer to refrain from selling, distributing or dealing in any product of a competitor, like, similar, or related to respondents' products.

II

1. Nothing contained herein shall prevent respondents from availing themselves of the benefits, if any, accruing to them by virtue of the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

2. Nothing contained herein shall prevent respondents from complying with the provisions of Paragraphs 7 and 14 of the court order duly entered in United States District Court, Eastern District of New York, entitled *Fashion Two Twenty, Inc. v. Rudolph Steinberg, et al.*, civil action No. 71 Civ. 665, and Paragraphs 7 and 16 of the court order duly entered in United States District Court, Northern District of Indiana, entitled *Fashion Two Twenty, Inc. v. Marjo, Inc., et al.*, civil action No. 72 F. 71; said paragraphs to expire June 13, 1974 and Sept. 13, 1973, respectively.

III

It is further ordered, That respondent Fashion Two Twenty, Inc., within sixty (60) days from the effective date of this order, shall:

1. Mail or deliver a conformed copy of this order to cease and desist to all directors, associate directors, persons performing the functions of directors and associate directors, and other persons known by it to have received copies of the prior "How Manual," and who are known to it to be engaged in the sale or distribution of respondent's products or services.

2. Offer distributorships or dealerships to any former distributor or dealer who was terminated or suspended by respondent solely for the violation of any rule, regulation or policy which contravenes any of the provisions of this order.

It is further ordered, That respondent shall furnish a conformed copy of this order to all future directors, associate directors, and persons performing the functions of directors and associate directors.

IV

It is further ordered, That the respondents herein shall within sixty (60) days from the effective date 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 thirty (30) days prior to any proposed change in 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 corporation which may affect compliance obligations arising out of the order.

IN THE MATTER OF
P. J. NEE COMPANY
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS
OF THE TRUTH IN LENDING AND FEDERAL TRADE COMMISSION
ACTS