

OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2490. Complaint, Feb. 12, 1974—Decision, Feb. 12, 1974

Consent order requiring a San Mateo, Calif., franchisor of hot-drink vending machines, among other things to cease misrepresenting the nature, character, performance or efficacy of its vending machines; misrepresenting offers as being restricted or limited to certain individuals with specific qualifications; misrepresenting respondent's affiliation with the Coca-Cola Company; misrepresenting the nature or extent of its services and misrepresenting its business activities. Further, respondent is required to inform prospective customers of their right to a three-day cooling-off period during which they may cancel any contract as set out in the order; and maintain files for a two-year period of all inquiries or complaints on contracts entered into by respondent relating to acts or practices prohibited by this order.

Appearances

For the Commission: *John M. Porter.*

For the respondents: *Robinson & Leland*, San Francisco, Calif.

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 Redi-Brew Corporation, a corporation, and Morgan Montague, individually and as an officer of said corporation, hereinafter sometimes 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 Redi-Brew Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. The respondent corporation maintains its office and principal place of business at 1001 Howard Avenue, San Mateo, Calif.

Respondent Morgan Montague is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. His address is 1001 Howard Avenue, San Mateo, Calif.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of hot drink vending machines and merchandise sold in vending machines to distributors and potential distributors. Said distributors purchase respondents' vending machines under a distribution agreement whereby respondents agree to locate vending machines in areas of high potential customer concentration and perform various other acts helpful to dis-

tributors, and distributors agree to purchase respondents' hot drink products for distribution in their vending machines.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have caused vending machines and merchandise, when sold, to be shipped or delivered from their place of business in the State of California to purchasers thereof located in other States of the United States and have disseminated in newspapers of interstate circulation and by the United States mails, advertisements designed and intended to induce sales of vending machines and merchandise, and thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in said vending machines and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of vending machines and merchandise, respondents have made numerous statements and representations in newspapers and promotional material. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

* * * * *

After eighteen months of research and development, the founders of Redi-Brew developed a concept that virtually eliminates the problems that plague businesses serving hot beverages.

* * * * *

What qualifications are necessary to become a Redi-Brew distributor?

The selection of a distributor is made by the home office only after the company is certain that the person being considered is honest, trustworthy, dependable, industrious and willing to put forth the effort that is required for him to be successful. We do not want an inept distributor servicing accounts that the company has put out effort and expense to establish.

* * * * *

AVAILABLE NOW—Large Corporation desires responsible person to distribute TENCO (a Division of Coca-Cola) COFFEE PRODUCTS. Can start full or part time (5-10 hrs. per wk.). Company establishes business for distributors.

NO SELLING. Go fishing or spend more time with your favorite hobby and let the machine age earn you money. CASH REQUIRED \$2498. Secured. LIMITED OPPORTUNITY. Write now for information, include phone number.

* * * * *

COCA COLA—California Corporation wants men or women to service fast moving automated equipment products, produced by multi-billion dollar company.

* * * * *

Who secures the accounts, the distributor or Redi-Brew? Redi-Brew. Redi-Brew Corp.

proposes to offer distributors a great deal of help, the first step of which is to secure original accounts for the distributor.

PAR. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of vending machines and merchandise, respondents, through their agents and representatives, have made and are now making, numerous oral statements and representations regarding ownership and operation of vending machines sold by respondents. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

-Redi-Brew is the freeze-dried division of Coca Cola Company.

-Numerous prime locations are available in specific areas with high potential volume, primarily manufacturing plants, large office buildings and other areas with high business volume.

-Redi-Brew is in business to sell hot-drink products and not hot drink machines.

-Redi-Brew grants exclusive territories to distributors.

-Redi-Brew representatives train distributors to repair and service their machines.

PAR. 6. By and through the use of the statements and representations set forth in Paragraph Four and others of similar import but not specifically set forth therein, and through said oral statements set forth in Paragraph Five, and others of similar import but not specifically set forth therein made by respondents, their employees, agents and representatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Vending machines sold by respondents are of high quality and durability.

2. The respondents' offer to sell vending machines is limited to persons who possess certain qualifications beyond having the necessary capital.

3. Respondents are a division of the Coca Cola Company.

4. Respondents will obtain profitable sales producing locations for the placement of vending machines purchased from them.

5. Respondents' representatives will train distributors in servicing and repairing mechanical problems and otherwise enable distributors to be self-sufficient in the care and operation of respondents' products.

6. Distributors will be granted exclusive territories in which to operate.

7. The prime business of respondents is the sale of hot-drink products, and not the sale of the vending machines.

PAR. 7. In truth and in fact:

1. Vending machines sold by respondents are of inferior quality and seldom perform as advertised.

2. Respondents take no steps to check the qualifications of potential purchasers.

3. Respondents are not now, nor have they ever been, in any way connected with the Coca Cola Company.

4. In most instances, respondents fail to place vending machines in top sales producing locations, and in many cases, fail to place the machines in any locations.

5. Respondents fail to train distributors in servicing and repairing vending machines and provide little, if any, assistance to distributors who request it.

6. Distributors are not granted exclusive territories in which to operate; on the contrary, respondents attempt to sell as many distributorships as possible with little or no concern for the number of distributors within a given territory.

7. The prime interest of respondents is selling vending machines.

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

PAR. 8. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of vending machines and merchandise sold in vending machines of the same kind and nature of those sold by respondents.

PAR. 9. 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 and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of vending machines and merchandise offered by respondents by reason of said erroneous and mistaken belief.

PAR. 10. 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 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 San Francisco 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 of the facts as alleged in the complaint or that the law has been violated as alleged in said 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 Redi-Brew Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1001 Howard Avenue, San Mateo, Calif.

Respondent Morgan Montague is an officer and director of said corporation. As a director, he helps to formulate, direct and control the policies of the said corporation and as an officer he directs and controls the acts and practices of said corporation. His address is the same as that of the 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 Redi-Brew Corporation, a corporation, its successors and assigns, and its officers, and Morgan Montague, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines, merchandise sold in vending machines, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, directly or by implication, that vending machines or any other products sold by respondents are of excellent quality or durability, or misrepresenting, in any manner, the na-

ture, character, performance or efficacy of respondents' vending machines or any other products.

2. Representing, directly or by implication, that an offer of any product or service is restricted or limited to individuals or firms with specific qualifications unless such represented restrictions or limitations are actually enforced and adhered to in good faith.

3. Representing, directly or by implication, that respondents are connected with the Coca Cola Company or otherwise misrepresenting their affiliation with any other firm, organization, group or individual.

4. Misrepresenting that respondents will secure profitable locations for their distributors.

5. Misrepresenting in any manner the nature and extent of assistance provided by respondents to distributors of respondents' machines and other products.

6. Misrepresenting, directly or by implication, that any distributor will receive an exclusive sales territory.

7. Representing, directly or by implication, that respondents are primarily in the business of selling merchandise sold in vending machines or misrepresenting in any manner the true nature of respondents' business activities.

It is further ordered, That respondents:

a. Inform orally all prospective distributors and customers and provide in writing in all contracts entered into after the effective date of the order, that (1) the contract may be cancelled for any reason by notification to respondents in writing within three days from the date of execution and that (2) the contract is not final and binding until respondents have completely performed their obligations thereunder by placing the vending machines in locations satisfactory to the distributor and said distributor has thereafter signed a statement indicating his satisfaction.

b. Refund immediately all monies received on contracts entered into after the effective date of the order to (1) prospective distributors who have requested contract cancellation in writing within three days from the execution thereof and to (2) prospective distributors who have refused to sign statements indicating satisfaction with respondents' placement of the machines, and (3) prospective distributors showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order in contracts entered into after effective date of this order.

It is further ordered, That respondents maintain files containing all inquiries or complaints on contracts entered into after the effective date

of this order from any source relating to acts or practices prohibited by this order, for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' distributorships or products or in any aspect of preparation, creation or placing of advertising and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and his affiliation with a new business or employment. Such notice shall include respondent's current business address and statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

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.

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.

IN THE MATTER OF

KOSCOT INTERPLANETARY, INC., ET AL.

Docket 8888. Interlocutory Order, Feb. 22, 1974

Order directing Commission's general counsel to seek appropriate modification of order of the U.S. District Court for the Middle District of Florida restricting testimony of certain witnesses and persons who may have information relevant to Commission's proceeding.

Appearances

For the Commission: *Quentin McColgin* and *David Keehn*.

For the respondents: *Pro se*.