

It is ordered, That the parties be, and they hereby are, instructed that the Commission will defer ruling on said motion to amend until after oral argument on the merits of the matter scheduled for Apr. 10, 1974, and will hear thereat such additional arguments on said motion as the parties might like to present.

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

Docket C-2509. Complaint, Mar. 28, 1974—Decision, Mar. 28, 1974

Consent order requiring a Philadelphia, Pa., seller of promotional coupons, among other things to cease misrepresenting the terms and conditions regarding the use of its coupons; misrepresenting the prices of its coupons as sales prices; failing to maintain adequate records substantiating its claims; and misrepresenting savings afforded to purchasers or that merchandise or services are "free."

Appearances

For the Commission: *David W. Bushong.*

For the respondents: *Martin J. Sablosky, Philadelphia, Pa.*

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 Metro Passbook, Inc., a corporation, and Richard Natow, 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 Metro Passbook, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 3900 Ford Road, Philadelphia, Pa.

Respondent Richard Natow, is an individual and 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 business address is the same as the corporate respondent.

The aforementioned respondents cooperated and acted together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale of promotional coupons in booklet form to the general public. Said coupons are redeemable in certain restaurants and other business establishments.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their merchandise, when sold, to be shipped from their places of business located in the Commonwealth of Pennsylvania 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 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 their promotional coupons, respondents have made, and are now making, numerous statements and representations by repeated advertisements inserted in newspapers of interstate circulation.

Typical and illustrative of said statements and representations, but not all-inclusive thereof, are the following:

Buy one dinner, receive one compliments of the house.

Buy one ticket, receive the second absolutely free.

Good seven nights a week! including Friday, Saturday, and Sunday evenings.

* * * over 300 fine restaurants

Thousands sold at our regular price of \$17.50 each * * * special offer \$8.00

Over 300 FREE bonuses & Passes

Over \$943 FREE enjoyment

PAR. 5. By and through the use of the above-quoted advertising statements and representations, and others of similar import and meaning not expressly set out herein, respondents represent, and have represented, to prospective purchasers, directly or by implication, that:

1. Through the use of respondents' promotional coupon, the purchase of any one dinner on participating restaurants' menus the buyer is entitled to any other dinner on said menus free of charge.

2. Through the use of respondents' promotional coupon, the purchase of any one ticket at participating theaters or other entertaining establishments entitles the buyer to any second ticket free of charge.

3. Respondents' promotional coupons may be used at any time.

4. Over 300 restaurants accept respondents' promotional coupons.

5. Respondents' promotional coupon booklet's regular price is \$17.50.

6. That customers receive free passes and bonuses.

PAR. 6. In Truth and in fact:

1. The value of respondents' promotional coupons are limited at participating restaurants and sports' facilities to specific amounts and types of admissions.

2. Respondents' promotional coupons are not honored at all participating establishments seven nights a week; promotional coupons are not honored at all participating theaters for all performances.

3. Respondents' promotional coupons are expressly excluded from holiday use.

4. Far less than 300 restaurants honor respondents' promotional coupons.

5. Respondents regularly sell their promotional coupon booklets for \$8.

6. Purchasers do not receive free passes but actually pay for such passes which are the substance of the respondents' product; passes are not free for the additional reason that another purchase must be made in order to negotiate such passes.

Therefore, the statements and representations as set forth in Paragraphs Four and Five, hereof, 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 and distribution of merchandise and service of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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 accurate, and into the purchase of substantial quantities of respondents' products and services by reason of said erroneous and mistaken belief.

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 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 Washington, D.C. 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, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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 Metro Passbook, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 3900 Ford Road, Philadelphia, Pa.

Respondent Richard Natow is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Metro Passbook, Inc., a corporation, its successors and assigns, its officers and Richard Natow, 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 or sale of promotional coupons, or any other merchandise or service, 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 through the use of respondents' promotional coupons the purchase of any item at participating restaurants entitles the buyer to any second item free of charge.

2. Representing, directly or by implication, that through the use of respondents' promotional coupons the purchase of any ticket at

participating sport exhibitors entitles the buyer to any second ticket free of charge.

3. Representing, directly or by implication, that respondents' promotional coupons are accepted by participating theaters and other places of entertainment for any and all performances.

4. Representing, directly or by implication, that respondents' promotional coupons may be used at any and all times.

5. Representing, directly or by implication, that the number of restaurants or establishments that honor respondents' promotional coupons is greater than those that do in fact honor respondents' promotional coupons.

6. Using the word "Sale," or any other word or words of similar import or meaning not set forth specifically herein unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

7. (a) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise or services in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise or services at the compared price or some higher price.

(c) Representing, directly or indirectly, orally or in writing, that by purchasing any of said merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise or services, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or

obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise or services of like grade and quality.

8. Representing, directly or by implication, orally or in writing, that purchasers of respondents' merchandise will save any stated dollar or percentage amount without fully and conspicuously disclosing in immediate conjunction therewith, the basis for such savings representations.

9. Failing to maintain and produce for inspection or copying for a period of three (3) years, adequate records (a) which disclose the facts upon which any savings claims, sale claims and other similar representations as set forth in Paragraphs Six, Seven, and Eight of this order are based, and (b) from which the validity of any savings claims, sale claims and similar representations can be determined.

10. Representing, directly or indirectly, orally or in writing, that any price amount is respondents' regular price for any article of merchandise or services unless said amount is the price at which such merchandise or services have been sold or offered for sale by respondents for a reasonably substantial period of time in the recent, regular course of their business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison or a "free" or similar offer might be based.

11. Representing, directly or indirectly, orally or in writing, that a purchaser of respondents' merchandise or services will receive "free" bonuses, passes or values of any other "free" merchandise, services, gifts, prizes or awards unless all conditions, obligations, or other prerequisites to the receipt and retention of such merchandise, services, gifts, prizes or awards are clearly and conspicuously disclosed at the outset in close conjunction with the word "free" wherever it first appears in each advertisement or offer.

12. Representing, directly or indirectly, orally or in writing, that any merchandise or services is furnished "free" or at no cost to the purchaser of advertised merchandise or services, when, in fact, the cost of such merchandise or services is regularly included in the selling price of the advertised merchandise or services.

13. Representing, directly or indirectly, orally or in writing, that a "free" offer is being made in connection with the introduction of new merchandise or services offered for sale at a specified price unless the respondents expect, in good faith, to discontinue the offer after a limited time and commence selling such merchandise or

services, separately, at the same price at which it was sold with a "free" offer.

14. Representing, directly or indirectly, orally or in writing, that merchandise or services are being offered "free" with the sale of merchandise or services which are usually sold at a price arrived at through bargaining, rather than at a regular price, or where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

15. Representing, directly or indirectly, orally or in writing, that a "free" offer is available in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such "free" offer is made in the same trade area. No more than three such "free" offers shall be made in the same area in any twelve (12) month period. In such period, respondents' sale in that area of merchandise or services in the amount, size or quality promoted with the "free" offer shall not exceed 50 percent of the total volume of its sales of merchandise or services, in the same amount, size or quality, in the area.

16. Representing, directly or indirectly, orally or in writing, that merchandise or services are being offered as a "gift," "without charge," "bonus," or by other words or terms which tend to convey the impression to the consuming public that merchandise or services are free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist, and a copy of the Commission's news release setting forth the terms of the order, to each advertising agency and advertising medium, such as newspaper publishing companies, radio stations or television stations, presently utilized in the course of their business, and that respondents shall, immediately upon opening an account, deliver a copy of such order and news release to any such agency or medium with which they subsequently open an account.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist to each of their agents, representatives and employees engaged in the offering for sale or sale of respondents' merchandise or services, or in any aspect of the creation, preparation or placing of respondents' advertisements and that respondents shall deliver a copy of such order to each such person whom they subsequently employ, immediately upon employing each such person and that respondents shall secure from each such person a signed statement acknowledging receipt of said order.

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

It is further ordered, That respondents shall 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 individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Such notice shall include respondent's current business address and a 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 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
BRITISH OXYGEN COMPANY, LIMITED, ET AL.

Docket 8955. Interlocutory Order, Apr. 2, 1974

Order denying motion of respondents to extent it requests a fixed schedule for proceedings, without prejudice to right of respondents to renew their motion in event of