

Consent order requiring two affiliated Westwood, N.J., wholesale merchandisers from using exaggerated earnings claims and other misrepresentations to recruit salesmen for their products.

Appearances

For the Commission: *James Manos.*

For the respondents: *Pro se.*

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 Grayco Chemical Corp. and Grayco Industries, Inc., corporations, and Alvin Serkez, individually and as an officer of said corporations, 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 Grayco Chemical Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 336 Old Hook Road, Westwood, N.J.

Respondent Grayco Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 336 Old Hook Road, Westwood, N.J.

Respondent Alvin Serkez is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including those hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time past have been engaged in the advertising, offering for sale, sale and distribution of various products at the wholesale level to persons who act as salesmen of these products to the public. Products sold by respondents have included, *inter alia*, personal protection sprays and cleaning cloths for car and household use. Sales of such merchandise to salesmen are induced by advertisements in national publications and by promotional materials sent by mail.

PAR. 3. Respondents, in the course and conduct of their business have been and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents promote their products and their product distribution plans by the use of advertisements in magazines of national circulation and by advertisements sent through the United States mail. Merchandise of substantial value is sold by respondents and is shipped from respondents' place of business in New Jersey to purchasers located in various other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, and in order to recruit salesmen to sell respondents' products to the general public,

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respondents have disseminated, or caused the dissemination of, advertisements through the United States mails or printed in magazines or other print media. In conjunction therewith, respondents have published certain statements and representations respecting the large demand for respondents' products, the ease with which salesmen can sell them, and the high earnings which can be made by respondents' salesmen. Typical and illustrative of the statements and representations published by respondents in said advertisements, but not all inclusive thereof, are the following:

\$2.00 PRICE CHANGE CAN PUT \$2,000.00 INTO YOUR POCKET—* * * THIS COMING MONTH—AND EACH MONTH AFTER!

HERE'S HOW TO MAKE MORE MONEY THAN YOU CAN SPEND * * * AND GET A NEW CADILLAC FREE!

We've barely introduced 3 unique new products and already sales and the demand are booming beyond our wildest expectations.

You can make as much money as this * * * Mr. Coffey made \$88.00 in 3 hours—\$600.00 in 10 days. Mr. Davis made \$991.00 in one day. Mrs. Kemmer a grandmother made \$210.00 in one day. A woman in Georgia sold \$180.00 worth in 2 minutes. Mr. James McCue made \$300.00 in one day. I'm sure if you try, you will do well too.

And you can get into this rich business today without risking one penny.

EXTRA—LET ME HELP YOU GET A BRAND NEW CADILLAC—FREE! As an extra incentive, you enjoy a Free Cadillac Promotion with VACU-SHINE. Just accumulate 300 points and a brand new Cadillac (or \$6,800.00 in cash) is yours free and clear * * * **YOU CAN GET UP TO 101 POINTS ON YOUR STARTING ORDER!**

One of the most amazing things about distributing these wonderful products is the ease and simplicity with which you can make MONEY! * * * Not just "nickles and dimes" but an honest-to-goodness HIGH INCOME. There's only one thing that can limit the amount of money you make with an opportunity like this—that's yourself!

We have a unique EXCLUSIVE DISTRIBUTORSHIP PROGRAM for ambitious people. Unique—because there are no franchise fees, no hidden costs. Territories are awarded Free to ambitious people * * * with the privilege of obtaining merchandise at the below wholesale cost.

HOW IT SELLS: "I MADE \$645.00 IN ONE DAY—\$1,560.00 IN ONE WEEK * * * PART TIME. When I show people this product, they tell me—**THAT I NEED.**" (Testimonial of a Mr. Fleetwood)

"I reordered over \$5,000.00 worth my first month!" (Testimonial of a Mr. D. Wicklund)

"I MAKE \$30.00 PER HOUR—PART TIME. Almost everyone is interested in buying!" (Testimonial of a Mr. M. Mathews)

"I'm making approximately \$3,000.00 more per month now, than I was making before!" (Testimonial of a Mr. J. D. D.)

"I MADE \$100.00 IN 2 1/2 MINUTES. It used to take me three days to make as much money as I now make in one day—and the customers thank me." (Testimonial of a Mr. T. Sanders)

PAR. 5. By and through the use of the aforesaid statements and representations, and others similar thereto, but not specifically set forth herein, respondents have represented, directly or by implication, that:

1. Any person selling respondents' products may reasonably expect to regularly earn \$2000 or more per month.
2. There is a substantial demand for respondents' products.
3. Respondents have a reasonable basis from which to conclude that their products can be sold by salesmen easily, quickly, and in substantial quantities.
4. Respondents' salesmen can obtain exclusive territories without any fees, obligations, or hidden costs.
5. Respondents' salesmen will not incur any risk of loss when dealing with respondents' products.
6. A participant in respondents' program who is reasonably diligent will be awarded a free Cadillac by respondents.
7. The earnings made by certain of respondents' salesmen, as advertised by respondents, accurately represent the net earnings, after costs and operating expenses, made by such salesmen.
8. The value of merchandise purchased from respondents by certain salesmen, as advertised by respondents, reflects the wholesale value of such purchases.
9. The earnings, sales or wholesale purchases made by certain of respondents' salesmen, as advertised by respondents, accurately represent:
 - (a) earnings, sales or wholesale purchases continuously made over a substantial period of time, and
 - (b) earnings, sales or wholesale purchases which are average and typical of all sellers of respondents' products in the usual and ordinary course of business.
10. Each representation of earnings, sales or wholesale purchases made by certain of respondents' salesmen is based on a separate testimonial letter, received by respondents recently and without solicitation.

PAR. 6. In truth and in fact:

1. Persons selling respondents' products can not reasonably expect to regularly earn \$2,000.00 or more per month. Such earnings are gross exaggerations and are greatly in excess of the average earnings of persons selling respondents' products.
2. There is not a substantial demand for respondents' products.
3. Respondents have no reasonable basis from which to conclude that their products can be sold by salesmen easily, quickly, and in substantial quantities.
4. Respondents' salesmen can not obtain exclusive territories without any fees, obligations, or hidden costs. A salesmen is given an exclusive territory only as long as he buys a stated minimum quantity of merchan-

dise each month. The minimum quantity required varies with the population of the territory.

5. Respondents' salesmen do incur risk of loss since they must bear the cost of their own operating expenses, advertising, and maintenance of inventory. In addition, unsold inventory may not be returned to respondents for refunds after an initial thirty day period.

6. A participant in respondents' program who is reasonably diligent will not be awarded a free Cadillac by respondents. No salesman has ever been awarded a Cadillac by respondents.

7. The earnings made by certain of respondents' salesmen, as advertised by respondents, do not accurately represent the net earnings, after costs and operating expenses, made by such salesmen.

8. The value of merchandise purchased from respondents by certain salesmen, as advertised by respondents, reflects the retail value, rather than the wholesale value, of such purchases.

9. The earnings, sales or wholesale purchases made by certain of respondents' salesmen, as advertised by respondents, accurately represent neither:

(a) earnings, sales or wholesale purchases continuously made over a substantial period of time, nor

(b) earnings, sales or wholesale purchases which are average and typical of all sellers of respondents' products in the usual and ordinary course of business.

10. Each representation of earnings, sales or wholesale purchases made by certain of respondents' salesmen is not based on a separate testimonial letter. In many instances a single letter is the basis for two or more testimonial quotations appearing in the same advertising material. Testimonial letters were not received by respondents recently, but rather three to five years prior to their appearance in respondents' advertisements. Respondents solicited testimonials by offering free advertising to salesmen who consented to being named and pictured in respondents' advertisements.

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

PAR. 7. 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 to induce a substantial number thereof to purchase respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. 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 engaged in the wholesale and retail sale of products of the same general type and nature as those sold by respondents.

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 York 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 sixty (60) 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 Grayco Chemical Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 336 Old Hook Road, Westwood, N.J.

Respondent Grayco Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 336 Old Hook Road, Westwood, N.J.

Respondent Alvin Serkez is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and place of business is located at the above-stated address.

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 Grayco Chemical Corp., and Grayco Industries, Inc., corporations, their successors and assigns, and their officers, and Alvin Serkez, individually and as an officer of said corporations, 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 personal protection devices, automotive and household cleaning products, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that:

1. There is a substantial demand for respondents' products.
2. Salesmen can sell substantial quantities of respondents' products easily and quickly.
3. Salesmen may secure exclusive territories without any fees, obligations, or hidden costs.
4. Salesmen can sell respondents' products without risk of loss.

B. Representing any sum of money as possible earnings which might be made by selling respondents' products, unless such sum is not greater than the average net earnings consistently made by all salesmen of respondents' products in the ordinary course of business and under normal conditions and circumstances.

C. Publishing any representation of earnings made by any person which does not reflect the average net earnings, after costs and operating expenses, made consistently by such person in the ordinary course of business and under normal conditions and circumstances.

D. Publishing any representation of wholesale purchases of merchandise by salesmen in terms of the retail value of such merchandise or in any other manner which does not reflect the wholesale value of such merchandise.

E. Publishing any representation of earnings, sales or wholesale purchases made by any person which is in excess of the average earnings, sales or wholesale purchases made by all of respondents' salesmen, unless such representation is immediately and conspicuously followed by disclosures which:

1. state that such earnings, sales or wholesale purchases are exceptional and unusual, and
2. indicate the average earnings, sales or wholesale purchases made by all of respondents' salesmen.

F. Publishing any statement concerning an experience had by a salesman or user of respondents' products, unless such statement is immediately and conspicuously followed by the date when the experience occurred.

G. Representing that salesmen of respondents' products can receive a free Cadillac or other prize, unless immediately and conspicuously following such representation respondents disclose:

1. the number of salesmen who have in fact received such prize,
2. the dollar amount of purchases a salesman must make in order to receive such prize, and
3. any applicable time limit or other condition which may serve to disqualify a salesman from receiving such prize.

It is further ordered, That respondents shall maintain for at least a three (3) year period following each publication, copies of each advertisement, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of soliciting salesmen to sell any product or utilized in the advertising, promotion, or sale of any product, together with all documentation and factual material in substantiation of the claims appearing in said advertisements and promotional materials.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices described in this order, for a period of three 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.

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It is further ordered, That respondents or their successors or assigns notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporate respondents which may affect compliance obligations arising out of this 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 a 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

INDIAN ARTS & CRAFTS, INC., ET AL.

Docket 8965. Interlocutory Order, Sept. 12, 1974

Order denying respondents' motion to disqualify Harry R. Hinkes as administrative law judge in this case.