

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2545. Complaint, Sept. 13, 1974—Decision, Sept. 13, 1974

Consent order requiring a Statesville, N.C., seller and distributor of vending machines and merchandise for them, among other things to cease using false earnings claims and other misrepresentations. Further, respondent must give future distributors a three-day right of cancellation with full refund rights, and make immediate refunds to prospective distributors who show violations of this order or have signed leasing agreements but have not received products purchased by the effective date of this order.

Appearances

For the Commission: *David Krischer.*

For the respondents: *William R. Whittenton, Jr.,* Statesville, N.C.

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 Eastern Investors Company, Inc., a corporation and William R. Stacy, 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 Eastern Investors Company, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of North Carolina with its principal office and principal place of business located at 110-J Stockton Street, Statesville, N.C.

Respondent William R. Stacy is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have engaged in the advertising, offering for sale, sale and distribution of refrigerated fruit juice vending machines, hot food 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 distributors, and distributors agree to purchase respondents' cold 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 supplier in the State of Connecticut to purchasers thereof located in other States of the United States and have disseminated in newspapers of interstate circulation and by the United States mail, 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

Complaint

84 F.T.C.

statements and representations, but not all inclusive thereof, are the following:

* * * * *

Incredible profit on these fast moving famous juices.

* * * * *

\$10,000 per year part time.

\$50,000 per year full time.

* * * * *

We provide: Company secured locations in factories, schools, motels, health clubs, hospitals, auto agencies, etc.

* * * * *

We provide: Installation of all equipment, training and skilled guidance.

* * * * *

NO INVESTMENT NECESSARY. Our investors will put up the necessary capital for a qualified individual; however, applicant must have adequate working capital for inventory.

* * * * *

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, which are made directly or by implication, but not all inclusive thereof, are the following:

—Eastern is in business to sell juice products and not to sell refrigerated juice vending machines.

—Eastern representatives train distributors to repair and service their machines.

—Eastern would deliver the ordered vending machines within thirty days.

—Eastern guarantees that it will place vending machines in high traffic locations.

—Eastern has a working arrangement with a leasing company which will underwrite the leasing of vending machines by distributors.

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 repre-

sentatives, respondents have represented, and do now represent, directly or by implication to the purchasing public, that:

1. Distributors can earn \$10,000 per year part time or \$50,000 per year full time operating vending machines purchased from respondents.
2. Distributors will be set up and operating within thirty (30) days of their signing the distributor agreement.
3. Respondents will obtain high traffic and thus profitable sales producing locations for the placement of vending machines purchased from them.
4. 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.
5. The prime business of respondents is the sale of juice products and not the sale of vending machines.
6. Respondents are prepared to deliver vending machines to a distributor under a leasing agreement between the distributor and a leasing company with whom respondent does business.
7. Distributors need not invest their own capital in order to obtain respondents' vending machines.

PAR. 7. In truth and in fact:

1. The representations of part time or full time yearly earnings cannot be substantiated; relatively few, if any, of respondents' distributors has earned \$10,000 per year part time or \$50,000 per year full time.
2. In many instances, distributors have had to wait over ninety (90) days until their vending machines were delivered and in many cases, distributors have had to wait up to five months for delivery.
3. In many instances, respondents have failed to secure top sales producing locations, and in at least one instance failed to secure any location.
4. Respondents fail to train distributors in servicing and repairing vending machines and provide little, if any, assistance to distributors who request it.
5. The prime interest of respondents is selling vending machines.
6. Respondents have delivered vending machines to relatively few, if any, of their distributors who have signed a leasing agreement because they have been unable to locate a company to underwrite the leasing of vending machines.
7. Distributors must make substantial payments to respondents when the contract is signed.

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, 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 complete 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 Atlanta 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 pre-

scribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Eastern Investors Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 110-J Stockton Street, Statesville, N.C.

Respondent William R. Stacy is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of the corporate respondent.

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 Eastern Investors Company, Inc., a corporation, its successors and assigns, and its officers, and William R. Stacy, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, divisions or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines, merchandise sold in vending machines, and any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication, that:

1. Distributors will earn or can reasonably expect to earn or receive any stated or gross or net amount of earnings or profits; or representing, in any manner the past earnings of distributors unless in fact the past earnings represented are those of a substantial number of distributors and accurately reflect the average earnings of said distributors under circumstances similar to those of the person to whom the representation is made.

2. Respondents will deliver their merchandise within a specific period of time, or on a specific date, unless in each instance such delivery is made as represented by respondents; subject to any possibilities of delay which will be disclosed in writing at the point of sale; or misrepresenting in any manner the time within which respondents' merchandise will be delivered.

3. Respondents, their agents, representatives or employees will secure high traffic vending machine locations for their distributors, unless in each instance such high traffic locations are secured as

represented by respondents; or misrepresenting, in any manner, the amount of time and effort respondents will spend in attempting to obtain such locations for their distributors.

4. Distributors will be trained or assisted in the operation of their distributorship or misrepresenting, in any manner, the quality, amount or nature of training or assistance respondents will provide their distributors.

5. 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.

6. Respondents will sell vending machines under a leasing agreement unless in each instance the leasing agreement is arranged within ten days of receipt by respondents of a downpayment.

7. Distributors need not make a capital investment to obtain respondents vending machines or misrepresenting, in any manner the amount of money a prospective distributor must invest to obtain a distributorship.

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 this order, that (1) the contract may be canceled for any reason by notification to respondents in writing within three days from the date of execution and that (2) respondents obligations will not be fulfilled until vending machine locations are secured as represented.

b. Refund immediately all monies received on contracts entered into after the effective date of this order to (1) prospective distributors who have requested contract cancellation in writing within three days from the execution thereof and to (2) 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.

c. Refund immediately all monies received on contracts entered into before the effective date of this order to distributors who have signed a leasing agreement and who have not received, as of the effective date of this order, all of the vending machines or other products which had been purchased from respondents.

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 respondents' 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 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
CAREER ACADEMY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2546. Complaint, Sept. 13, 1974—Decision, Sept. 13, 1974

Consent order requiring a Milwaukee, Wis., resident/correspondence school, among other things to cease using deceptive means to sell its correspondence-resident instruction courses and to recruit franchised distributors; and to cease misrepresenting that the school's diplomas are equivalent to degrees from accredited colleges and that course credits are transferrable. Further, respondent is required to give unalleged