

Docket C-2615. Complaint, Dec. 17, 1974 - Decision, Dec. 17, 1974

Consent order requiring a Terrell, Tex., seller and distributor of ladies' cologne and franchises in relation thereto, among other things to cease misrepresenting the nature of its franchises or distributorships; misrepresenting the risks involved in the investment; misrepresenting earnings and profits; failing to maintain accurate records substantiating representations made; failing to make certain disclosures as to the background and experience of respondent and the success of the franchises sold by respondent. Respondent is further required to allow future purchasers a 10-day cooling-off period in which to cancel the contract.

Appearances

For the Commission: *Andre Trawick, Jr.*

For the respondents: *Kelvin Wyrick*, Dallas, Tex.

Complaint

84 F.T.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 C & C Distributing Co., Inc., a corporation, and William Thomas Hall, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, (15 U.S.C. Section 45), 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 C & C Distributing Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at P. O. Box 646, Abner Wilson Road, in the city of Terrell, State of Texas.

Respondent William Thomas Hall is president and a stockholder of the corporate respondent. This individual formulates, directs and controls the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter set forth, and he maintains business offices at the same address as the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of ladies' cologne, and routes, licenses, franchises and distributorships in relation thereto to franchisees and distributors for resale to members of the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from respondents' place of business in the State of Texas to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products 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 products and the other aforesaid business opportunities, respondents have made numerous statements and representations in oral sales presentations to prospective purchasers and in newspaper advertisements and promotional literature respecting profits, locations of routes, character of business, business success, security of investment, and exclusive territories.

Typical and illustrative of the statements and representations con-

tained in said advertising and promotional material, but not all inclusive thereof, are the following:

WHOLESALE
DISTRIBUTORSHIP

Wholesale distributorship to service company established retail and super market accounts. Internationally known product (established in 1927).

PROTECTED ACCOUNTS provide immediate excellent income with high repeat and market acceptance due to national advertising on TV, Radio, Newspapers, and Magazines. NO SELLING REQUIRED.

TO QUALIFY you must have excellent character, good credit and be bondable, a desire for success and \$5750 and up investment for inventory. Earnings potentially * * * \$20,000 to \$40,000 per year. Interested parties only * * * CALL for appointment TODAY!

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not specifically set forth herein, and through oral statements and representations to prospective purchasers, respondents now represent, and have represented, directly or by implication, orally, in writing or visually, that:

1. Exclusive franchises or distributorships for established retail and supermarket accounts are offered.
2. Any amount invested is secured by an inventory worth the amount invested and there is no risk of losing any part of the investment.
3. Profitable accounts and routes are established. New accounts and routes when the original location is not profitable are obtained.
4. Persons who purchase any such products or services and engage in business can expect to receive substantial earnings of \$20,000 to \$40,000 per year.
5. Persons who purchase any such products or services and engage in business must have special qualifications or be specially selected to qualify for purchases of any such products or services and engage in business.
6. Continuing assistance and advice to distributors and franchisees is offered.

PAR. 6. In truth and in fact:

1. Exclusive distributorships or franchises for established retail and supermarket accounts are not available.
2. Invested sums of money are not secured by an inventory worth the amount invested and there is a real and substantial risk assumed by the purchaser of losing all or a substantial portion of the money invested.
3. Profitable accounts or routes are not established. New accounts or routes when the original location is not profitable are not obtained.

4. Persons who purchase any such products or services and engage in business do not make substantial earnings of \$20,000 to \$40,000 per year.

5. An offer is not made to specially selected persons only, but to anyone who has the money to purchase any such products or services or engage in business.

6. Little or no assistance or advice is given once the purchase price is paid.

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

PAR. 7. Furthermore, it was and is a false, misleading and deceptive act and practice for respondents to seek to sell their products or services, routes, licenses, franchises and distributorships in the manner set forth in Paragraphs Five and Six hereof, while they knew or, as reasonably prudent businessmen, should have known, that their product, route, license, franchise and distributorship would not operate and produce results as represented.

At no time did respondents notify any persons who expended money in reliance upon respondents' statements and representations that their money would be refunded if respondents knew or, as reasonably prudent businessmen, should have known that respondents' products or services, routes, licenses, franchises and distributorships would not operate and produce results as represented, and if, in fact, such persons found in practice that the products or services, routes, licenses, franchises and distributorships did not operate and produce results as represented. Meanwhile, the operations and practices of respondents alleged herein were and are perpetuated for an indeterminate period of time with the monies obtained from such persons who expended sums in reliance upon respondents' statements and representations.

Therefore, the aforesaid failure of respondents to notify and refund to persons who acted in reliance upon said statements and representations set forth in Paragraphs Four and Five hereof, all monies expended by such persons, was and is inherently and unconscionably unfair and deceptive.

PAR. 8. Respondents offered for sale franchises, distributorships, licenses, routes, and products or services intended to establish franchisees or distributors in a lucrative business without disclosing in advertising or through their sales representative: (1) the business experience and background of the franchisor and various key personnel; (2) the number of franchises or distributorships which operated at a loss during the previous year; (3) other material facts relating to the success of the franchises or distributorships sold by the respondents. Knowl-

edge of such facts would indicate the possibility of success and risk involved in the franchises and distributorships. Thus, respondents have failed to disclose material facts, which if known to potential franchisees or distributors would be likely to affect their consideration of whether or not to purchase such franchise or distributorship. Therefore, the aforesaid acts and practices were, and are, false, misleading and deceptive acts or practices.

PAR. 9. In the course and conduct of their 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 sale of franchises, distributorships and products or services of the same general kind and nature as those sold by respondents.

PAR. 10. The use of 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 numbers of respondents' franchises, distributorships and products or services by reason of said erroneous and mistaken belief.

PAR. 11. 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 (15 U.S.C. Section 45).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with the proposed form of order; and

The respondents, their counsel and counsel for the Commission having thereafter executed and agreement containing a consent order, an admission by the respondents of all jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent C & C Distributing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business at P. O. Box 646, Abner Wilson Road, Terrell, Tex.

Respondent William Thomas Hall, is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his principal 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 C & C Distributing Company, Inc., a corporation, and its officers, and William Thomas Hall, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of perfume and ladies' cologne and routes, licenses and franchises in relation thereto, or any other route, franchise, license, product, or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, orally, in writing, or visually, that:

1. Exclusive franchises or distributorships for established retail and supermarket accounts are offered, or misrepresenting in any manner the nature of the franchises or distributorships.

2. Any amount invested is secured by inventory worth the amount invested and there is no risk of losing the money so invested or misrepresenting, in any manner, the amount of security provided by the inventory or the risk of losing all or any part of the investment.

3. Profitable accounts and routes are established. New accounts and routes, when the original location is not profitable are obtained,

or misrepresenting in any manner, the establishing or quality of the accounts and routes.

4. Persons who purchase any such products or services and engage in business can or will derive any stated amount of sales, profits or earnings, or representing directly or by implication, the past or present sales, profits or earnings of purchasers of any such products or services, routes, licenses, franchises or distributorships unless in fact the past sales, or the profits and earnings represented, are those of a substantial number of purchasers and accurately reflect the average sales, profits or earnings of such purchases under circumstances similar to those of the franchisee or distributor or the prospective franchisee or distributor to whom the representation is made or misrepresenting, in any manner, the past, present, or future sales, profits or earnings from the engagement in business and resale of any such products or services.

5. Persons who purchase any such products or services and engage in business must have special qualification or be specially selected to qualify for purchases of any such products or services and engage in business.

6. Continuing assistance and advice to their distributors or franchisees is offered, or misrepresenting, in any manner, the type and duration of assistance and advice offered.

B. Failing to maintain accurate records which substantiate that any past or present sales, profits or earnings represented are accurate and are those of a substantial number of franchisees or distributors and accurately reflect the average sales, profits or earnings, of such franchisees or distributors under circumstances similar to those of the franchisee or distributor or prospective franchisee or distributor to whom the representation is being made.

C. Failing to furnish any prospective franchisee with all of the following information, in a clear, permanent, and straight-forward form, at the time when contact is first established between such prospective franchisee and respondents or their representatives:

1. A factual description of the franchise offered or to be sold.
2. The business experience, stated individually, of each of the franchisor's directors, stockholders owning more than ten percent of the stock, and the chief executive officers for the past ten years; and biographical data concerning all such persons.
3. The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee; has granted franchises for such business; and has granted franchises in other lines of business.

Decision and Order

4. Where such is the case, a statement that the franchisor or any of its directors, stockholders owning more than ten percent of the stock, or chief executive officers:

a. Have been held liable in a civil action, convicted of a felony, or pleaded nolo contendere to a felony charge in any case involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

b. Are subject to any currently effective injunctive or restrictive order or ruling relating to business activity as a result of action by any public agency or department; or

c. Have filed bankruptcy or been associated with management of any company that has been involved in bankruptcy or reorganization proceedings; or

d. Are, or have been, a party to any cause of action brought by franchisees against the franchisor.

Such statement shall set forth the identity and location of the court, date of conviction or judgment, any penalty imposed or damages assessed, and the date, nature, and issuer of each such order or ruling.

5. The financial history of the franchisor, including balance sheets and profit and loss statements for the most recent five-year period; and a statement of any material changes in the financial condition of the franchisor since the date of such financial statements.

6. A description of the franchise fee; and a statement indicating whether all or part of the franchise fee may be returned to the franchisee and the conditions under which the fee will be refunded.

7. The formula by which the amount of such franchise fee is determined if the fee is not the same in all cases.

8. A statement of the number of franchises presently operating and the number proposed to be sold, indicating which existing franchises, if any, are company-owned and their addresses.

9. A statement of the number of franchises, if any, that operated at a loss during the previous year.

10. A statement of the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor, and a statement of the number of franchisees that fell into each of these categories during the past 12 months.

11. A statement of the conditions and terms under which the franchisor allows the franchisee to sell, lease, assign, or otherwise transfer his franchise, or any interest therein.

12. A statement of the conditions under which the franchisee agreement may be terminated or renewal refused or repurchased at the option of the franchisor, and a statement of the number of franchisees that fell into each of these categories during the past 12 months.

13. A statement of the conditions and terms under which the franchisor allows the franchisee to sell, lease, assign or otherwise transfer his franchise, or any interest therein.

14. A statement of the terms and condition of any financing arrangements offered directly or indirectly by the franchisor or affiliated persons, and a description of any payments received by the franchisor from any persons for the placement of financing with such persons.

15. A list of at least ten representative operating franchises with addresses and telephone numbers, similarly situated to the franchise offered and located in the same geographic area, if possible.

16. A statement of the average length of service of personnel who are responsible for assisting the franchisee at his location, and the average number of hours such personnel spent during the past year with each franchisee that was in business for less than one year.

17. If the franchisor informs the prospective franchisee that it intends to provide him with training, the franchisor must state the number of hours of instruction and furnish the prospective franchisee with a brief biography of the instructors who will conduct the training.

All of the foregoing information 1. to 17. is to be contained in a single disclosure statement, which shall not contain any promotional claims or other information not required by this order. The statement shall carry a distinctive and conspicuous cover sheet with the following notice (and no other) imprinted thereon in bold face type of not less than 10 point size:

**INFORMATION FOR PROSPECTIVE FRANCHISEES
REQUIRED BY FEDERAL TRADE COMMISSION DECISION
AND ORDER**

This information is provided for your own protection. It is in your best interest to study it carefully before making any commitment. If you do sign a contract, you may cancel it, and obtain a full refund of any money paid, for any reason, within ten business days after

either signing such contract or receiving this disclosure statement, whichever occurs later. Details appear on the contract itself.

It is further ordered, That respondents shall cease and desist from making any claim:

1. In any advertising, promotional material, or disclosure statement, or in any oral sales presentation, solicitation, or discussion between a franchisor's representative and prospective franchisees for which the franchisor does not have substantiation in its possession, which substantiation shall be made available to prospective franchisees upon demand. This provision applies, but is not limited, to statements concerning the experience or qualifications, or lack of experience or qualifications, needed for success as a franchisee.

2. In any advertising or promotional material, or in any oral sales presentation, solicitation, or discussion between a franchisor's representatives and prospective franchisees, which (directly or by implication) contradicts or exceeds any of the statements required to be disclosed by Para. (B) of this order.

It is further ordered, That respondents herein cease and desist from:

(a) Failing to include immediately above and on the same page as the franchisee's signature line of any contract establishing or confirming a franchise agreement, the following statement in bold face print at least 50 percent larger than any other print in the body of such contract, or in bold face print of a contrasting color:

NOTICE: YOU ARE ENTITLED TO CERTAIN IMPORTANT INFORMATION CONCERNING THIS TRANSACTION ENTITLED, "INFORMATION FOR PROSPECTIVE FRANCHISEES REQUIRED BY FEDERAL TRADE COMMISSION DECISION AND ORDER." IT IS IN YOUR BEST INTEREST TO DEMAND AND STUDY SUCH INFORMATION. *YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN TEN BUSINESS DAYS AFTER EITHER SIGNING THIS CONTRACT OR RECEIVING THE REQUIRED INFORMATION, WHICHEVER OCCURS LATER.* If you do choose to cancel, you will be entitled to receive a full refund within ten business days after franchisor receives notice of your cancellation. You may use any reasonable method to notify franchisor of your cancellation within the grace period. For your own protection you may wish to use certified mail with return receipt requested, or a telegram, either of which should be sent to the address below. (Franchisor will insert here the address and telephone number to which such notices should be sent.)

(b) Failing to cancel any contract for which a notice of cancellation was sent by any reasonable means within ten business days after either the contract's execution, or the franchisee's receipt of all required information, whichever occurs later, or to refund any money paid by franchisee within ten business days after the date of receipt of such notice of cancellation.

1647

Complaint

(c) Failing to furnish the prospective franchisee upon request at any time, and in the absence of any request, before consummation of any agreement, with a copy of the franchise agreement proposed to be used.

It is further ordered, That the individual respondent William Thomas Hall, 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.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any of 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 this order.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all of their present and future personnel engaged in the offering for sale, or sale of franchises, services, or any other products or services, 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.

IN THE MATTER OF

ALBERT'S FURNITURE COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS*Docket C-2616. Complaint, Dec. 17, 1974—Decision, Dec. 17, 1974*

Consent order requiring three Florida furniture dealers, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act and failing to maintain records.