
(Home Telephone No.)

(Employer)

(Employer's Address)

(Employer's Telephone No.)

IN THE MATTER OF

FEDERATED SANITARY CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF

THE FEDERAL TRADE COMMISSION ACT

Docket C-2627. Complaint, Jan. 27, 1975 - Decision, Jan. 27, 1975

Consent order requiring a New Rochelle, N.Y., seller and distributor of toilet bowl cleaners, air refreshers and other products to salesmen, franchisees and other distributors, among other things to cease misrepresenting earnings and profits of franchisees; misrepresenting the number of individuals engaged in the sale of respondents' products; using false testimonials, and failing to make certain disclosures to prospective franchisees.

Appearances

For the Commission: *Moir P. McDermott.*

For the respondents: *Sidney Schreiber*, New York, N.Y.

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 Federated Sanitary Corp., a corporation, and Harry Wessel, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, having 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 Federated Sanitary Corp. 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 65 Plain Ave., New Rochelle, N.Y.

Respondent Harry Wessel is an officer of Federated Sanitary Corp. He formulates, directs and controls the acts and practices of the 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 been engaged in the advertising, offering for sale, sale and distribution of toilet bowl cleaners, air refreshers and other products to salesmen, franchisees and other distributors for resale. The toilet bowl cleaners and air refreshers are sold under the trade names of Toil-Ease, Flora-Scent and Petite.

PAR. 3. In the course and conduct of their business as aforesaid, respondents cause advertising concerning the sale and distribution of said products to be published in magazines which have interstate circulation and have caused sales brochures and promotional materials and said products to be mailed or otherwise shipped from their place of business in the State of New York to salesmen, franchisees and other distributors in various other States of the United States and the District of Columbia. 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 business as aforesaid and for the purpose of inducing prospective salesmen, franchisees and other distributors to purchase and resell said products, the respondents have

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made, and are now making numerous statements in said promotional materials and other advertisements with respect to the benefits of distributing said products or undertaking franchises for the sale of said products.

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

* * * And here's how easy it will be for you to be appointed the Toil-Ease [Petite] Franchise Distributor for your important territory.

Since the quota for your County is 48 dozen units of Toil-Ease [Petite] at the Franchise Dealer's rock-bottom cost of \$8.76 per dozen - (\$420.48) - all you need to do is rush me your remittance of either a Cashier's Check or Certified Check in this amount of \$420.48 covering your order for the 48 dozen units of Toil-Ease Petite * * *.

* * * * *

* * * And here's how easy it will be for you to be appointed the Flora-Scent Franchise Distributor for your important territory.

Since the quota for your County is 36 dozen units of Flora-Scent at the Franchise Dealer's rock-bottom cost of \$14.52 per dozen - (\$522.72) - all you need to do is rush me your remittance of either a Cashier's Check or Certified Check in this amount of \$522.72 covering your order for the 36 dozen units of Flora-Scent* * *.

* * * * *

There are no extra charges or fees of any kind for securing a [Toil-Ease or Flora-Scent] Franchise. . . . and it can be yours for life - and can be sold, transferred, or passed on to your children, if and when you decide to retire!

* * * * *

I have pocketed as much as \$100.00 for a half day of work* * *.

* * * * *

Average weekly profits of \$1,000.00 plus* * * 75 percent repeat business.

* * * * *

CALL THEM ON US!

These are some of the thousands of people making it with Federated Sanitary Corporation.

* * * * *

The biggest sales I've made to date have been to organizations in my town that use "Petite" to raise money for charity and other worthwhile services* * *, clubs, churches, Boy Scouts, Girl Scouts, etc.

* * * * *

Here Are Excerpts From Just a Few of the Scores of Letters in Our Files, Telling How Flora-Scent Salesmen Are "Cleaning" Up!

* * * * *

Recently a national sales magazine published an article about L. A. Coleman, Toil-Ease distributor in Utah.

PAR. 5. By and through the use of the above-quoted statements, and others of similar import and meaning, but not expressly set out herein, respondents have represented, and are now representing, directly or by implication:

1. That obtaining and holding a franchise or distributorship is solely conditional upon an initial purchase of, for example, 48 dozen units of "Toil-Ease" or "Petite," or of 36 units of "Flora-Scent."
2. That salesmen, franchisees or other distributors of said products earn or realize \$1000 per week full time or \$100 per half day, spare time, or other stated amounts of earnings or profits.
3. That thousands of persons are engaged as salesmen, franchisees or other distributors of said products.
4. That the testimonials quoted in said advertisements and promotional material are bona fide statements by salesmen, franchisees, or other distributors engaged in the sale of respondents' products.
5. That articles which have appeared in trade magazines about respondents' salesmen, franchises or other distributors have been independently written and published.

PAR. 6. In truth and in fact:

1. Obtaining and holding a franchise or distributorship is not solely conditional upon an initial purchase. To the contrary, respondents frequently require that additional purchases be made on a monthly or other basis, and do not disclose the material fact that failure to make the additional purchases, may be treated as a condition for terminating the franchise.
2. Few, if any, salesmen, franchisees or other distributors earn \$1000 per week full time or \$100 per half day, spare time, or other amounts set forth in respondents' advertisements and promotional material. To the contrary said salesmen, franchisees or other distributors, in the main, earn substantially less than those respective amounts.
3. Respondents have substantially fewer than a thousand salesmen, franchisees or other distributors regularly engaged in the sale of said products. Furthermore, many of said persons have purchased only a few small orders.
4. The testimonials quoted in said advertisements and promotional material are not bona fide statements by salesmen, franchisees or other distributors engaged in the sale of respondents' products. To the contrary, a substantial number of these persons have never dealt with the respondents.
5. Articles which have appeared in trade magazines and which were

reprinted and included in the respondents' promotional mailings or were quoted in publicity material included in the mailings were not independently written and published but were "puff editorials" which were solicited by the respondents and were either prepared by the respondents or respondents' agents or from material submitted by the respondents.

Therefore, respondents' statements and representations and their failure to disclose material facts, as set forth in Paragraphs Four, Five and Six hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business as aforesaid, respondents have misquoted, exaggerated and otherwise distorted testimonial statements and endorsements received from purchasers of their products. Typical and illustrative of said practice, but not all inclusive thereof, are the following:

*Respondents' Version of
Purchaser's Statement*

Repeat orders are fantastic!

Can't get enough order blanks-
everyone wants these items!

Been selling for 15 years -
nothing compares with Federated.
One of the best! Great order
demands!

Actual Statement

There is no problem
getting repeat orders.

* * *wish I had more time
this month to sell your
product. You see I am
a post office employee
so it is hard for me to
get time off because of
the holidays. I am sure
I can move Flora-Scent.
P.S. My last order took
almost three weeks to
get to me. Please send
me some more order blanks* * *.

* * *none of them compare
with Toil-Ease.
Toil-Ease is one of the
best to clean toilets
I've ever seen and keep
them clean and does not
harm the drain pipes.

Therefore, respondents' practice of misquoting, exaggerating and otherwise distorting testimonial statements and endorsements received from purchasers of their products, as set forth in Paragraph Seven hereof, was and is false, misleading and deceptive.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondents have been in substantial competition, in

commerce, with corporations, firms and individuals in the sale of articles of merchandise and services of the same general kind and nature as those sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations and their failure to disclose material facts 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 respondents' products 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, 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 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 a proposed form of order; 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 complaint to issue herein, 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 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 Federated Sanitary Corp. 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 65 Plain Ave., New Rochelle, N.Y.

Respondent Harry Wessel is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, 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 Federated Sanitary Corp., a corporation, its successors and assigns, and its officers, and Harry Wessel, 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 toilet bowl cleaners, air refreshers, or other products, 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 individuals will earn any stated gross or net amount, or representing, in any manner, the past earnings of individuals where such profits represent unusual earnings by a small percentage of individuals unless the pertinent facts with reference to such earnings are disclosed: for example, full or part-time employment or whether the individual operates alone or employs a staff.

2. Representing, directly or by implication, a prospective franchisee's potential income or gross or net profits unless such representation is based upon the actual average figures for all franchises and distributorships in operation during the entire preceding twelve-month period and unless there is disclosed clearly and conspicuously immediately adjacent to any such representation that "REPRESENTATIONS ARE BASED ON THE AVERAGE EARNINGS OR PROFITS OF ALL FRANCHISES AND DISTRIBUTORSHIPS IN OPERATION DURING THE PAST YEAR. THESE FIGURES SHOULD NOT BE CONSIDERED AS ACCURATE REPRESENTATIONS OF POTENTIAL EARNINGS OR PROFITS OF ANY SPECIFIC FRANCHISEE OR DISTRIBUTOR."

3. Misrepresenting, directly or by implication, the number of individuals regularly engaged in the sale or distribution of respondents' products.

4. Using testimonials from individuals who did not purchase from the respondent corporation the products covered by the testimonials.

5. Failing to furnish any prospective distributor or franchisee, in a

separate written statement in a clear and concise manner, prior to the consummation of any contracts between respondents and any such prospective distributor or franchisee:

A. The conditions under which the franchise or distributorship agreement may be terminated or renewal refused by respondents, and a statement of the number of franchises or distributorships which were terminated or renewal refused in the past calendar year.

B. Complete financial details pertaining to the distributor or franchise agreement including the amount to be paid by the distributor or franchisee for the distributorship or franchise, the amount to be paid for any services to be rendered by respondents and the amount to be paid for any merchandise offered for sale or sold thereunder.

C. The median and mean gross sales to respondents' franchisees or distributors, exclusive of initial inventories sold to new franchisees or distributors, during the 12-month period preceding the month in which the information is to be furnished.

D. The number of franchisees or distributors at the beginning of the 12-month period, the number appointed during the 12-month period, the number terminated during the 12-month period, the number retained at the end of the 12-month period, and the median and mean length of time that those retained at the end of the 12-month period have been respondents' franchisees or distributors.

6. Using reprints of magazine articles, describing the experience of respondents' salesmen, distributors or franchisees with the respondents' products when such articles are suggested, drafted or prepared by respondents or on their behalf, unless it is clearly indicated that said articles were initiated by the respondents.

7. Misquoting, exaggerating or otherwise distorting statements from purchasers.

It is further ordered, That respondents furnish any prospective franchisee or distributor a copy of the franchise or distributorship agreement proposed to be used reasonably prior to the date the agreement is to be consummated or payment is to be made by the prospective franchisee or distributor for such franchise or distributorship.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination and copying by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future office personnel employed

directly by respondents and to all persons engaged in the offering for sale or sale of respondents' distributorships or franchises 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 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 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 no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of or the statutes administered by the Federal Trade Commission.

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

TOWN FINANCE CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS