

IN THE MATTER OF

GEORGIA AGENCY COMPANY, INC., ET AL.

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

Docket C-2658. Complaint, Apr. 22, 1975 - Decision, Apr. 22, 1975

Consent order requiring an Atlanta, Ga., seller of aerosol product distributorships and franchises, among other things to cease misrepresenting earnings and profits, nature of products, and survey results; making unsubstantiated advertising claims; and failing to disclose certain information, such as right-to-cancel provision and cooling-off period, prior to the signing of contracts.

Appearances

For the Commission: *Charles C. Murphy Jr.*

For the respondents: *John Feagin, Jr., Atlanta, Ga.*

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 Georgia Agency Company, Inc., a corporation, Richard A. Bryant, Jr. and Richard R. Royal, individually and as officers of said corporation and Doyle Fleming, an individual and principal stockholder of said corporation, 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:

PAR. 1. Respondent Georgia Agency Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located in Suite 850, 8 Perimeter Pl., N.W., Atlanta, Ga.

Respondents Richard A. Bryant, Jr., Richard R. Royal, and Doyle Fleming are individuals and officers and/or stockholders of said corporation. Together they formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 aerosol health and beauty aid products, fire extinguishers, lubricants and novelty items and in the advertising, offering for sale, and sale of

distributorships or franchises for said products to members of the public.

PAR. 3. In the course and conduct of their business, respondents cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Georgia and their suppliers' places of business in the State of Georgia, and other States, to purchasers thereof located in various other States of the United States. In addition, in the course and conduct of their business, respondents have disseminated and caused to be disseminated in newspapers of interstate circulation, advertisements designed to be read by persons residing outside the State of Georgia and intended to induce such persons to enter into contractual agreements with respondents to purchase distributorships or franchises and products from respondents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in products, distributorships or franchises 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 the purchase of their distributorships or franchises and products, respondents have made numerous statements and representations in promotional material and in newspaper advertisements. Persons responding to said advertisements are contacted by respondents or their representatives. Said respondents or their representatives, in soliciting the sale of said products, make various oral statements and representations concerning the business opportunities and benefits to be derived by purchasing said distributorships or franchises and products.

Among and typical, but not all inclusive, of the statements and representations made in newspapers, circulars, form letters, flyers and by other printed material given to prospective purchasers are the following:

IF YOU COULD EARN: \$50,000 ANNUALLY

Would you:

Work at least 3 days a week? Contact established accounts regularly? Distribute at wholesale level only, top nationally advertised products to drug, department, discount stores, etc.?

And if:

There were no selling, vending or employees? (Other than a manager, if you have other business interests)?

Could you:

Make an immediate decision? (Bring your wife, banker, lawyer or supervisor). Invest \$5,000 to \$10,000 (fully rebatable under contract)?

If so, call: Jan O'Connell 724-3410.

If unable to reach Jan O'Connell, call or write: The Georgia Agency Company, 8 Perimeter Place, N.W., Suite 850, Atlanta, Georgia 30339, (404) 432-0705.

WE'RE GOING TO PUT A LOCAL MAN IN BUSINESS * * * HE MUST REQUIRE \$25,000 to \$50,000 per year and not just a job. Very few jobs pay \$50,000, but a lot of businesses do. One of them is ours * * *

* * * * *

We merchandise to leading drug stores, department stores, etc., the No. 2 most used personal product in America today, enhanced by the ten most coveted brand names in the industry. Only we offer this opportunity, and this you would have going for you if qualified* * *.

* * * * *

LOOKING FOR A \$50,000 JOB?

There are not too many jobs paying \$50,000, but there are lots of businesses that do. One of them is ours and we are a national company in a Billion Dollar Business.

* * * * *

DO NOT CALL ME UNLESS YOU QUALIFY!

We do not want a \$10,000 to \$20,000 per year man.

You must desire and believe that \$100,000 per year and up can be made.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, respondents have represented directly or by implication that:

A. Persons who purchase a distributorship or franchise from respondents can earn from \$25,000 to \$100,000 annually working part-time or full-time.

B. Said earnings projections are the earnings made by a significant number of respondents' distributors or franchisees.

C. Respondents obtain top sales producing locations such as leading department, discount, and drug stores for the placing of products purchased from them.

D. Respondents' products are nationally advertised.

E. A distributor's investment is fully refundable under the rebate provisions of respondents' contract.

F. Respondents' goods contain well-known brand name products.

G. Only respondents offer to sell distributorships to distribute the particular type of products they describe, to the exclusion of all others.

PAR. 6. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of distributorships or franchises and products, respondents, through their agents and representatives, have made and are now making, numerous oral statements and representations regarding ownership and operation of distributorships and franchises sold by respondents and the products supplied by respondents. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

A. A survey has been made of the market in which the prospective purchaser will operate.

B. The geographical territory granted to each distributor is exclusive.

C. The products of respondents are manufactured using an exclusive formula.

D. Respondents' products are fast moving and easy to sell.

E. A list given to a prospective distributor contains names and telephone numbers of successful distributors of respondents located in various major cities in the United States.

F. \$60 of the prospective distributor's investment is used to pay for a "back up inventory."

G. Many retail accounts secured by respondents will pay cash when the respondents' products are placed in their place of business.

PAR. 7. In truth and in fact:

With respect to advertising representations:

A. Few, if any, persons who purchased a distributorship or franchise from respondents earned from \$25,000 to \$100,000 annually working part-time or full-time.

B. Respondents' claimed earnings projections are far in excess of the earnings of most, if not all, persons who purchased and operated respondents' distributorships or franchises.

C. Respondents do not obtain top income producing locations, but place most of the accounts in small stores which have very little consumer traffic. The locations secured by respondents are few in number and usually undesirable, unsuitable and unprofitable.

D. Respondents do not conduct any national advertising of their products and have no control over the extent to which their distributors conduct product advertising.

E. A distributor's investment is not functionally refundable under the terms of the distributor's contract with the respondents, and few, if any, distributors have received a full refund of their investment under the contractual provisions of respondents' contract.

F. Name brand products are not contained in respondents' products, but instead synthetically-prepared substances which simulate brand-name fragrances such as, but not limited to Arpege, Chanel 5, Joy, Estee Lauder, Shalimar, White Shoulders, Intimate, Jade East, English Leather, Canoe and Brut are used in the manufacture of respondents' products.

G. At least one company other than respondents offers products or distributorships to sell products the same as or similar to the products distributed by respondents.

With respect to oral representations:

A. Seldom, if ever, have respondents made a survey of the market in which the

prospective purchaser intends to operate, prior to the contact by the salesman or thereafter.

B. The geographic territory granted to distributors is not exclusive, but is sometimes granted by respondents to from one to three other distributors.

C. The formula employed in the manufacture of the products sold by respondents is not exclusive to the respondents' products but is used by at least one other company in its aerosol products.

D. The aerosol products sold to distributors are not fast-moving and easy to sell, but are an off-brand and usually undesirable to consumers.

E. The list given to prospective distributors did not contain names of distributors of respondents, successful or otherwise, but were instead so-called "singers" or individuals set up by respondents to represent and hold themselves out as prosperous and successful distributors.

F. The \$60 per account "back up inventory" charge is not used by respondents to purchase and warehouse products for their distributors but is merely an added cost for which distributors receive no consideration.

G. Few, if any, retail accounts secured by respondents' representatives pay cash for respondents' products, but on the contrary, most, if not all, secured accounts are specifically told that the distributor is placing the product on a "consignment only" basis.

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

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in the solicitation and sale of distributorships requiring a substantial outlay of money from persons with little or no previous experience in such business without affording such persons the right to cancel such contracts of sale without penalty for a period of not less than five (5) business days following the finalization of such transaction.

Therefore, the solicitation of distributorship contracts without allowing for cancellation within a reasonable time constitutes an unfair practice where such contract involves substantial monetary obligations on the part of persons with little or no experience in the type of business arrangement sold by respondents.

PAR. 9. In addition to the foregoing statements, representations, acts and practices, respondents usually and normally require payment in full of the contract price by distributors prior to fulfilling their contractual obligations including, but not limited to, establishing locations and delivering merchandise.

Therefore, the requirement that distributors pay the full contractual price prior to the performance of contractual obligations by respondents under the circumstances and conditions herein alleged constitutes an unfair practice.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations and practices, has had the capacity and tendency to mislead members of the public

into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of respondents' distributorships or franchises and products by reason of said erroneous and mistaken belief and unfairly into the assumption of obligations and the payment of monies which they might otherwise not have incurred.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce, and unfair or deceptive acts or 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 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 Georgia Agency Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of Georgia, with its office and principal place of business located at Suite 850, 8 Perimeter Pl., N.W., Atlanta, Ga.

Respondents Richard A. Bryant, Jr., Richard R. Royal and Doyle Fleming are officers and/or stockholders of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

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, Georgia Agency Company, Inc., a corporation, its successors and assigns, and its officers, and Richard A. Bryant, Jr. and Richard R. Royal, individually and as officers of said corporation and Doyle Fleming, individually and as principal stockholder 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 aerosol health and beauty aid products, fire extinguishers, lubricants and novelty items or any other products, services, distributorships or franchises 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. (a) Persons investing in respondents' distributorships, franchises or purchasing respondents' products will receive any stated amount of income or gross or net profits or other earnings, or misrepresenting in any manner, earnings, profits or other benefits to be derived by purchasers of respondents' distributorships, franchises or products.

(b) Any stated sums of money are past earnings of distributors or purchasers of respondents' products unless such sums are based upon the actual figures for all distributorships granted by the respondents in operation during the entire preceding twelve (12) month period, and without disclosing clearly and conspicuously immediately adjacent to any such representation that "REPRESENTATIONS ARE BASED ON THE REPRESENTATIVE NET EARNINGS OR PROFITS OF ALL INDEPENDENT DISTRIBUTORS OF THIS COMPANY IN OPERATION DURING THE PAST YEAR. THESE FIGURES SHOULD NOT BE CONSIDERED AS ACCURATE REPRESENTATIONS OF POTENTIAL EARNINGS OR PROFITS OF ANY SPECIFIC DISTRIBUTOR."

2. Respondents will obtain satisfactory or profitable locations for sale of the products purchased from them; *Provided, however,* That

nothing herein shall be construed to prohibit respondents from truthfully and nondeceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immediate conjunction therewith, the average net or gross earnings realized by all distributors from sales of its products in locations obtained by respondents or through their assistance.

3. National advertising will be conducted by or provided for by respondents.

4. The distributorship investment is fully rebatable or refundable under the contract without fully disclosing, both orally and in writing in the contract, the procedure by which such a refund may be obtained including the amount of product which must be purchased, based on the prospective distributor's investment in order to obtain full reimbursement of the investment.

5. Brand name products are used in the manufacture of respondents' products or misrepresenting in any manner the type, nature or origin of respondents' products.

6. Respondents conduct surveys or investigations to find desirable market areas for their products or suitable retail locations for the sale of their products.

7. Geographic territories granted to distributors are exclusive or that the subsequent disposition by distributors of products are geographically restricted.

8. The formula employed in the manufacture of respondents' products is exclusive.

9. The products of respondents that are sold to distributors are fast moving or easy to sell.

10. Persons named as references are distributors, successful or otherwise, unless such persons have been actual distributors as described in Section C-3 of this order.

11. There is a charge as part of the distributorship investment or otherwise for any goods or services specified in the distributorship contract or application that are not actually shipped or provided by respondents.

12. Retail accounts secured by respondents pay or will pay cash for respondents' products.

B. Making any claim in any advertising or promotional material for which the respondents do not have in their possession valid substantiating data, which data shall be made available to prospective distributors or the Commission or its staff upon demand.

C. Failing to furnish any prospective distributor with all of the following information, in writing and in a clear permanent form, at the

time when contact is first established between such prospective distributor and the respondents or their representatives:

1. The official names(s) and address(es) of the corporate respondent, the parent firm or holding company of the respondent, if any; all affiliated companies that will engage in business with the distributor.

2. The business experience of the respondents, including the length of time the respondents have conducted a business of the type to be operated by the distributor, have granted distributorships for such business and have granted distributorships in other lines of business.

3. A list of the names and addresses of ten (10) persons who purchased distributorships, for products or product lines similar to, or the same as, those being offered by respondents to any prospective distributor.

4. A statement of the conditions and terms under which the respondents allow the distributor to sell, lease, assign, or otherwise transfer his distributorship, or any interest therein.

5. A statement of the number of persons who have signed distributor agreements for whom locations have not yet been agreed upon by both the respondents and the distributor.

All of the foregoing material is to be contained in a single package, is to be made available to the Commission or its staff upon demand, and is to carry a distinctive and conspicuous cover sheet with the following information (and no other) imprinted thereon in bold face type of not less than ten (10) point size:

**INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY
THE FEDERAL TRADE COMMISSION**

This package of 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 five business days after signing. Details appear on the contract itself.

The information contained herein has not been reviewed or approved by the Federal Trade Commission, but any misrepresentation constitutes a violation of Federal law. If you feel you have been misled, you should contact the Federal Trade Commission in Washington, or the Federal Trade Commission Regional Office nearest you.

D. Failing to include immediately above and on the same page as the distributor's signature line of any contract establishing or confirming a distributorship 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 DISTRIBUTORS REQUIRED BY THE FEDERAL TRADE COMMISSION." IT IS IN YOUR BEST INTEREST TO DEMAND AND STUDY SUCH

INFORMATION. *YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN FIVE BUSINESS DAYS AFTER YOU SIGN IT.* If you do choose to cancel, you will be entitled to receive full refund of any money paid within five business days after Georgia Agency Company, Inc., receives notice of your cancellation. You may use any reasonable method to notify Georgia Agency Company, Inc., of your cancellation within the five business day 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. [Respondents will insert here the address to which such notices should be sent.] To cancel this transaction, the notice of cancellation must be sent not later than midnight of [Respondents will insert date.]

E. Failing to cancel any contract for which a notice of cancellation was sent by any reasonable means within five (5) business days after the contract's execution, or failing to refund any money paid by distributor within five (5) business days after the date of receipt of such notice of cancellation.

As used in this order, the following definitions shall apply:

1. "Prospective distributor" means any person who approaches, or is approached by, respondents or their agents or representatives for the purpose of investigating a distributorship between such person and respondents;

2. "Time when contact is first established" means the earlier of the time when: (a) a direct personal meeting first occurs between respondents or their agents or representatives and a prospective distributor, or (b) any document or promotional literature is distributed to a prospective distributor;

3. "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

It is further ordered, That respondents:

Inform orally all prospective customers and provide in writing in all contracts that the contract is not final and binding until respondents have completely performed their obligations thereunder by shipping all supplies and products to the customer and performing all services, and said customer has thereafter signed a statement indicating his satisfaction;

Refund immediately all monies to (1) customers who have refused to sign statements indicating satisfaction with respondents' shipments of supplies and products, and (2) customers showing that respondents' contract, solicitations or performance were attended by or involved violations of any of the provisions of this order.

It is further ordered, That respondents require that distributors pay no more than one-third of the amount of the contract price prior to the shipment of goods and the establishment of accounts to the satisfaction of the distributor.

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 (2) years after the 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 the corporate respondent 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 successor corporations, the creation or dissolution of subsidiaries or corporate affiliates or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their 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 they are engaged as well as a description of their duties and responsibilities.

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 corporate respondent distribute a copy of this order to each of its operating divisions or departments.

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.
