

IN THE MATTER OF
KUSTOM ENTERPRISES, INC., ET AL.

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

Docket C-2662. Complaint, May 7, 1975--Decision, May 7, 1975

Consent order requiring an Atlanta, Ga., seller and distributor of equipment and supplies used in the assembly of stereo tapes, among other things to cease misrepresenting earnings and profits, guarantees; and opportunities; failing to deliver goods; failing to disclose contract cancellation rights, to make refunds, and to maintain records.

Appearances

For the Commission: *David E. Krischer.*

For the respondents: *Morton P. Levine, Levine, D'Alessio & Cohn,*
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 Kustom Enterprises, Inc., a corporation, and Stephen R. Cohen, 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 Kustom Enterprises, Inc., (hereinafter referred to as Kustom), 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 principal place of business located at 200 Wendell Ct., Suite 230, Atlanta, Ga.

Respondent Stephen R. Cohen is an officer of the corporate respondent. 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 equipment and supplies used in the assembly of stereo tapes to distributors and potential distributors. Said distributors purchase respondents' equipment and supplies under a distribution agreement, whereby respondents agree to purchase each week from distributors, a specified amount of assembled stereo tapes at a specified price.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have caused equipment and supplies used in the assembly of stereo tapes, when sold, to be shipped or delivered from their place of business in the State of Georgia to purchasers thereof located in other States of the United States, and disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of such equipment and supplies, and thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in said equipment and supplies 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 equipment and supplies used in the assembly of stereo tapes, respondents have made numerous statements and representations in newspapers and promotional material. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

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GUARANTEED INCOME

* * * * *

Make \$300 a week part time; unlimited income full time.

* * * * *

EXCEPTIONALLY HIGH INCOME

* * * * *

Contract for 1,500 pieces per week at \$300
net weekly profit. Expansion possible.

* * * * *

PAR. 5. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of equipment and supplies used in the assembly of stereo tapes, respondents through their agents and representatives, have made and are now making, numerous oral statements and representations regarding ownership and operation of stereo tape distributorships sold by respondents. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

Kustom guarantees that distributors will earn at least \$300 per week.

Each week, Kustom will supply its distributors with the amount of equipment and supplies necessary for the assembly of the stereo tapes which Kustom has contracted to buy weekly from the distributors.

Each week, Kustom will purchase from its distributors the contractually specified amount of assembled stereo tapes.

Each week, Kustom will pay its distributors for the stereo tapes it has purchased from them.

Kustom distributors earn an amount equivalent to their initial investments, within twenty-six weeks of operation.

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

1. Distributors are guaranteed to earn \$300 per week part-time or an unlimited amount per week full-time.

2. Each week, distributors will receive the amount of equipment and supplies necessary for the assembly of the stereo tapes which respondents have contracted to buy weekly from the distributors.

3. Each week, respondents will purchase from distributors the contractually specified amount of assembled stereo tapes.

4. Each week, respondents will pay distributors for the assembled stereo tapes the respondents have purchased from them.

5. Distributors will earn an amount equivalent to their initial investments within twenty-six weeks of operation.

PAR. 7. In truth and in fact:

1. The representations of guaranteed part-time or full-time weekly earnings cannot be substantiated; relatively few, if any, distributors earn \$300 per week part time or an unlimited amount per week full time.

2. Relatively few, if any, distributors receive the equipment and supplies necessary for the assembly of stereo tapes each week. In many instances distributors have had to wait up to eight weeks for their deliveries.

3. Because of the nondelivery of equipment and supplies, relatively few, if any, distributors have been able to sell to respondents each week the contractually specified amount of assembled stereo tapes.

4. Because of the nondelivery of equipment and supplies, relatively few, if any, distributors receive weekly payments from respondents.

5. Relatively few, if any, distributors earn an amount equivalent to their initial investments within twenty-six weeks of operation.

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 equipment and supplies used in the assembly of stereo tapes of the same kind and nature as 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 respondents' products and services 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its rules, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Kustom Enterprises, 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 200 Wendell Ct., Suite 230, Atlanta, Ga.

Respondent Stephen R. Cohen 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 Kustom Enterprises, Inc., a corporation, its successors and assigns, and its officers, and Stephen R. Cohen, 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 equipment and supplies used in the assembly of stereo tapes, and any other products or service, 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. Earnings of distributors are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.

3. Respondents will deliver the equipment and supplies used in the assembly of stereo tapes on a weekly or other periodic basis, 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' equipment and supplies will be delivered.

4. Respondents will purchase assembled stereo tapes from distributors on a weekly or other periodic basis unless in each instance distributors will have delivered to them the equipment and supplies necessary for the assembly of such tapes.

5. Respondents will make weekly or other periodic payments to distributors in payment for the assembled stereo tapes it has purchased from them unless in each instance distributors will have delivered to them the equipment and supplies necessary for the assembly of such tapes and in each instance such payments are made as represented by respondents.

6. Distributors will earn or can reasonably expect to earn an amount equivalent to their initial investment within twenty-six weeks

of operation; or representing, in any manner, the time within which a distributor can earn back his investment.

It is further ordered, That respondents:

(a) Orally inform all prospective distributors and provide in writing in all contracts entered into after the effective date of this order, that the contract may be canceled for any reason by notification to respondents in writing within three business days from the date of execution of the contract.

(b) Provide a separate and clearly understandable form to all prospective distributors at the time of execution of the contract, which said distributors may use as a notice of cancellation.

(c) 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 business 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.

It is further ordered, That respondents:

(a) Refund immediately, pursuant to the terms described in part (c) below, all monies received on contracts entered into before the effective date of this order to distributors who, as of the effective date of this order, have not been brought within two weeks of being up to date on the receipt of their contractually specified weekly shipments of the equipment and supplies used in the assembly of stereo tapes unless;

(1) respondents obtain a signed statement from a distributor stating his desire to reduce his weekly output and respondents have brought him within two weeks of being up to date on his revised output, or

(2) respondents show that a distributor has in his possession two weekly shipments of equipment and supplies used in the assembly of stereo tapes which the distributor has not assembled and shipped to respondents for purchase by respondents, or

(3) respondents obtain a signed statement from a distributor stating that he does not wish a refund pursuant to this provision.

(b) Provide an immediate refund, pursuant to the terms described in part (c) below, to any distributor to whom deliveries of equipment and supplies used in the assembly of stereo tapes fall more than two weeks behind the distributor's contractually specified periodic quota, if at any time during such period said distributor requests such a refund in writing unless;

(1) respondents obtain a signed statement from a distributor stating his desire to reduce his weekly output and respondents have brought him within two weeks of being up to date on his revised output, or

(2) respondents show that a distributor has in his possession two

weekly shipments of equipment and supplies used in the assembly of stereo tapes which the distributor has not assembled and shipped to respondents for purchase by respondents, or

(3) respondents obtain a signed statement from a distributor stating that he does not wish a refund pursuant to this provision.

(c) For the purposes of parts (a) and (b) above, the term "refund" shall mean all sums of money paid by a distributor to respondents less (1) any amount paid by respondents to distributors, and (2) the price paid for any equipment or supplies purchased by the distributor that the distributor does not return (a distributor requesting a refund pursuant to this provision who has equipment or supplies either credited to him in an account, or in his actual possession, shall be entitled to a refund for such merchandise or equipment on the basis of the price paid by the distributor for the equipment or supplies; *Provided, however,* That any of said equipment or supplies in the distributor's actual possession for which he requests a refund under this provision must be delivered to respondents before the refund is payable to the distributor).

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 respondents deliver a copy of this order to cease and desist to all present and future distributors 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 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 respondents notify the Commission at

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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.
