

IN THE MATTER OF
THE A & R AGENCY, ET AL.

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

Docket C-2681. Complaint, July 14, 1975-Decision, July 14, 1975

Consent order requiring a New York City advertising promoter, among other things to cease using misrepresentations to sell advertising in ethnic publications, and from placing and seeking payment for unauthorized advertisements.

Appearances

For the Commission: *Moir P. McDermott.*

For the respondents: *Richard C. Shadyac*, Annandale, Va. and
Stanley R. Stern, Brooklyn, 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 The A & R Agency, a partnership doing business in its own name and as Daily Challenge, Spanish Newspaper Agency, Jewish Newspaper Agency, Scandanavian Newspaper Agency, Italian Newspaper Agency, Chinese Newspaper Agency, Catholic Newspaper Agency, German Newspaper Agency, Recorder Newspaper Agency, Caribbean Echo, Bronx Home Newspaper Agency, Polish Publication Agency, Hungarian Newspaper Agency, Greek Newspaper Agency, and Anthony Abraham individually and as a partner in said partnership and Anthony Clausi individually and as an

employee of said partnership, 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The A & R Agency is a partnership 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 350 Fifth Ave., New York, N.Y.

Respondent Anthony Abraham is an individual and is the only active partner in the partnership respondent. Respondent Anthony Clausi is an individual and is employed as manager of the partnership respondent. Said individual respondents formulate, direct and control the acts and practices of the partnership respondent, including the acts and practices hereinafter set forth. The address of respondent Anthony Abraham is 727 S. Alhambra Cir., Coral Gables, Fla., and the address of respondent Anthony Clausi is that of the partnership respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the solicitation of advertisements to be published in a number of newspapers, magazines, and other publications and in the collection of accounts arising out of their said business.

PAR. 3. In the course and conduct of their business, respondents engage in extensive commercial activities among the various States of the United States. By long distance telephone and other means, respondents contact prospective purchasers of advertising space in states other than the State of New York and seek to sell advertising space to such persons. Respondents transmit through the United States mails to such persons invoices, statements, letters and other business communications and receive from them bank checks, letters and other instruments of a commercial nature. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business respondents and their agents or representatives contact prospective purchasers of advertising space by telephone and other means and seek to induce them to purchase advertising space in many newspapers and periodicals among which are the Daily Challenge, El Tiempo and Menora.

In connection with such solicitations, respondents and respondents' agents and representatives, have made numerous statements regarding the character and volume of circulation of the individual publications.

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

That the Daily Challenge has a circulation of 10,000 subscribers in Wilmington, Del., or 350,000 circulation in New England, New York and Washington, D.C., or reaches hundreds of Black homes by mail or is the largest newspaper in the East serving the Black community; that El Tiempo has a circulation of 200,000 or 500,000; that Menora has a guaranteed paid circulation of 72,000, or is read by 50,000 Jewish families in the New York area, or has a general circulation of more than 100,000 or 250,000 or 100,000 readers in Long Island.

PAR. 5. In truth and in fact, the various statements and representations made by respondents and respondents' agents and representatives regarding the character and volume of said publications were and are false and exaggerated. The total circulation of the Daily Challenge is about 34,000; of El Tiempo 33,000 and of Menora 30,000.

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

PAR. 6. In the course and conduct of their business, respondents and their agents or representatives seek to induce prospects to purchase advertising space in various publications by representing that the readership of a publication is of a special type or class. For example: that the Daily Challenge's readers are Black professionals, and that Menora is the Jewish businessman's paper, is widely circulated among prominent Jewish doctors, lawyers, and professionals, and goes to Jewish investment houses.

PAR. 7. In truth and in fact, the various statements and representations made by respondents and respondents' agents and representatives regarding the type or class of subscribers or readers of the said publications were and are false and exaggerated. The Daily Challenge carries no news of special interest to Black professionals and the Menora is published in the Hungarian language and there is a limited number of American Jewish people who can read Hungarian.

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

PAR. 8. In the course and conduct of their business, respondents have also engaged in the practice of placing advertisements of various persons and firms in various publications without having received authorization from such persons or firms. Respondents have then sought to exact payment from said persons and firms for such unauthorized advertisements.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive practices as set forth in Paragraphs Four and Six has had, and now has, the capacity and tendency to mislead prospective advertisers into the purchase of advertising space by reason of said practices. The unfair and deceptive practice engaged in by respondents

of publishing wholly unauthorized advertisements as set forth in Paragraph Eight has subjected firms and individuals to harassment and unlawful demand for payment of nonexistent debts.

PAR. 10. In the course and conduct of their business, respondents have engaged in the following additional unfair, false, misleading and deceptive practices:

1. In a substantial number of instances, respondents have represented that advertisements will appear in special sections of a publication when in fact the publication is not divided into sections and does not segregate advertisements according to type but commingles advertisements.

2. In a substantial number of instances, respondents have represented that advertisements will appear in special editions of a publication when in fact there was no special edition of the publication.

3. In a substantial number of instances, respondents have placed advertisements on dates which are contrary to those selected by the advertisers and have not advised the advertisers of the change or the reason therefor.

4. In a substantial number of instances, respondents' agents engaged in the solicitation of advertisements have represented themselves as employees of the publication for which the advertisement is being solicited.

PAR. 11. In the 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 advertising space in newspapers, magazines and other publications.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity or tendency to mislead prospective advertisers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of advertising space by reason of said erroneous and mistaken belief.

PAR. 13. 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 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 New York 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 The A & R Agency is a partnership 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 350 Fifth Ave., New York, N.Y.

Respondent Anthony Abraham is an individual and is the only active partner in the partnership respondent. His address is 727 S. Alhambra Cir., Coral Gables, Fla. Respondent Anthony Clausi is an individual and is employed as manager of the partnership respondent. His address is 40 Royal Park Terrace, Hillsdale, N.J. They formulate, direct and control the policies, acts and practices of said partnership, and their principal office and place of business is located at 350 Fifth Ave., New York, N.Y.

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 The A & R Agency, a partnership, doing business in its own name and as Daily Challenge, Spanish Newspaper Agency, Jewish Newspaper Agency, Scandanavian Newspaper Agency, Italian Newspaper Agency, Chinese Newspaper Agen-

cy, Catholic Newspaper Agency, German Newspaper Agency, Recorder Newspaper Agency, Caribbean Echo, Bronx Home Newspaper Agency, Polish Publication Agency, Hungarian Newspaper Agency and Greek Newspaper Agency and Anthony Abraham individually and as a partner in said partnership and Anthony Clausi individually and as an employee of said partnership, and their successors and assigns, respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the offering for sale or sale of advertising space in newspapers, magazines or any other publication, and in connection with the collection of or attempt to collect past due or allegedly past due accounts arising out of the publication of any advertisement, 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 the circulation, whether paid or unpaid, of any newspaper, magazine or other publication is more than the circulation figures provided in writing by the publisher of said publication as stated in its certification or statements to governmental authorities or as verified by an accounting audit by independent certified public accountants and/or as they appear in the independent Audit Bureau of Circulation Reports.

2. Representing, directly or by implication, that the readership of any newspaper, magazine or other publication is more than twice the circulation figure provided for in Paragraph 1 of this order.

3. Representing, directly or by implication, that a publication for which an advertisement is being solicited is read by a certain type or class of subscriber or reader or covers a specified geographical area when such is not the fact; or misrepresenting in any manner the nature or type of reader or geographic area covered by such publication.

4. Placing, printing or publishing, or causing to be placed, printed, or published, any advertisement on behalf of any person, firm or corporation in any publication unless a prior authorization, order or agreement to purchase said advertisement has been received by respondents.

5. Sending or causing to be sent bills, collection letters or notices to any person, firm or corporation with regard to any advertisement which has been or is to be printed, inserted or published on behalf of said person, firm or corporation, or in any other manner seeking to exact payment for any advertisement, without a prior authorization, order or agreement to purchase such advertising, either orally or in writing.

6. Representing that advertisements placed by respondents for its customers will appear in special editions or in special sections of a

publication when in fact there is no such special edition of or special section in the publication for which the advertisement is solicited.

7. Placing orders for advertisements to appear on dates which differ from the dates selected by respondents' customers without advising such customers of the changes and the reasons therefor and without obtaining authorization for such changes.

It is further ordered, That:

A. Respondents' advertising solicitors or agents in making contact with any person, firm or corporation for the purpose of selling advertising clearly disclose that they are employed by The A & R Agency, or Daily Challenge, or Spanish Newspaper Agency, or Jewish Newspaper Agency, or Scandanavian Newspaper Agency, or Italian Newspaper Agency, or Chinese Newspaper Agency, or Catholic Newspaper Agency, or German Newspaper Agency, or Recorder Newspaper Agency, or Caribbean Echo, or Bronx Home Newspaper Agency, or Polish Publication Agency, or Hungarian Newspaper Agency, or Greek Newspaper Agency, to solicit advertisements for the named publication and disclose the correct and complete name of the publication for which advertising is being solicited and state the number of times a week the publication appears and the language in which the publication is printed.

B. The complete name of the publication and the dates the advertisements appeared be clearly stated on all respondents' invoices to their customers.

C. Respondents furnish tear sheets to their customers on request, for every issue in which the customers' advertisements appear and that such tear sheets show the name of the publication and the dates of publication.

D. Respondents retain all complaints from any source relating to the acts or practices prohibited by this order, for a period of two years after their receipt, and that these records 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.

E. Respondents notify the Commission at least thirty (30) days prior to any proposed change in the partnership respondent such as dissolution or the addition of partners or any other change in the partnership which may affect compliance obligations arising out of this order.

F. Respondents give written instructions which cover all the provisions of this order to all present and future employees, agents and representatives engaged in the offering for sale, or sale of advertising space in newspapers, magazines or any other media and engaged in the

collection of or attempt to collect past due or allegedly past due accounts arising out of the publication of any advertisement and that respondents secure a signed statement acknowledging receipt of said written instructions.

G. 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 respondent's current business address and a statement as to the nature of the business or employment in which the individual is engaged as well as a description of his duties and responsibilities.

H. The partnership respondent distribute a copy of this order to each of its operating divisions or departments.

I. 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 the 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.

J. *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.
