

IN THE MATTER OF
CONSOLIDATED INTERNATIONAL TOOL & OIL, INC.,
ET AL.

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

Docket C-2742. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Rockford, Ill., seller of distributorships for automotive products, tools, electrical products, recording tapes, and other products, among other things to cease making unsubstantiated earnings claims, false claims concerning the quality and quantity of locations and products they will provide distributors, and connections or arrangements with nationally advertised corporations. Further, respondents must notify prospective customers that their contracts are not final and binding until a distributor is satisfied with his account locations and has been supplied with sufficient products for his displays.

Appearances

For the Commission: *James F. Drzewiecki.*

For the respondents: *Patrick H. Sreenan, Rockford, Ill.*

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 Consolidated International Tool & Oil, Inc., a corporation, Globe Marketing & Services, Inc., a corporation, and Joseph La Franka, individually and as an officer of said corporations, and also doing business as Consolidated Distributing Co., 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 Consolidated International Tool & Oil,

Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Globe Marketing & Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Joseph La Franka is an individual and officer of respondent corporations and also does business as Consolidated Distributing Co. He formulates, directs and controls the acts and practices of said business entities including the acts and practices hereinafter set forth. His address is 1211 Florist Dr., Rockford, Ill.

PAR. 2. Respondents are now, and for some time have been engaged in the advertising, offering for sale, sale and distribution of distributorships for automotive products, tools, electrical products, recording tapes and various other products to distributors. These products are purchased by distributors for resale to the public.

PAR. 3. In the course and conduct of their business, respondents for some time have caused, their said products to be shipped from their place of business in the State of Illinois to distributors located in various other States of the United States, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Respondents insert advertisements in newspapers, soliciting persons to become distributors for respondent corporations. Typical and illustrative but not all inclusive of the statements and representations made in newspapers and various promotional materials are the following:

Excellent opportunity for additional Part-Time Income of \$6,000 to \$8,000 or, a Full-Time Income of \$15,000 or more.

EARNINGS UP TO:

\$800 per month part-time

\$2,000 per month full-time

NO SELLING

100% MONEY BACK GUARANTEE

WE OFFER: Pre-established accounts Complete training Full Company Support
Defined territory Continued Support and Assistance Guaranteed Investment
Secured investment: \$6,500
This is an excellent opportunity for persons who qualify.

* * * * *

IMPORTANT TO INSTALL IMMEDIATELY Install all of your displays immediately after your locations have been secured. Don't put it off. Do it **IMMEDIATELY!**
INITIAL DISPLAY LOADING Be certain all displays are fully loaded for immediate use by the consumer.

PAR. 5. By and through the use of the aforesaid statements and others of similar import not specifically set forth herein, respondents represent directly or by implication that:

1. A person can expect to earn between \$500 and \$800 or more per month by devoting part time to his distributorship, and that he can expect to earn between \$1250 and \$2000 or more per month by devoting full time to his distributorship.
2. There is no selling required of a distributor.
3. Respondents guarantee to return the entire investment to a distributor if he is not satisfied with the distributorship.
4. All account locations assigned to a distributor have been established by respondents prior to signing of a contract by distributor.
5. Respondents offer complete training to distributor.
6. Respondents offer distributor continuing support and assistance in making his distributorship a success.
7. Distributor is assigned a defined and exclusive territory in which all of his accounts will be established and in which no other distributor for respondent may operate.
8. Respondents guarantee distributor's investment against loss.
9. Respondents are selective with regard to persons qualified to become distributors.
10. Respondents will provide distributor with products for his displays on a timely basis.

PAR. 6. In truth and in fact:

1. A person cannot expect to earn between \$500 and \$800 or more per month by devoting part time to his distributorship, nor can he expect to earn between \$1250 and \$2000 or more per month by devoting full time to his distributorship. Such earnings claims are greatly in excess of the profit that will accrue in a great majority of cases no matter how much time is devoted to the distributorship.
2. Selling is required of a distributor if profitable locations are to be obtained.
3. Respondents have never returned the entire investment to a distributor who is not satisfied with the distributorship.
4. Account locations assigned to a distributor have not been established by respondents prior to signing of a contract by distributor. In a majority of cases respondents have not established account locations until after the distributor has signed a contract.
5. Respondents do not offer distributor complete training. The only

training given is in the form of general suggestions in a "Distributor Operating Manual."

6. Respondents have failed in some instances to support and assist distributor in making his distributorship a success.

7. Though respondents may purport to assign a distributor a defined and exclusive territory, frequently his assigned accounts are outside this territory; territorial boundaries overlap and distributors are not assigned exclusive territories.

8. Respondents in no way guarantee a distributor's investment against loss.

9. Respondents are not selective with regard to persons qualified to become distributors. The only requirement for becoming a distributor is the price of the initial investment.

10. Respondents do not provide distributor with products for his displays on a timely basis.

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

PAR. 7. In the further course and conduct of their business as aforesaid, and in furtherance of their purpose of inducing the purchase of their distributorships, respondents direct various newspapers to print advertisements containing corporate logos of STP Corporation, the Bernzomatic Corporation, General Electric Company and Super-scope, Inc. The use of these logos in newspaper advertising and on other printed matter disseminated by respondents represents, directly or by implication, that respondents are closely affiliated with the said corporations.

In fact, respondents are not closely affiliated, nor are they affiliated in any way, with the said corporations. Rather, the relationship between respondents and the said corporations is basically that of buyer and seller.

Therefore, the acts and practices set forth above were, and are, false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to advertisements to contact respondents' sales representatives. For the purpose of inducing the sale of distributorships offered by respondents, said sales representatives make to prospective distributors many statements and representations, directly or by implication, regarding opportunities available to distributors and assistance given to distributors by respondents. Among and typical, but not all inclusive, of such statements and representations are the following:

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1. A distributor will earn between \$12,000 and \$30,000 or more per year.
2. A distributor can expect an average sale of a certain-specified amount of merchandise per day.
3. A distributor can recover his initial investment within one year.
4. Accounts will be set up by respondents in profitable sales producing locations.
5. All accounts will be within the certain radius of distributor's home stipulated in distributor's contract.
6. Accounts will be in an exclusive territory where no other distributor for respondent may operate.
7. Respondents will set up 20 separate physical account locations for distributor.
8. Accounts will be set up shortly after distributor signs his contract.
9. A distributor will be able to sell STP products for less than the price charged by retail stores in his area.
10. Respondents would at some undetermined future time become the sole STP dealer in the distributor's area.
11. A distributor would have exclusive dealership for STP products in his territory.
12. A distributor will receive original parts tune-up kits from respondents.
13. A distributor will be supplied with a great variety of products exhibited to him by respondents.
14. A distributor will have 90 days to pay for all products ordered from respondents.
15. Respondents will pay freight costs for shipment of products to distributor.

PAR. 9. In truth and in fact:

1. Few, if any, distributors have earned more than \$12,000 per year.
2. A distributor cannot expect an average sale of a certain specified amount of merchandise per day.
3. Few, if any, of respondents' distributors have recovered their initial investment within one year.
4. Accounts are not set up by respondents in profitable sales producing locations. They are usually set up in marginal places of business.
5. Accounts are often located outside the certain radius of distributor's home stipulated in distributor's contract.
6. Accounts are often not in an exclusive territory where no other distributor for respondent may operate. Territories often overlap with more than one distributor sharing a territory or even a single location.

7. Respondents do not set up 20 separate physical account locations for distributor. Often respondents count each display rack in one physical location as a single account.

8. Accounts are not set up shortly after distributor signs his contract. Often there are protracted delays by respondents in setting up accounts.

9. A distributor is seldom able to sell STP products for less than the price charged by retail stores in his area.

10. Respondents never were, nor ever had the opportunity to become, sole STP dealers in any area. Thus there was no possibility that all STP products sold in any area would be sold through respondents' distributors.

11. A distributor never had, nor is he likely to ever have, exclusive dealership for STP products in his territory.

12. A distributor does not receive original parts tune-up kits from respondents.

13. A distributor is not supplied with the great variety of products exhibited to him by respondents.

14. A distributor does not have 90 days to pay for all products ordered from respondents. He must pay cash when ordering.

15. Respondents do not pay freight costs for shipment of products to distributor. Distributor must pay these costs himself.

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

PAR. 10. In the further course and conduct of their business as aforesaid, and in furtherance of their purpose of inducing the purchase of their distributorships, respondents' sales representatives give prospective distributors the names and addresses of alleged "successful distributors" for respondents. Respondents' sales representatives tell prospective distributors to contact these "successful distributors." For the purpose of inducing the sale of distributorships offered by respondents, such "successful distributors" make to prospective distributors many statements and representations, directly or by implication, regarding opportunities available to purchasers of distributorships. Among and typical, but not all inclusive, of such statements and representations are that:

1. They are distributors for respondents.
2. They are extremely successful, earning \$25,000 or more per year as distributors for respondents.

PAR. 11. In truth and in fact:

1. They are not, and never have been, distributors for respondents.
2. They are not extremely successful, and do not earn \$25,000 or more per year as distributors for respondents.

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

PAR. 12. By directing prospective distributors to such "successful distributors," respondents are furthering and abetting the deception of the public in the manner and as to the things hereinbefore alleged.

PAR. 13. In the course and conduct of their aforesaid 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 and distribution of similar distributorships.

PAR. 14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said distributorships offered by respondents by reason of said erroneous and mistaken belief.

PAR. 15. 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 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 Chicago 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 Consolidated International Tool & Oil, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Globe Marketing & Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business formerly located at 4304 Charles St., Rockford, Ill.

Respondent Joseph La Franka is an individual and an officer of said corporations, and also does business as Consolidated Distributing Co. He formulates, directs and controls the policies, acts and practices of said business entities and his address is 1211 Florist Dr., Rockford, Ill.

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 Consolidated International Tool & Oil, Inc., a corporation, Globe Marketing & Services, Inc., a corporation, their successors and assigns, and officers and Joseph La Franka, individually and as an officer of said corporations and doing business as Consolidated Distributing Co., and respondents' officers, 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 distributorships for automotive products, tools, electrical products, recording tapes and any other products to distributors for resale to the public, or in connection with any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

a. Distributors of respondents' products can or will derive any stated amount of sales, income, gross or net profits, unless:

1. Such sales, income or profits are reasonably likely to be achieved by the person to whom the representation is made;

2. The basis and assumptions for such representation are set forth in detail;

3. Such representation and the underlying data have been prepared in accordance with generally accepted accounting principles;

4. In immediate conjunction therewith, the following statement is clearly and conspicuously disclosed: "THERE IS NO ASSURANCE THAT INCOME AND PROFIT PROJECTIONS WILL BE ATTAINED BY ANY SPECIFIC DISTRIBUTOR. THEY ARE MERELY ESTIMATES." and,

5. The amounts represented are not in excess of sales, income or profits actually achieved by existing distributors; and where distributors have not been in operation long enough to indicate what sales, income or profits may result, making any representation of such to a prospective distributor.

6. Respondents maintain adequate records (a) which disclose the facts upon which any claims of the type discussed in Paragraph a. of this order are based; and (b) from which the validity of any claim of the type discussed in Paragraph a. of this order can be determined.

b. Persons investing in respondents' distributorships are assured of profitable income from the distributorships.

c. Persons investing in respondents' distributorships can expect an average sale of a certain specified amount of merchandise per day, or any other period of time, unless in fact the average number of sales represented is that of a substantial number of distributors.

d. Selling is not required of distributors in order to profitably operate a distributorship.

e. A distributor's entire investment, or any portion thereof, will be returned if he is not satisfied with the distributorship.

f. Account locations assigned to a distributor have been established prior to signing of a contract by distributor.

g. Persons investing in respondents' distributorships will receive complete training enabling them to become self-sufficient distributors, unless complete details of the training are explained to a prospective distributor prior to his signing of a contract.

h. Respondents will provide a distributor full and continuing support and assistance in making his distributorship a success.

i. Persons investing in respondents' distributorships will be granted an exclusive territory in which to sell products purchased from respondents, and in which no other distributor for respondents may operate.

j. All accounts established for a distributor will be within a certain radius of distributor's home.

k. A distributor's investment in respondents' distributorship is guaranteed in any way against loss.

l. Any criteria other than the ability to provide the price of initial investment are used in the selection of respondents' distributors.

m. Respondents will provide distributors with products for their displays on a timely basis.

n. Respondents are in any way affiliated with any firm whose products they merely resell; or misrepresenting in any way their status with or relation to any other business organization or product.

o. Persons investing in respondents' distributorships will receive the return of their investment within any specified period of time.

p. Respondents will obtain profitable sales producing account locations for their distributors; or misrepresenting in any way the type of business establishment or premises in which account locations will be established.

q. Any certain number of accounts will be established by respondents, unless in fact this number corresponds with the actual number of physical account locations finally established by respondents.

r. Respondents will set up accounts for distributor shortly after distributor signs his contract.

s. A distributor will be able to sell any product sold to him by respondents for less than the price charged by others selling the same product at the same distributive level in the distributor's trade area.

t. Respondents are, or will become, sole dealers, franchisees or distributors of any product in any area.

u. A distributor will be the exclusive dealer or distributor in his area for any product sold by respondents.

v. A distributor will receive from respondents any products other than those which respondents in fact will make available to distributor.

w. Terms of payment for products supplied to distributors by respondents are anything other than cash.

x. Respondents will pay freight costs for shipment of products to distributors.

y. Any person is a distributor, employee, representative or agent of respondents unless in fact that person actually holds the position he is represented to hold.

It is further ordered, That respondents make the following disclosures to all prospective purchasers of their distributorships:

1. State in writing in all contracts and purchase agreements:

a. That the contract or purchase agreement is not final and binding until respondents have completely performed their obligations thereunder by establishing account locations satisfactory to the purchaser, and by providing the purchaser with sufficient inventory to fill his initial displays.

b. That full refund of a prospective purchaser's investment will be

made at any time during the period described in Paragraph 1(a) above, upon written request from the prospective purchaser.

It is further ordered, That respondents furnish each prospective purchaser of respondents' distributorships with a copy of the completed contract or purchase agreement proposed to be used at least fifteen (15) business days prior to the date the agreement is to be consummated.

It is further ordered, That respondents:

a. Distribute a copy of this order to each of their operating divisions.

b. Deliver a copy of this order to all prospective purchasers of respondents' products, services or distributorships at least fifteen (15) days prior to the signing of a contract or purchase agreement, and secure from each such prospective purchaser a signed statement acknowledging receipt of said order.

c. Deliver a copy of this order to all present and future salesmen or other persons engaged in the sale of respondents' products, services or distributorships, and require that each of these said persons sign a statement clearly stating his intention to be bound by and to conform to the requirements of this order; retain said statement during the period said person is employed or engaged; and make said statements available to the Commission's staff for inspection and copying upon request.

d. Institute a program of continuing surveillance adequate to reveal whether each person described in subparagraph (c) of this paragraph is conforming to the requirements of this order.

e. Discontinue dealing with or terminate the use or engagement of any person who refuses to sign a statement as described in subparagraph (c) of this paragraph, or who continues on his own any act or practice prohibited by this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, creation or dissolution of subsidiaries or any other change in the corporations 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 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.
