

IN THE MATTER OF

BILL J. ROBERTSON, ET AL. T/A ROBERTSON
PRODUCTSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2792. Complaint, Feb. 20, 1976—Decision, Feb. 20, 1976

Consent order requiring a Texarkana, Ark., manufacturer and door-to-door seller of cleaning products, among other things to cease using exaggerated earnings claims; misrepresenting the terms and conditions of employment; failing to disclose full job particulars prior to hiring sales agents; fining or using threats or physical force on them; and making false and unsubstantiated claims for their products or services. The order further requires that eligible consumers be given three days to cancel their contracts in accordance with the F.T.C.'s Trade Regulation Rule governing door-to-door sales.

Appearances

For the Commission: *Richard H. Gateley and Paul W. Turley.*
For the respondents: *Winford L. Dunn, Jr.,* Texarkana, Ark.

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 Bill J. Robertson and Patricia M. Robertson individuals trading and doing business as Robertson Products, hereinafter sometimes referred to as respondents, have violated the provisions of said Act and, it appearing to the Commission that the 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. Respondents, Bill J. Robertson and Patricia M. Robertson, are individuals trading and doing business as Robertson Products, a proprietorship, with its office and principal place of business located at Route 8, Box 212, Texarkana, Arkansas.

PAR. 2. Respondents are now, and for some time have been engaged in the business of manufacturing and selling a cleaning product to the public, advertising that product and offering business opportunities through advertisements in newspapers of general circulation for persons to become associated with respondents as sales agents.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, the dissemination of advertisements in newspapers of general circulation offering

business opportunities soliciting sales agents for respondents' products. Respondents now cause, and for some time have caused, to be conducted, interviews in various States of the United States and have transported said sales agents, employees and representatives to various States in the United States in the course of their business aforesaid. By and through their product label, respondents now cause, and for some time have caused, the dissemination of advertisements and representations concerning their product in various States of the United States. Respondents now maintain, and for some time have maintained, places of business in various States of the United States other than Texas. Respondents now make, and for some time have made, substantial sales to consumers in various States of the United States. Therefore, respondents engage in, and at all times mentioned herein have engaged in, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

I

PAR. 4. Typical and illustrative of such advertisements, but not all inclusive thereof, are the following:

TRAVEL

Have openings for 5 over 18, must be free to travel California, Florida & Major US Cities. No experience necessary. Transportation furnished. average \$115-\$150 weekly in commissions. Represent Commercial Cleaning Product. Must leave this week. Call Mrs. Robertson 669-2660 for appointment 11 AM-3 PM only. Parents welcome at interview.

GIRLS TRAVEL

Have opening for 5 over 18, must be free to travel Calif., Florida and major U.S. cities. No experience necessary. On the job training. Travel expenses paid, transportation furnished. Avg. \$115-\$150 weekly and up to start. Must leave this week. Apply Mr. Robertson, Holiday Inn, 2247 E. Van Buren or call 244-9347, for appt. 10 a.m. — 6 p.m.

PAR. 5. By and through said advertisements and by means of oral or written statements made during subsequent interviews of prospective sales agents responding to such advertisements, respondents have represented and are representing, directly or by implication, that:

A. Respondents bear the cost of sales agents' meals, lodging and travel;

B. Each sales agent's weekly profits or earnings will be \$115, \$150 or various other stated amounts;

C. Sales agents receive a salary from respondents, in lieu of or in addition to any commissions earned;

D. Sales agents have adequate free time for leisure and recreation;

E. Respondents provide transportation home without cost or obligation to sales agents when said agents terminate their association with respondents.

PAR. 6. In truth and in fact:

A. Respondents do not bear the cost of sales agents' meals, lodging and travel, but to the contrary, charge all such expenses against sales agents' commissions, if any.

B. Few, if any, sales agents earn \$115,\$150 or the other stated amounts, but to the contrary, most sales agents derive insignificant profits or earnings.

C. Sales agents do not receive a salary from respondents in lieu of or in addition to any commissions earned, but to the contrary, have the right to receive nothing but commissions from sales.

D. Sales agents do not have adequate free time for leisure and recreation.

E. Respondents do not provide transportation home without cost or obligation to sales agents when said agents terminate their association with respondents.

Therefore, the representations alleged in Paragraph 5 are false, misleading and deceptive and have misled and deceived persons who, relying on said statements, have become sales agents for respondents.

II

PAR. 7. In the further course and conduct of their business as aforesaid, respondents are now engaging and for some time have engaged, in unfair acts and practices for the purpose of increasing sales of their product, increasing profits accruing to themselves, or retaining the services of their sales agents with little regard, if any, to the best interest of their sales agents.

Pursuant to and in furtherance of one or more of said purposes, respondents have engaged in a course of conduct involving the following coercive acts, policies and practices, among others:

A. Respondents conduct frequent lengthy and repetitious sales meetings during which sales agents are harassed, embarrassed or belittled.

B. Respondents impose or threaten the imposition of monetary fines for disobeying respondents' policies such as compulsory attendance at sales meetings.

C. Threats or acts of reprisal, intimidation or physical violence against sales agents, or persons acting on behalf of sales agents, who have requested commissions earned which were due and payable or who have expressed a desire to terminate their employment with

respondents; or against sales agents who, in the opinion of respondents, demonstrate an insufficient incentive to sell respondents' product.

D. Respondents now represent, and for some time have represented, directly or by implication, that each sales agent must sell a minimum amount of product per day or per week, and to enforce compliance with this policy, respondents now cause, and for some time have caused, the use of coercive and unfair acts, policies, and practices including threats of reprisals, intimidation, and physical violence against sales agents who sell less than the minimum amount of product.

III

PAR. 8. Respondents now fail, and for some time have failed, to disburse commissions due and payable to sales agents and retain said commissions for an unreasonable period of time. In lieu of full disbursement of commissions, respondents now cause and have caused, periodic disbursements of nominal sums of money to sales agents even if such agents accumulate commissions payable in excess of that nominal sum. The respondents' failure to disburse in full commissions due and payable and the retention of same for an unreasonable period of time, as aforesaid, is an unfair act or practice.

IV

PAR. 9. In the further course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, to be conducted interviews as alleged in Paragraph 3 herein. During such interviews, respondents now engage and have engaged in a course of conduct to solicit sales agents, many of whom are inexperienced young adults, in circumstances where such prospective sales agents have not had the opportunity to seek assistance or counsel in understanding the nature, duties and responsibilities of the business opportunity being offered by respondents.

PAR. 10. The hiring of sales agents in the manner aforesaid, involving a substantial commitment by each sales agent, where prospective sales agents have not had the opportunity to seek assistance or counsel for the purpose of understanding the nature, duties and responsibilities of the business opportunity is an unfair act or practice.

V

PAR. 11. In the further course and conduct of their aforesaid business, respondents now offer and for some time have offered, business opportunities without disclosing to prospective sales agents facts concerning the probability of receiving profits or earnings from

their association with respondents. Such facts, if known to certain prospective sales agents, would be likely to affect their consideration of whether or not to become sales agents for respondents. Therefore, respondents are failing and for some time have failed to disclose material facts and such failure to disclose is a deceptive or unfair act or practice.

VI

PAR. 12. In the further course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, to be made various statements and representations to consumers concerning the efficacy and utility of respondents' product.

PAR. 13. By and through such statements and representations alleged in Paragraph 11 herein, respondents have represented and are representing, directly or by implication, that their product has been tested by the United States Government and guaranteed by some agency thereof; that said product is safe and non-toxic and that their product is an effective industrial or household cleaning agent.

PAR. 14. In truth and in fact, respondents' product has not been tested or guaranteed by the United States Government or any agency thereof.

Furthermore, at the time respondents represented that their product was safe and non-toxic and that it was an effective industrial or household cleaning agent, respondents had no reasonable basis to support said representations.

Therefore, the aforesaid acts and practices were, and are, false, deceptive, misleading or unfair.

VII

PAR. 15. In the ordinary course and conduct of their business, as aforesaid, respondents engage in door-to-door sales of consumer goods, as the terms "door-to-door sales" and "consumer goods" are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales. 16 C.F.R. § 429. (1974) (hereinafter referred to as the "Commission Rule"), duly promulgated by the Federal Trade Commission.

PAR. 16. Subsequent to June 7, 1974, respondents, in the ordinary course and conduct of their business, as aforesaid, and in connection with their door-to-door sales of consumer goods,

A. Now fail and have failed to furnish the buyers with a fully completed receipt of the sale in accordance with subsection (a) of the Commission Rule; and

B. Now fail and have failed to provide a NOTICE OF CANCELLATION in the form and manner provided by subsection (b) and (c) of the Commission Rule.

C. Now fail and have failed to inform each buyer orally of his right to cancel, in accordance with subsection (e) of the Commission Rule.

Therefore, respondents' aforesaid failures to comply with Section 429.1(a), (b), (c), and (e) of the Commission Rule constitute unfair and deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act and respondents have been, and are now, in substantial competition, in or affecting commerce, with corporations, firms, and individuals in the manufacturing and sale of cleaning products and in the offering of business opportunities.

PAR. 17. The use by respondents of the aforementioned unfair, misleading and deceptive statements, representations, acts, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements were, and are, true, and into the acceptance of business opportunities or into the purchase of respondents' product because of said mistaken and erroneous beliefs.

PAR. 18. The aforementioned acts and practices, as herein alleged, are causing and have caused substantial pecuniary losses to persons associated with respondents or buying respondents' product and are all to the prejudice and injury to the public and respondents' competitors and constituted and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting 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 Dallas 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondents Bill J. Robertson and Patricia M. Robertson are individuals trading and doing business as Robertson Products, a proprietorship, with its office and principal place of business located at Route 8, Box 212, city of Texarkana, State of Arkansas.

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

1. *Definitions*

For purposes of this order, "sales agent" shall mean any person who is employed by, represents or in any manner is associated with respondents in the sale or offering for sale of any product or service.

II.

It is ordered, That respondents Bill J. Robertson and Patricia M. Robertson, individually, and trading and doing business as Robertson Products, or under any other name or names, each of them and their successors and assigns, and respondents' agents, sales 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 cleaning products, or other products or services; or in the recruitment or retention of sales agents for said products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by any means, that:

(a) Respondents pay all, or any part of, the expenses of sales agents or any other person associated with respondents;

(b) Respondents will pay for or furnish transportation home for sales agents;

(c) Sales agents will get a certain sum of money from respondents in lieu of or in addition to any commissions earned;

(d) Attendance at any meetings held by respondents is compulsory except in accordance with Paragraph 6(e) herein;

(e) Sales agents must sell a minimum amount of product except in accordance with Paragraph 6(g) herein;

(f) Sales agents will travel on a planned itinerary to various cities or resort areas throughout the United States.

2. Fining or threatening the imposition of fines or other penalties on any sales agent or other person for any reason.

3. Misrepresenting the terms or conditions of employment, or nature of such employment, or the manner or amount of payment for such employment.

4. Representing by any means that persons selling respondents' products can or will derive any stated amount of sales, profits, or earnings therefrom.

5. Misrepresenting in any manner the past, present, or future sales, profits or earnings from the sale of respondents' products, or representing, by any means the past or present sales, profits or earnings of respondents' sales agents except that any or all of the following representations shall not be prohibited:

(a) A true statement of the average or median sales profits or earnings actually achieved by all respondents' sales agents during any stated time period.

(b) A true statement of any particular amount of sales, profits, or earnings actually achieved or exceeded by a substantial number of respondents' sales agents during any stated time period, *provided*, that it is accompanied by a clear and conspicuous disclosure (if printed, in typesize at least equal to that of the statement of sales, profits or earnings) of the percentage of the total number of sales agents who have achieved such results.

(c) An accurate representation of any range or ranges of sales, profits, or earnings actually achieved by respondents' sales agents for any stated period of time. Ranges describing yearly results shall not exceed \$4,000 (*e.g.*, \$0 — 4,000; \$2,000 — 6,000; \$4,000 — 8,000). Ranges describing monthly results shall not exceed \$350 (*e.g.*, \$0 — 350; \$350 — 700) and ranges describing results for any other time period shall not exceed an amount constituting the same percentage of \$4,000 as the time period constitutes of one year. The representation of any range or ranges of sales, profits, or earnings achieved by respondents' sales agents must include a clear and conspicuous statement (if printed, in

typesize at least equal to that of the statement of the range) of the percentage which sales agents achieving results within the range constitute of the entire number of respondents' sales agents, *provided, however*, that if the ranges employed begin with \$0 and proceed continuously upward, a statement of the number of sales agents within each range may be included in lieu of the percentage.

6. Failing to make the following disclosures to any person including sales agents or prospective sales agents prior to the time such person is employed by respondents. Said disclosures shall be given clearly and conspicuously in a single written statement which the sales agent or other person must execute and shall state:

(a) The nature of the employment being offered and a brief description of the product or services being sold.

(b) The basis of compensation and, if on a commission basis, a statement to the effect that earnings, if any, depend solely on sales made.

(c) The responsibility for paying motel, food, transportation and incidental expenses during the term of employment.

(d) The responsibility for providing transportation home for sales agents terminating their employment with respondents.

(e) The nature and extent of sales meetings, if any, held by respondents.

(f) A sales agent has three (3) days from the date of the interview to consider respondents' offer of employment. The disclosure shall state the date on which said offer was made and the date on which the offer expires.

(g) A sales agent's responsibility, if any, for selling a minimum amount of product and the consequences of failing to discharge said responsibility.

7. Employing any person prior to expiration of the three (3) day period disclosed in accordance with Paragraph 6 herein after respondents interview a prospective sales agent, *provided*, that a sales agent may waive this right if such waiver is in writing and is knowingly and voluntarily made. Such waiver shall not relieve the respondents of disclosure (f) in Paragraph 6.

8. Failing to retain executed copies of all disclosures required by Paragraph 6 of this order for a period of three (3) years after such disclosures are made except disclosures made to prospective sales agents who do not become associated with respondents. Respondents shall make accurate statistical disclosures required by Paragraph 6 and maintain records for a period of three (3) years sufficient to verify the accuracy of each disclosure.

9. Failing to maintain for a period of three (3) years after any advertisements are disseminated:

(a) Records disclosing the date or dates each advertisement was published;

(b) Records disclosing the name and address of the newspapers, other publications or broadcast media disseminating said advertisement; and

(c) Copies or scripts of all of their advertisements published or disseminated by any media.

10. Using coercion, or intimidation or any similar means, including but not limited to the use or threat of use of physical force or reprisals against persons or property.

11. Failing to disburse all commissions or salaries to a sales agent upon demand of such sales agent or any other person acting on his behalf.

12. Failing to furnish a written accounting of gross commissions or salaries earned as well as itemized deductions from said earnings periodically to each sales agent but not less often than every seven (7) days. Such accounting shall be given in clear and conspicuous wording in a single written statement which the sales agent may retain. A duplicate copy thereof shall be retained by respondents.

13. Representing, by any means, that their product or any other product is tested by the United States Government or any agency thereof unless such representation has been expressly authorized in writing by the United States Government or the agency thereof that performed the test.

14. Representing, by any means, that a product is guaranteed by the United States Government or any agency thereof.

15. Representing, by any means, that their product or any product is safe and non-toxic or that their product or any product is effective as an industrial or household cleaning agent unless, at the time such representation is made, respondents have a reasonable basis for such representation, which shall consist of a competent scientific test or tests, or other similar objective materials that substantiate such representation. The results of said test or tests, the original data collected in the course thereof and a detailed description of how said test or tests were performed shall be maintained by respondents for a period of at least three (3) years from the date on which any representation is made.

16. Failing to maintain records which substantiate that any representation made regarding past or present sales, profits, or earnings is accurate. Such records shall be sufficient to substantiate the accuracy of any representation made regarding amounts earned or sold,

the number or percentage of purchasers achieving such results, the time period during which such results are achieved, and the amount of time per day, week, or month required to achieve such results.

17. *It is further ordered*, That respondents, and each of them, trading and doing business as Robertson Products or under any name or names, their successors and assigns, and respondents' agents, sales agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any door-to-door sale of consumer goods or services, as such sales are defined in the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period Rule for Door-to-Door Sales (16 C.F.R. § 429.1) (hereinafter "the Rule") do forthwith cease and desist from:

a. Failing to furnish their buyers with a fully completed copy of the contract used in door-to-door sales, as such transactions are defined in the Rule, which contains in immediate proximity to the space reserved in the contract for the signature of the buyer a summary notice of the buyer's right to cancel in substantially the same form as that required in subsection (a) of the Rule.

b. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services, a completed form in duplicate, captioned "Notice of Cancellation," which is attached to the contract and easily detachable therefrom, containing substantially the same information and statements set forth and required in subsection (b) of the Rule.

c. Failing to inform each buyer orally at the time he signs the contract or purchases the goods or services of his right to cancel as required in subsection (e) of the Rule.

d. Including in their door-to-door contracts a confession of judgment clause or waiver of the buyer's right to cancel the sale in accordance with the provisions of the Rule.

e. Engaging in any act or practice which constitutes an unfair or deceptive act or practice pursuant to the Commission's Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales, effective June 7, 1974, 16 C.F.R. §429.1 and any amendments thereto, a copy of which is attached hereto as Appendix A.*

III.

18. *It is further ordered*, That respondents and each of them, cease and desist from:

(a) Including in any contract or other document any waiver,

* For reasons of economy, Appendix A is not reproduced herein.

limitation or condition on the rights of a prospective sales agent under Paragraph 6 of this order, except as allowed by Paragraph 7 of this order.

(b) Misrepresenting the rights of a prospective sales agent under Paragraph 6 of this order.

(c) Making any representations or taking any action which is inconsistent with or detracts from the effectiveness of this order.

IV.

19. *It is further ordered*, That the individual respondents and each of them shall not engage in any course of conduct which contravenes the rights of sales agents to receive their commissions in accordance with Paragraph 11 herein.

20. *It is further ordered*, That any respondent, upon receipt of a complaint from any party alleging facts to indicate that this order may have been violated, refund all monies paid by such party where respondents determine after a good faith investigation that this order has been violated in connection with such party's transaction with respondents; *provided, however*, that in the event any respondent refunds money pursuant to this paragraph of the order, the sole fact of such refund shall not be admissible against that respondent in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order; *and further provided*, that this paragraph shall not be applicable to transaction in which the sale was made prior to the date this order became final.

21. *It is further ordered*, That respondents maintain documents demonstrating compliance with this order for a period not less than three (3) years and furnish any documents to the Federal Trade Commission or Commission staff members upon request.

22. *It is further ordered*, That each respondent named herein promptly notify the Commission of discontinuance of any 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.

23. *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 which they have complied with this order.

IN THE MATTER OF
FOREST CITY ENTERPRISES, INC. T/A FOREST CITY
MATERIALS COMPANY

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

Docket C-2793. Complaint, Feb. 20, 1976—Decision, Feb. 20, 1976

Consent order requiring a Cleveland, Ohio, seller and distributor of appliances and television sets, among other things to cease misrepresenting prices as special or reduced unless such prices are bona fide reductions from the regular selling prices; misrepresenting the duration of sales; and failing to disclose to consumers, where manufacturers have discontinued particular models, that such models are discontinued.

Appearances

For the Commission: *Melvin H. Wolovits* and *Paul K. Trause*.

For the respondent: *Albert L. Reisenfeld*, Cleveland, Ohio.

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 Forest City Enterprises, Inc., trading and doing business as Forest City Materials Company, a corporation, hereinafter sometimes referred to as respondent, has 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. For the purposes of this proceeding, "discontinued model(s)" is defined as those model(s) which have been supplanted, superseded, or succeeded by a newer or later model and which no longer appear in the prevailing literature of the manufacturer of said product.

PAR. 2. Respondent Forest City Enterprises, Inc., trading and doing business as Forest City Materials Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business located at 10800 Brookpark Rd., in the city of Cleveland, State of Ohio.

PAR. 3. Respondent is now, and for some time last past has been, engaged in the business of advertising, offering for sale, sale, and distribution of appliances and television sets to members of the purchasing public.