

Complaint

88 F.T.C.

IN THE MATTER OF

INTERNATIONAL INVENTORS INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2845. Complaint, Sept. 30, 1976 — Decision, Sept. 30, 1976*

Consent order requiring a Los Angeles, Calif., idea promotion firm, among other things, to cease misrepresenting its ability to promote ideas, inventions or products that will or may result in financial gains for its clients; misrepresenting the nature or value of its services; failing to disclose relevant information including the fact it does not provide any legal protection recognized by the United States Patent Office, and that serious consequences could result from this lack of patent protection. Further, the order prohibits the firm's president from even engaging in the idea promotion business and prohibits the company from accepting any money from a client other than a percentage of royalties or other financial gain derived through its efforts.

*Appearances*For the Commission: *Carl B. Mickelson* and *George J. Gregores*.For the respondents: *Fred LaDeane*, Los Angeles, Calif.

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 International Inventors Incorporated, a corporation, and Siegfried Bart, 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:

I. DEFINITIONS

PAR. 1. For purposes of this complaint the following definitions shall apply:

- A. "Idea" shall mean any idea, invention or product;
- B. "Client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea";
- C. "Financial gain" shall mean an amount of money greater than the amount of money paid by a "client" to respondents;
- D. "Promotion" shall mean the evaluation, development, manufac-

turing, marketing or otherwise contributing to the success or growth of an "idea."

PAR. 2. Respondent International Inventors Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 11110 Ohio Ave., Los Angeles, California.

Respondent Siegfried Bart is an individual and 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 21361 Rambler Vista, Malibu, California.

III. NATURE OF TRADE AND COMMERCE

PAR. 3. Respondents are now and have been engaged in the advertising, offering for sale and sale of contracts for future services in connection with the evaluation, development, manufacturing and marketing of ideas. The consideration required by respondents is and has been generally approximately \$1,690.

IV. JURISDICTION

PAR. 4. In the course and conduct of their business as aforesaid, respondents now cause, and have caused, their advertising materials, contracts, and various business papers to be transmitted through the United States mail and other interstate instrumentalities from their place of business in the State of California to clients, prospective clients, and potential manufacturers in various other States of the United States and the District of Columbia, and maintain 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.

PAR. 5. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents are, and have been, in substantial competition, in or affecting commerce, with corporations, firms and individuals offering contracts for future services in connection with the evaluation, development, manufacturing and marketing of ideas.

V. ACTS AND PRACTICES

PAR. 6. In the further course and conduct of their aforesaid business, respondents now cause and have caused the dissemination of advertisements in various publications of general circulation, the broadcast of radio and television advertisements, the distribution of advertising

materials to members of the public, and are now making and have made sales presentations by means of oral and written statements. By and through such means, respondents have made and are making representations that:

A. Respondents possess the ability to recognize ideas which may result in financial gains.

B. Respondents possess engineering and marketing expertise necessary for the development and promotion of ideas.

C. Respondents possess adequate knowledge to provide legal protection for clients' ideas.

D. Respondents have the ability to obtain manufacturing contracts for their clients.

E. Respondents have the ability to obtain financial gains for their clients, including but not limited to potential income to be derived by their clients from sales, licensing or royalty agreements.

PAR. 7. By and through the statements and representations alleged in Paragraph 6 herein, respondents have represented and are now representing, directly or by implication, that clients will have their ideas reviewed and evaluated by qualified and appropriately licensed persons; that clients receive legal protection for their ideas; that clients' ideas will be manufactured and marketed; and as a result of contracting with respondents, clients will receive a financial gain.

PAR. 8. In truth and in fact, few, if any, of respondents' clients have their ideas reviewed and evaluated by qualified and appropriately licensed persons; receive legal protection for their ideas; have their ideas manufactured or marketed; or receive a financial gain as a result of contracting with respondents. Therefore, the acts and practices alleged in Paragraph 7 herein are deceptive, false, misleading and unfair.

PAR. 9. In the further course and conduct of their aforesaid business, respondents have failed to protect clients' investments and have failed to disclose facts concerning the probability that such clients will receive a financial gain as a result of contracting with respondents.

Since few, if any, of respondents' clients receive or have received financial gains as a result of contracting with respondents, respondents know or should have known that their clients' investments are unprotected and that their clients will not obtain financial gains.

Therefore, respondents, by inducing their clients to pay substantial sums of money without adequate protection for such clients' investments and without a disclosure of facts concerning the probability of a client receiving a financial gain which if known to certain prospective clients, would likely affect their decision of whether to execute contracts with respondents, are engaging in unfair acts or practices

constituting a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

PAR. 10. In the further course and conduct of their aforesaid business, respondents have represented, directly or indirectly, that their clients' ideas have adequate legal protection. Respondents have failed to disclose to their clients the degree of legal protection being offered the clients' ideas and the risk involved in contracting with respondents concerning potential patent rights. Such non-disclosures include, but are not limited to:

A. Respondents fail to disclose that they afford no legal protection recognized by the United States Patent Office.

B. Respondents fail to disclose that the ordinary course of conduct of their business may be construed by the United States Patent Office to constitute publication of the clients' idea.

C. Respondents fail to disclose that publication of an unprotected idea for a period of one year or more may constitute a waiver of any patentable rights the client may have.

D. Respondents fail to disclose that their clients must maintain the confidentiality of their ideas.

Respondents' failure to disclose such consequences in language calculated to be readily understood by their clients is a failure to disclose material facts which if known to prospective clients would likely affect their decision of whether to execute contracts with respondents. Respondents' aforesaid failure to disclose material facts is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act.

PAR. 11. Respondents as aforesaid have been and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for services by respondents was and is virtually worthless. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such persons.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice and a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

PAR. 12. The use by respondents of the aforementioned unfair, false, misleading and deceptive acts, practices, statements or representations has had and now has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into erroneous and mistaken beliefs and into the execution of contracts with respondents by reason of said erroneous and mistaken beliefs.

PAR. 13. The aforementioned acts and practices, as herein alleged, have caused and are now causing substantial pecuniary losses to persons contracting with respondents and are all to the prejudice and injury of the public and respondents' competitors and have 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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the 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 the 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent International Inventors Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 11110 Ohio Ave., Los Angeles, California.

Respondent Siegfried Bart is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent. His business 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

I. DEFINITIONS

For purposes of this order the following definitions shall apply:

- A. "Idea" shall mean any idea, invention or product.
- B. "Client" shall mean any party that has entered into an agreement with respondents for the "promotion" of an "idea."
- C. "Financial gain" shall mean an amount of money derived by a "client", from a respondent's "promotion" of the client's "idea."
- D. "Promotion" shall mean the evaluation, development, manufacturing, marketing or otherwise contributing to the success or growth of an "idea."
- E. "Future services" shall include any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive, as a result of such arrangement, the delivery or performance, at least partly in the future, of any service, benefit, promotion, sum of money, or similar thing of value; the term shall include, but shall not be limited to, any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive a financial gain as a result of such arrangement.

II.

It is ordered, That respondent, International Inventors Incorporated, a corporation, its successors and assigns, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale and sale of contracts for future services in the promotion of ideas, or any other future 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. Respondent possesses ability in the field of engineering unless it retains a licensed engineer who shall provide a written evaluation of each client's idea. Respondent shall provide a copy of said evaluation which the client may retain.
 - B. Respondent can or will provide legal protection for a client's idea unless respondent retains an attorney or agent licensed by the United States Patent Office who renders a written opinion on such client's idea. Respondent shall provide a copy of said opinion which the client may retain.

C. Any party may or will receive a financial gain as a result of contracting with respondent except as allowed by Subparagraphs A and B of Paragraph 4 of this order.

2. Misrepresenting, directly or indirectly, by any means, that respondent possesses the ability to promote ideas that will or may result in financial gains for its clients.

3. Failing to prominently display the following notice in two or more locations in those portions of respondent's business premises most frequented by prospective clients and in each location where clients sign contracts or other binding instruments. Such notice shall be considered prominently displayed only if so positioned as to be easily observed and read by respondent's clients and prospective clients:

NOTICE

BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY, YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. THEREFORE, PRIOR TO SIGNING ANY AGREEMENT WITH US YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY.

4. Failing to make the following disclosures on the contract or other binding instrument to be executed by prospective clients. Said disclosures shall be in more conspicuous print than all other language in said instrument, but in no case shall they be smaller than 12 point upper case type. Said disclosures and instrument shall be delivered to prospective clients at least 10 days prior to the time prospective clients execute said instrument. The disclosures shall be in the following form set off from the text of the instrument by a black border and immediately above the line for the prospective clients' signatures:

NOTICE

(A) SINCE WE BEGAN DOING BUSINESS, WE HAVE CONTRACTED TO PROMOTE IDEAS, INVENTIONS, OR PRODUCTS FOR (*Number*) CLIENTS. AS A RESULT OF OUR SERVICES:

1. (*Number*) OF OUR CLIENTS EARNED NOTHING.
2. (*Number*) OF OUR CLIENTS EARNED \$100-\$499.
3. (*Number*) OF OUR CLIENTS EARNED \$500-\$1,000.
4. (*Number*) OF OUR CLIENTS EARNED OVER \$1,000.

(B) WITHOUT PATENT PROTECTION RECOGNIZED BY THE UNITED STATES PATENT OFFICE, YOU MAY LOSE THE OPPORTUNITY TO OBTAIN FINANCIAL

BENEFIT FROM YOUR IDEA. WE DO NOT PROVIDE ANY LEGAL PROTECTION RECOGNIZED BY THE UNITED STATES PATENT OFFICE.

(C) BECAUSE THERE WILL BE NO PATENT PROTECTION FOR YOUR IDEA, SERIOUS CONSEQUENCES COULD RESULT FROM YOUR CONTRACTING WITH US, INCLUDING:

(1) When we disclose information concerning your idea to persons/manufacturers/marketers outside our company, such disclosure may be interpreted by the United States Patent Office as a "publication" of your idea.

(2) "Publication" for a period of one year or more of an idea which has no legal protection recognized by the United States Patent Office will result in the loss of any patentable rights you may have.

(D) YOU SHOULD TREAT YOUR IDEA AS A CONFIDENTIAL SUBJECT IN ORDER TO AVOID LOSING ANY PATENT RIGHTS YOU MAY HAVE.

(E) BY PROCEEDING WITHOUT THE ADVICE OF AN INDEPENDENT PATENT ATTORNEY YOU MAY LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA, INVENTION OR PRODUCT OR EXPOSE YOURSELF TO A COSTLY PATENT INFRINGEMENT LAWSUIT. YOU SHOULD AND ARE ENCOURAGED TO CONSULT AN INDEPENDENT PATENT ATTORNEY BEFORE YOU SIGN THIS AGREEMENT.

(F) TODAY IS (*Date*). WE CANNOT ASK YOU TO SIGN AN AGREEMENT UNTIL 10 BUSINESS DAYS HAVE ELAPSED WHICH WILL BE ON (MONTH/DAY/YEAR).

I, (Name of Customer), hereby acknowledge receipt of a copy of this agreement on the date specified below.

Customer's Signature

Date

5. Executing contracts or other agreements with a client prior to expiration of the 10-day period disclosed in accordance with Paragraph 4 herein.

6. Failing to retain executed copies of all disclosures required by Paragraph 4 of this order for a period of three (3) years after such disclosure is made regardless of whether prospective clients ultimately execute contracts. Respondent shall make accurate statistical disclosures required by this paragraph and maintain records for a period of five (5) years sufficient to verify the accuracy of each disclosure. Accurate disclosures, given without comment, as required by Para-

graph 4 of this order, shall not be deemed a violation of Paragraph 1 of this order.

7. Failing, in all pamphlets, brochures and other promotional materials to make the following disclosures in the manner and form provided for herein:

A. In all printed advertisements, the notice shall be conspicuously placed in print at least as large as the largest print in the advertising material other than respondent's name and shall state:

“(Number)% of our clients have earned at least \$100 as a result of our efforts to promote their ideas.”

B. In all advertisements broadcast by radio, or television, the above-required notice shall be read at the end of the advertisement at a rate of speed at least as slow as the slowest part of the advertisement.

C. At the time respondent submits advertising to any newspaper or other written medium, it shall provide a copy of the following notice to each such medium:

“NOTICE

The Federal Trade Commission has entered into a consent agreement with (*Name of Respondent*). A copy of the Commission's News Release is available from (*Name of Respondent*) upon request.”

D. At the time respondent submits advertising to any radio or television station, it shall provide a copy of the following notice to each such station:

“NOTICE

The Federal Trade Commission has entered into a consent agreement with (*Name of Respondent*). A copy of the Commission's news release is available from (*Name of Respondent*) upon request. Your attention is directed to an agreement between the Federal Trade Commission and the Federal Communications Commission dated April 27, 1972.”

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

(A) records disclosing the date or dates each such 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.

9. Failing to utilize one written contract or other binding instrument which shall constitute the entire agreement between the parties. In addition to the disclosures required under Paragraph 4 herein, each such instrument shall contain the following provision:

“(Name of Respondent) agrees to present to the client all materials due to the client pertaining to the promotion of said client’s idea within 180 days of the date this agreement is executed, and it is hereby further agreed that time is of the essence. If such materials are not presented to the client within the 180 day period, it is hereby mutually agreed between (Name of Respondent) and the client whose signature appears below that this agreement is rescinded in its entirety.”

It is further ordered, That respondent cease and desist from:

A. Including in any contract or other document any waiver, limitation or condition on the right of a client to rescind an agreement under any provision of this order.

B. Misrepresenting the right of a client to rescind an agreement under any provision of this order or any applicable statute or regulation.

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

It is further ordered, That respondent shall make all disclosures required by this order accurately, making such disclosures or copies thereof available to the Federal Trade Commission on request, and comply with all contract provisions required by this order.

It is further ordered, That the corporate respondent shall not engage in any course of conduct which contravenes the rights of clients or prospective clients provided by this order.

It is further ordered, That respondent, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated, rescind the contract where respondent determines, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client’s transaction with respondent.

It is further ordered:

A. That respondent delivers, by hand or by certified mail, a copy of this order to each of its present or future salesmen, independent brokers, employees or any other person who sells or promotes the sale of respondent’s contracts;

B. That respondent provide each person so described in sub-para-

graph A above with a form returnable to respondent, clearly stating an intention to conform sales practices to the requirements of this order and retain such form for a period of three (3) years after it is executed by said persons;

C. That respondent inform each person described in subparagraph A above that respondent shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondent to be bound by the provisions contained in this order;

D. That in the event such person will not agree to file such notice with respondent and be bound by the provisions of this order, respondent shall not use such person, or the services of such person;

E. That respondent institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in sub-paragraph A conform to the requirements of this order; and

F. That respondent discontinue dealing with any person described in sub-paragraph A of this order who engages in the acts or practices prohibited by this order.

It is further ordered, That respondent may accept compensation from a client for the promotion of the client's idea only as a percentage of royalties or other financial gain derived through respondent's efforts. Respondent may not accept any other fee or monetary consideration from a client.

It is further ordered, That respondent shall not sell, lease, exchange or otherwise alienate a client's idea or disclose a client's name, address, telephone number or other personal data to any party which will or may request such client to pay a fee or other monetary consideration for the promotion of that client's idea.

It is further ordered, That in the event the Federal Trade Commission promulgates a trade regulation rule applicable to respondent's business that this order shall be deemed modified to the extent it contravenes said rule.

It is further ordered, That in the event that corporate respondent merges with another corporation or transfers all or a substantial part of its business, respondent shall require said successor or transferee to file within thirty (30) days with the Commission a written agreement to be bound by the terms of this order; *provided* that if respondent wishes to present to the Commission any reason why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the succession or transfer.

It is further ordered, That the corporate respondent notify the Commission at least thirty (30) days prior to any proposed change in the

corporate respondent, such as dissolution, assignment or sale resulting in the emergence of 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.

III.

It is ordered, That Siegfried Bart, individually and as an officer of the corporate respondent, directly or through any corporation, subsidiary, division or other device, does forthwith cease and desist from offering to engage or engaging in contractual relationships with consumers for monetary consideration, in connection with the evaluation, development, marketing or promotion of ideas or inventions, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

It is provided, however, that nothing in this paragraph shall be construed to limit respondent Siegfried Bart's right to participate or share in the royalty payments, licensing fee or other proceeds resulting from the sale of an idea or invention or to limit respondent's right to manufacture or market products.

It is further ordered, That the individual respondent named herein promptly notify the Commission in the event of both (1) the discontinuance of his employment with the corporate respondent and (2) 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.

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

IN THE MATTER OF
SHERRY MANUFACTURING COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER
PRODUCTS IDENTIFICATION ACTS

Docket C-2844. Complaint, Oct. 1, 1976—Decision, Oct. 1, 1976

Consent order requiring a Miami, Fla., textile fiber products manufacturer, among other things to cease misrepresenting the quality of its products; misbranding and mislabeling its textile fiber products; and removing required labels from items without substituting other specified labels.

Appearances

For the Commission: *Albert Posnick.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sherry Manufacturing Company, Inc., a corporation, and Quentin Sandler, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification 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 Sherry Manufacturing Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 3287 N.W. 65th St., Miami, Florida.

Respondent Quentin Sandler is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business 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 business of purchasing textile fiber products including, but not limited to, piece goods, jacquard woven beach towels, first quality and irregular white beach towels and white T-shirts; screen-printing some of said textile fiber products, such as the first quality and irregular white beach towels and the white T-shirts; manufacturing an