

Complaint

89 F.T.C.

IN THE MATTER OF

AMERICAN CONSUMER SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2887. Complaint, May 23, 1977 — Decision, May 23, 1977*

This consent order, among other things, requires a Carmel, Ind., buying club to cease misrepresenting and/or failing to disclose relevant information regarding benefits, shopping assistance, and savings experienced by club members; misrepresenting, in sales personnel recruitment, the size and true nature of their business, types of jobs offered, and potential earnings of sales personnel. The order further requires the firm to maintain specific files and to furnish prospective customers a 120-day cancellation period in membership agreements.

Appearances

For the Commission: *Peggy H. Summers.*

For the respondents: *Elroy H. Wolff, Sidley & Austin, Washington, D.C.*

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 American Consumer Service, Inc., a corporation, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Consumer Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 101 East Carmel, Carmel, Indiana.

Respondents Mark F. Thorne and Thomas P. Sheehan are individuals and officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their 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 buying and in the door-to-door offering for sale, sale and distribution of memberships in a shopping service. The shopping

service provides instructions, booklets, pamphlets and other literature regarding merchandise which may be purchased through the shopping service. Respondents' salesmen and/or agents prepare at the purchasers' home contracts for the purchase of such memberships in the shopping service.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents through the sale of memberships now cause, and for some time last past have caused various types of consumer products to be shipped and distributed to purchasers of such memberships from suppliers located in various States of the United States other than the state in which the sale of the membership was made. Respondents' sale of memberships have also caused the dissemination, transmittal and receipt of sales promotional materials, invoices, checks, collection notices and various other commercial documents in the course of advertising, selling, distributing and collecting payments for products sold to such membership by the shopping service or by numerous other suppliers, among and between the several States of the United States. In addition, the shopping service mails to enrolled purchasers in the State of Indiana price lists, instructions, booklets, pamphlets and other literature regarding merchandise which may be purchased through the shopping service.

Thus, respondents maintain, and at all times herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the further course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of memberships in the shopping service, respondents' salesmen and/or agents utilize various types of promotional materials in conjunction with an oral sales presentation furnished by respondents and have made and are making numerous oral statements and representations to purchasers and to prospective purchasers with respect to their purpose in contacting such purchasers in their homes, the nature of the shopping service and the savings that result to members of such service.

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

Complaint

89 F.T.C.

Hi, my name is _____ and I am with American Consumer Union. We are interested in having people fill out some questionnaires concerning their opinion on the high cost of living. Would you take a few minutes to help me?

We are looking for people in the area right now to write a couple of testimonial letters for us, so our offer is a special membership for people who are willing to do that.

To guarantee some savings immediately * * * and also to pay for you writing the letters, we include with your membership at no additional cost, a complete and unlimited 2 year supply of all cleaning agents.

Out of every dollar spent in the store, an average of close to 40 percent goes for markup.

We put the individual members in a position to * * * eliminate a high percentage of the retail markup.

You can save as much as 60 percent on some items.

In one year you can make up the major portion cost of the membership.

The \$499 * * * most people prefer to pay for it over a period of time and let the monthly savings pay for it as they go.

How do members get things? It's quite simple.

We tell people to shop the market. To look through the stores and see the make and model number that suits them. Then, request the same make and model number from the buying service. It's delivered to the home with full manufacturer's warranties and guarantees.

We're talking about first quality name brand merchandise at low prices all the time whenever the member wants it.

I will be your personal representative and we will work very close to help you save * * * I will explain to you in detail how to use your membership so you can start saving right away.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning not specifically set forth herein, in connection with the oral sales presentation used variously by their sales representatives, respondents have represented, and are now representing, directly or by implication, that:

- (1) Respondents' sales representatives are contacting persons in their homes primarily for the purpose of conducting a survey.
- (2) Respondents are offering membership in a shopping service at a special price only to those individuals who are willing to write testimonial letters.

(3) Respondents are offering a complete and unlimited two year supply of all cleaning agents to prospective purchasers of the shopping service at no additional cost.

(4) The supply of soap respondents offer prospective purchasers of the shopping service guarantees substantial savings immediately.

(5) Members of the shopping service will be able to eliminate a high percentage of retail markups and will realize substantial savings ranging up to 60 percent off of the regular retail prices of all consumer products that are made available for purchase through the shopping service.

(6) Individuals who purchase respondents' shopping service will recover the major portion of their initial investment within a year of purchase.

(7) Brand name consumer products can be purchased simply and easily through the shopping service by submitting the desired product's make and model number to the service which then delivers the product to the home.

(8) Brand name consumer products that appear in local retail stores are available all the time through the shopping service.

(9) Respondents and their sales representatives will be available after the date of sale to answer any questions and provide any help needed by members to make use of the shopping service.

PAR. 6. In truth and in fact:

(1) Respondents' sales representatives are not contacting persons in their homes primarily for the purpose of conducting a bona fide survey, but solely for the purpose of selling memberships in a shopping service.

(2) Respondents are not offering memberships in a shopping service at a special price to those individuals who are willing to write testimonial letters. The cost of the shopping service is the same for all individuals regardless of whether or not they write testimonial letters.

(3) Respondents are not offering a complete and unlimited two year supply of all cleaning agents at no additional cost to prospective purchasers of the shopping service. Respondents merely use these conditions to confuse and mislead such persons into believing that the amount of their monetary obligation to respondents does not include the cost of all merchandise obtained from respondents. In addition, the supply of cleaning agents given to individuals at the time of purchase does not last two years and to obtain additional cleaning agents members will incur additional expenses.

(4) The supply of soap respondents offer prospective purchasers of

the shopping service does not guarantee substantial savings immediately. Savings cannot be obtained until members have purchased enough products through the shopping service at a discount from the sale price of local retail stores so that the discounts they received exceed the total cost of their investment in the service.

(5) Members of the shopping service will not be able to eliminate a high percentage of retail markups and will not realize substantial savings ranging up to 60 percent off of the regular retail prices of all consumer products that are made available for purchase through the shopping service.

(6) Individuals who purchase respondents' shopping service may not recover the major portion of their initial investment within a year of purchase. Few, if any, members of American Consumer Service, Inc. have ever recovered the major portion of their purchase price.

(7) Brand name consumer products cannot be purchased simply and easily through the shopping service by submitting the desired product's make and model number to the service which then delivers the product to the home. Frequently additional information is requested by the shopping service which consumers find difficult to obtain by comparison shopping at local retail stores.

(8) Brand name consumer products that appear in local retail stores are not available all the time through the shopping service. Members are frequently informed that requested items are not available through the shopping service.

(9) Respondents and their sales representatives will not be available after the date of sale to answer any questions and provide any help needed by members to make use of the shopping service. In most cases members' attempts to call or write to respondents for information as to how to use the shopping service are ignored.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents, in connection with the representations set forth in Paragraphs Seven, Eight and Nine above, have failed to disclose to prospective purchasers that:

A. Some firms represented as being a source of discounts available only to members of the shopping service actually provide identical products at the same prices to all members of the general public who place orders through their mail order catalogues.

B. Shipping costs are not included in the price quoted to the

member, and purported savings achieved through the use of the service are frequently cancelled out by the cost of shipment to the member's home.

C. The contract of purchase will not be retained by the shopping service, but will be sold to a finance company.

The aforesaid failure to disclose such material facts to prospective purchasers of the shopping service has the tendency and capacity to mislead or deceive such persons with respect to the shopping service. The aforesaid material facts, if known to consumers, would be likely to affect their decision as to whether or not to purchase a membership in the shopping service.

Therefore, respondents' failure to disclose such material facts were, and are, unfair, false, misleading and deceptive.

PAR. 8. In the further course and conduct of their business and for the purpose of recruiting employees to sell their products, respondents now cause, and for some time last past have caused, advertisements for employment to appear in newspapers of general and interstate circulation. Said advertisements contain numerous statements and representations with respect to the size and nature of respondents' firm and the salaries available to employees thereof for the purpose of inducing, and which were likely to induce, directly or indirectly, the recruitment of door-to-door salesmen for the sale of respondents' memberships.

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

CAN YOU EARN \$100,000 NEXT YEAR? * * * For the opportunity of a lifetime with a prestige national company * * *

PART-TIME WORK \$400 EXTRA * * * I can show you people here making up to \$500 a week full time* * *

MAJOR CORPORATION NEEDS WOMEN

We are looking for young energetic men and women who want an exciting summer with a national super company. AMERICAN CONSUMER UNION

PAR. 9. By and through the use of the above quoted statements and representations, and others of similar import and meaning not specifically set forth herein, respondents have represented, and are now representing, directly or by implication, that:

(1) Respondents are offering positions in a major national corporation.

(2) Respondents are offering persons incomes ranging from \$500 per week up to \$100,000 per year.

PAR. 10. In truth and in fact:

(1) Respondents are not offering positions in a major national corporation. To the contrary, respondents are recruiting persons as door-to-door salesmen in a small newly established local corporation.

(2) Persons engaged by respondents do not receive the incomes as represented. Conditions and limitations imposed upon the receipt of the stated incomes result in few, if any, being paid the represented incomes.

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

PAR. 11. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in and affecting commerce, with corporations, firms and individuals, in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 12. The use by respondents of aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and induced the purchase of substantial quantities of respondents' services 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 or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 and 12 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 violations 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 such 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Consumer Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 101 East Carmel, Carmel, Indiana.

Respondents Mark F. Thorne and Thomas P. Sheehan are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above-stated address.

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

"Product line" as used in this order shall mean one of the following categories: subcompact size automobiles; compact size automobiles; intermediate size automobiles; full size automobiles; luxury automobiles; trucks; stoves-ovens; refrigerators; freezers; disposals; air conditioners; dishwashers; washers; dryers; other appliances; televisions; record players; radios; recorders; wearing apparel; pharmaceuticals; jewelry; furniture; upholstered furniture; bedding; carpeting.

"Shopping service" as used in this order shall mean any service that provides instructions, booklets, pamphlets and any other information regarding merchandise that is purportedly made available for purchase through such service at less than normal retail prices.

II

It is ordered. That respondents American Consumer Service, Inc., a corporation, its successors and assigns, and its officers, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the offering for sale, sale, and distribution of any memberships in a shopping service, or the door-to-door sale or distribution of any other products or services; or in the recruitment of sales representatives for said products or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' agents, representatives or employees are visiting the homes of families for the purpose of conducting surveys or opinion polls or for any purpose other than the sale of memberships in the shopping service, or misrepresenting in any manner, the nature of any prospective customer contact or situation.

2. Representing, directly or by implication, that memberships in the shopping service are being offered at a special price only to those individuals agreeing to write testimonials, or misrepresenting in any manner the terms and conditions of membership in the shopping service.

3. Representing, directly or by implication, that any article of merchandise is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately by respondents for a substantial period of time in the recent and regular course of their business, provided, however, that respondents may offer other products or services as included in the cost of membership in the shopping service.

4. Representing, directly or by implication, that purchasers of memberships in a shopping service will save any stated dollar or percentage amount through use of the shopping service, unless respondents clearly and conspicuously disclose in connection with any savings representations that purchasers will not enjoy such savings until they have made enough purchases through the shopping service to result in savings that exceed the initial cost of membership in the service.

5. Representing, directly or by implication, to any prospective

purchaser of a shopping service, that members of a shopping service will be able to purchase consumer products at prices that are below the local retail selling prices of such products, unless respondents clearly and conspicuously disclose, in connection with such claims, in a written form containing the following information, and that said form shall be retained by each prospective member:

(a) The number of local purchase transactions that have been made from each said product line through the shopping service;

(b) A comparison, expressed as an average percent, by product line of the local retail selling price of consumer products with the cost of the identical consumer products purchased through the shopping service including shipping, postage, and delivery as experienced by members of the shopping service who have purchased said consumer products through the shopping service during a specified period of time; and that

(c) Savings can only be enjoyed by the member if the shopping service is used; some people never use the shopping service and never enjoy any savings as a result.

6. Failing to disclose to all prospective purchasers, prior to purchase of a membership, in complete and accurate detail, all steps necessary to purchase all products available through the shopping service by every method such products are available to be purchased, or misrepresenting in any manner the ease with which the service can be used.

7. Representing, directly or by implication, that purchasers of memberships in a shopping service have recovered or will recover their cost of joining the shopping service within any specified period of time, unless respondents clearly and conspicuously disclose in connection with such representation, that to recover the cost of joining the shopping service members will have to obtain savings on purchases that equal their cost of joining the shopping service, and the percentage of members of the shopping service who have recovered the cost of joining the shopping service within the specified period of time.

8. Misrepresenting in any manner the type or duration of advice and assistance that respondents or their sales representatives will offer to members of the shopping service.

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

(a) Respondents are offering employment positions in a major,

national corporation, or misrepresenting in any manner the size or nature of respondents' firm; and

(b) Individuals who reply to respondents' employment advertisements can or will receive a stated weekly or yearly income, unless the stated incomes have actually been achieved by at least 50 percent of past or current employees engaged in identical duties as those being advertised for, and such incomes are reasonably likely to be achieved by the person to whom the representation is made.

10. Failing to disclose, clearly and conspicuously, in all advertising for sales representatives, that:

(a) Respondents are recruiting persons for the sole purpose of soliciting or selling;

(b) Such soliciting or selling will be on a door-to-door basis, if such method of sale is included, to any extent, in the position for which persons are being recruited; and

(c) Compensation for persons so engaged is to be on a commission basis only, if such is the fact, or, if an income is advertised, the conditions and limitations thereto or upon the receipt of said income.

It is further ordered, That respondents shall establish a Consumer Service Representative who shall be responsible for answering inquiries from members of the shopping service with regard to the use of the service and for providing general assistance to such persons in connection with their use of the shopping service. Respondents shall employ at least one person to serve as a Consumer Service Representative and shall continue to employ at least one such person for at least one year after the date of respondents' last sale of a membership in a shopping service.

It is further ordered, That respondents disclose the following information clearly and conspicuously in all of respondents' sales presentations to prospective purchasers:

A. Membership in a shopping service is not necessary in order to make purchases from some of the mail order firms whose catalogs are made available by the shopping service to its members.

B. All orders placed through the shopping service must be paid for in advance by certified check or money order. The shopping service neither accepts nor extends credit.

C. Prospective purchasers of memberships in the shopping service will be required to sign a retail installment contract that may be assigned to a finance company if the full cost of the membership is not paid to respondents in one installment.

It is further ordered, That respondents shall accord to each member who signs a contract the right to cancel his membership within 120 days of the effective date of the membership contract. Upon notice of cancellation of a contract within 120 days of the effective date of the contract, respondents shall not receive, demand or retain more than an initial registration fee of \$70.

It is further ordered, That respondents shall include in the contract in boldface type of at least ten (10) points the following provision:

CANCELLATION AND REFUND

You are free to cancel your membership at any time within 120 days of the date of this contract. You will have to pay only an initial registration fee of \$70.

You may cancel the contract by mailing or delivering to American Consumer Service, Inc. a signed and dated copy of the "Notice of Cancellation" given to you at the time of purchase or by mailing or delivering to American Consumer Service, Inc. your own written letter of cancellation. Cancellation will be effective on the date of mailing. If, prior to cancellation, you have paid more than \$70, the excess will be refunded to you within ten (10) business days.

It is further ordered, That respondents shall include in the contract a completed form in duplicate, which shall be attached to the contract and easily detachable, and which shall contain in boldface type of at least ten (10) points the following information:

NOTICE OF CANCELLATION

I hereby cancel this contract.

(Date)

Buyer's Signature

It is further ordered, That respondents, upon receipt of notice of cancellation within 120 days of the effective date of the contract, shall refund to the member all monies received in excess of \$70 within ten (10) business days of receipt of the Notice of Cancellation.

It is further ordered, That the cancellation provisions of this Order shall not affect any obligation upon respondents under the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or

employment whose activities include the sale of shopping services, or of his affiliation with a new business or employment in which his own duties and responsibilities involve participation in the development of a sales presentation for use in the sale of shopping services. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of their continuing compliance with all the above terms and provisions of this order.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation, and also distribute a copy of this order to all corporate officers and all of respondents' personnel, agents or representatives concerned with advertising, promotion, solicitation, sale or distribution of a shopping service by respondents and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That 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.

505

Decision and Order

IN THE MATTER OF

GULF COAST BUILDERS EXCHANGE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2888. Complaint, May 24, 1977 — Decision, May 24, 1977*

This consent order, among other things, requires a Sarasota, Fla., trade association to cease entering into agreements or taking any other action which requires members and signatories to deal exclusively with association's bid depository, and imposes sanctions on those fail to do so. The order further mandates that the firm immediately reinstate those participants previously suspended.

Appearances

For the Commission: *Thomas D. Wilson, Jr. and Truett M. Honeycutt.*

For the respondents: *Martin A. Harkavy, Harkavy, Moxley & Mitchell, Sarasota, Fla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party respondent named or designated in the caption hereof, and hereinafter more particularly named, designated, described and referred to as respondent, has violated the provisions of the 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 Gulf Coast Builders Exchange, Inc. hereinafter referred to as respondent corporation or GCBE, is a non-profit corporation, organized and existing under the laws of the State of Florida, with its principal office located at 1490 First St., Sarasota, Florida.

Respondent GCBE was organized for, and serves its members as, an instrumentality which promotes cooperative activity among its member contractors, collects business data from its members and generally purports to assist them in the operation of their businesses. One of the functions of respondent GCBE is the operation of a bid depository. Said respondent GCBE's membership represents a substantial, if not dominant, part of the construction industry contractors in the central Gulf Coast area of the State of Florida.

For the purposes of this complaint, the participants in the bid