

IN THE MATTER OF
GATEWAY OVERSEAS, INC., ET AL.

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

Docket 9065. Complaint, Dec. 19, 1975 — Decision, Oct. 27, 1977

This consent order, among other things, requires a New York employment agency to cease misrepresenting the availability of employment opportunities and the effectiveness of its employment services program; the availability of overseas employment in all trades, skills and professions; and the demand for American personnel by overseas employers. The order further prohibits use of a mandatory arbitration clause in contracts which commit consumers to arbitrate all disputes at a designated tribunal; and the acceptance of any fee prior to acceptance of employment, other than those fees charged for preparation or duplication of resumes. Additionally, the order requires the firm to maintain complete business records; conspicuously post prescribed disclosure statements and to include such statements in all sales contracts.

Appearances

For the Commission: *Shirley F. Sarna, Laura P. Worsinger and Ellen Zweibel.*

For the respondents: *Barry Bell, New York City.*

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 Gateway Overseas, Inc., a corporation, and Michael Anderson, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gateway Overseas, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1501 Broadway, New York, New York.

Respondent Michael Anderson, an individual, is an officer and director 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 business address is the same as that of the corporate respondent.

PAR. 2. Unless otherwise required by context, the following

definition shall apply for purposes of this complaint: the term "companies" means corporations and other legal entities of any type whatever, partnerships and individuals doing business overseas or elsewhere, and governments and governmental subdivisions, agencies and instrumentalities.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of services and related materials to persons seeking employment, such services including but not limited to the preparation and distribution of personal resumes, letters of introduction, and names and addresses of companies thought to be prospective employers to which respondents' clients can mail the aforementioned resumes and letters of introduction when attempting to obtain employment including overseas employment. Respondents also have provided and are now providing employment research services to other similar businesses in return for a fee.

PAR. 4. In the course and conduct of their business respondents require, as a prerequisite to commencing or performing services for any individual client, that said client pay or make unconditional commitment to pay in full, in advance, respondents' non-refundable prescribed fee. Said fee has been set during the period of respondents' operation at \$245 and \$185, usually expressed as a service charge.

PAR. 5. In the course and conduct of their business respondents now cause and for some time last past have caused advertisements for the above-described employment services to appear in newspapers of general and interstate circulation. In the further course and conduct of their business respondents have caused documents and communications pertaining to said business to be transmitted across state lines by means of the United States mail and other means to and from respondents' principal office in the State of New York to offices, customers and potential customers in other States of the United States and foreign countries; and in addition, respondents cause and have caused customers and other individuals and funds to pass between the State of New York and various other States of the United States and foreign countries. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in their said business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing the purchase of and payment for their services and materials, respondents have made and caused to be made, and are now making and causing to be made through advertisements published in newspapers of general and interstate circulation,

through brochures, form letters and other promotional matter, and through oral statements by respondents, their agents and representatives during personal interviews and consultations with prospective clients, numerous statements and representations with respect to the availability of jobs overseas and the salaries and other benefits incident thereto, and the nature, type and effectiveness of their employment services program.

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

1. Advertisements in various newspapers sometimes inserted in "Help Wanted" columns, stating, *inter alia*:

- a. HIGH PAY - NO TAXES! Men & Women Oppor'ties OVERSEAS All Trades, Skills & Profs. We assist you. Service charge. No placement fee.
- b. Have you considered the OVERSEAS areas. . . Australia, Asia, Europe? or the top U.S. areas. . . Such areas as Calif., Fla., Hawaii, Colorado, etc.?
- c. Has ANYONE ever thought of looking for a good local, national or overseas job through a resume service? Take 15 minutes of your time NOW to develop the rest of your life through our unexcelled services. Call, or write, office in your area.
- d. WORK OVERSEAS—HIGH PAY—BONUSES—NO TAXES—WORK OVERSEAS—and choice U.S. spots.
- e. All Trades, Skills & Professions—Go with GATEWAY. First in N.Y.!

2. Form letters, promotional matter and oral representations made or disseminated by or for respondents, stating, *inter alia*:

- f. Opportunities the world over. . . We've served thousands.
- g. GATEWAY OVERSEAS, INC., organized and operating under the laws of New York State is the nation's foremost Service Organization in its field.

We offer a unique approach to persons seeking lucrative and rewarding opportunities either Overseas or in the choice spots within the United States, Canada and Mexico.

Our service is individually tailored to your experience and background as well as to your geographic areas of preference.

h. A good resume and cover letter are of no value unless you have some place to send it. Here is where the all important function of our Research Department comes in. Their constant scanning of hundreds of foreign and American newspapers, trade journals, and government publications allows them to keep accurate and up-to-date information on thousands of American and Foreign companies with national and international operations. An intensive and individualized research is then conducted in which we select a minimum of 20 companies or organizations, which are in your field and are located in the geographic area of your choice. These companies are specifically matched to your qualifications and represent those which we feel will offer the best opportunities for you.

i. Any individual serious about solid career advancement should know about the Gateway Service. It is without question the most complete and professional

service of its kind in the nation. No company or individual is in a better position to help you in achieving your career goals than Gateway Overseas, Inc. At Gateway *YOUR SUCCESS IS OUR ONLY CONCERN*.

j. One of the most comprehensive and sophisticated job searches available in the United States - specifically designed to make the most immediate and efficient coordination of prospective employers and qualified individuals currently available.

k. If you are not completely satisfied with the results, we will service you until you are, regardless of the additional costs to Gateway. Although many people never request a second mailing, we will provide any additional mailings you request until you get the exact response you are seeking.

l. Through our global job research service, we know where the current and upcoming openings are from day to day.

m. YOUR OVERSEAS INCOME COULD RANGE FROM 25% TO 150% HIGHER THAN YOU WOULD MAKE AT DOMESTIC RATES OF PAY. HOWEVER, IT'S NOT POSSIBLE TO QUOTE YOU AN EXACT SALARY SINCE THESE FIGURES ARE INFLUENCED BY: (1) RATES CUSTOMARY IN THE UNITED STATES; (2) YOUR PARTICULAR QUALIFICATIONS AND OCCUPATION; (3) CURRENT NEEDS; (4) GEOGRAPHIC LOCATION OF THE PARTICULAR JOB; (5) HAZARDOUS CONDITIONS INVOLVED, IF ANY; AND (6) YOUR PRIOR FOREIGN CONTRACTS. THE SUBSISTENCE ALLOWANCE IS NON-TAXABLE; NEITHER IS YOUR INCOME AFTER 510 DAYS.

YOUR ROOM AND BOARD WILL BE FURNISHED FOR YOU OR MADE AVAILABLE TO YOU FOR A MINIMUM CHARGE. CERTAIN HIGH PRIORITY, TOP-FLIGHT PERSONNEL WILL BE FURNISHED HOUSING BY THE COMPANY.

TRANSPORTATION IS GENERALLY FURNISHED - FROM THE POINT OF HIRE AND RETURN WHEN THE CONTRACT HAS BEEN COMPLETED. SOME ORGANIZATIONS WILL ALSO PROVIDE TRANSPORTATION FOR YOUR FAMILY, IF SUITABLE LIVING QUARTERS AND ARRANGEMENTS CAN BE MADE FOR THEM ALSO.

SUBSISTENCE ALLOWANCE FROM \$250.00 to \$500.00 A MONTH IS GENERALLY PAID IN ADDITION TO YOUR BASE SALARY. THE EXACT AMOUNT OF THIS IS GOVERNED BY THE COST OF LIVING AT THE LOCATION AND THE PARTICULAR EMPLOYEE FRINGE BENEFITS FURNISHED BY THE EMPLOYER.

n. Then we circulate it (the resume) with a covering letter signed by the client and geared directly to the staff needs of about 40 companies or private institutions whom we know have job openings for which our client is qualified.

o. Anderson says about 70% of his clients get and accept satisfactory job offers with the first mailing.

p. *WHY DO YOU WANT TO WORK OVERSEAS?*

Is it because: a) Salaries generally range from 25% to 150% higher than those in the United States? b) Subsistence allowances of between \$250 and \$500 a month are normally paid? c) The majority of companies pay the roundtrip costs of you and your family?

PAR. 7. By and through the use of the aforesaid statements,

representations and advertisements, and others of similar import and meaning, but not expressly set out herein, respondents represent and have represented, directly or by implication, that:

1. Overseas jobs for Americans are plentiful in all trades, skills, and professions.
2. Overseas jobs for Americans have been and are immediately or imminently available.
3. Overseas jobs for Americans are plentiful in highly desirable areas such as Europe and Australia.
4. Respondents provide an expert and comprehensive employment service.
5. Respondents have specific or special knowledge of a substantial number of job openings or opportunities in highly desirable areas such as Australia and Europe and other locations for a significant number of clients.
6. Respondents have special, unique, exclusive or expert knowledge of the specific employment needs and hiring practices of a substantial number of companies.
7. Respondents' services include the matching or coordinating of a client's specific skills with companies which have a need for such skills.
8. Respondents' clients can expect their pay to be 25 percent - 150 percent higher than it would be in the United States for a comparable position.
9. Respondents' clients can expect their earnings overseas to be exempt from income taxes after 510 days.
10. Respondents' clients can expect subsistence allowances when working overseas and roundtrip transportation overseas to be paid for by the employer.
11. Substantially every person who becomes a client of respondents can reasonably expect to obtain employment as a result of respondents' services.

PAR. 8. In truth and in fact:

1. With the exception of a few occupations, jobs overseas for Americans have not been plentiful.
2. Jobs overseas have seldom been available immediately, imminently, or at any time to respondents' clients.
3. Overseas jobs for Americans are scarce, especially in such highly desirable areas as Europe and Australia.
4. Respondents do not have the experience or training necessary to provide an expert employment service, nor do they have the employer contacts and specific information necessary to provide a comprehensive employment service.

5. Respondents have no specific or special knowledge of any substantial number of job openings or opportunities in any part of the world, in any significant number of occupations.

6. Respondents have no special, unique, exclusive, or expert knowledge of the specific employment needs and hiring practices of a substantial number of companies. The policy of the vast majority of companies doing business overseas is to hire only local nationals, with rare exceptions for Americans with highly specialized or top management skills.

7. Respondents do not match or coordinate clients' specific skills with companies' specific needs, but identify each by broad category only.

8. A great majority of the overseas jobs for which respondents' clients are qualified do not provide high pay by American standards.

9. Overseas earnings are not exempt from income taxes after 510 days. Overseas salaries are subject to income taxation by the particular foreign state in which the client is employed.

10. Respondents' clients cannot expect subsistence allowances when working overseas nor roundtrip transportation overseas to be paid for by the employer because such benefits are only provided for a select category of personnel.

11. With the exception of a very few occupational skills, the great majority of persons who become clients of respondents cannot reasonably expect to obtain employment anywhere as a result of respondents' services. In the past, only a minute percentage of respondents' clients have obtained jobs as a result of respondents' efforts.

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

PAR. 9. By and through the use of the statements and representations described and exemplified in Paragraphs Six and Seven hereof, respondents represented and continue to represent to unemployed persons and other job seekers that they have knowledge of jobs currently available in all trades, skills and professions, and that individuals taken on as clients will in most instances obtain employment through the use of their services. In reliance on such representations of respondents' service as essentially one that will in most instances successfully lead to a satisfactory offer of employment, many of such unemployed persons and other job seekers have been induced, and continue to be induced, to their substantial hardship and detriment into becoming clients of respondents and

into paying or making unconditional commitments to pay respondents' prescribed fee in advance as required.

In fact, however, respondents' services have failed, and continue to fail, as a means of obtaining employment for the great majority of clients.

Moreover, the collecting of respondents' fee in advance of placement has diminished and tended to eliminate as to each individual client, respondents' incentive to provide and continue diligent efforts and service toward finding employment opportunities and matching clients thereto.

Therefore, it was and is an unfair trade practice for respondents to require clients to pay in advance for their services as represented and described in Paragraphs Three through Eight above.

PAR. 10. In the course and conduct of their business, as aforesaid, respondents require their clients to sign a contractual agreement for services, hereafter referred to as "the contract." On the aforesaid contract, respondents have included a provision requiring that all disputes involving the terms and obligations of the contract be referred to arbitration at a named tribunal designated by respondents. Said mandatory arbitration clause is not negotiated by and between the parties; and respondents' clients, as a result of signing this contract to utilize respondents services, are thereby bound to arbitrate all grievances regarding the contract with respondents. Respondents' clients are not afforded an opportunity to reject mandatory arbitration when signing respondents' contract.

PAR. 11. Respondents fail to disclose to prospective clients, prior to the signing of the contract, that arbitration is a binding resolution for all disputes arising under the contract nor do they disclose or explain to such clients material facts regarding the procedures, rules or fees of the named tribunal.

PAR. 12. The arbitration tribunal designated in respondents' contract requires individuals who wish to initiate an arbitration to pay an administrative filing fee of \$100. This administrative filing fee of the designated tribunal is significantly greater than the fees for some courts which could have jurisdiction of claims arising out of respondents' contracts and, in many instances said fee constitutes a substantial percentage of the amount involved in disputes arising out of respondents' contracts. Consumers are or may thereby be deterred from seeking redress through the designated arbitral forum.

PAR. 13. The arbitration tribunal designated by respondents is located in New York. Arbitration in New York is, by law, a binding award. As a result of the use of the aforesaid contract under the circumstances described herein, respondents substantially deprive

clients of a meaningful opportunity to obtain or seek redress when disputes arise in connection with respondents' contract or obligations.

PAR. 14. Therefore, respondents' use of the aforesaid arbitration clause in the circumstances described herein was and is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act.

PAR. 15. In the course and conduct of their business, and at all times mentioned herein, respondents have been and now are in substantial competition, in or affecting commerce, with corporations, firms, and individuals engaged in the sale of materials and performance of services of the same general kind and nature as those sold and performed by respondents.

PAR. 16. The use by respondents of the aforementioned false, misleading, unfair, and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are true, and into the purchase of respondents' services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, are unethical, oppressive, exploitative and cause substantial injury to consumers, and constituted, and now constitute unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 18. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; 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

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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement 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 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Gateway Overseas, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its former principal office and place of business located at 1501 Broadway, New York, New York. The corporate respondent's present address is the same as that of the individual respondent.

Respondent Michael Anderson, an individual, is an officer and director of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and his address is 5760 N. Campbell Ave., Tuscon, Arizona.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Gateway Overseas, Inc., a corporation, its successors and assigns, and its officers, and Michael Anderson, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the advertising, offering for sale, or sale of job search services or materials or articles incident thereto, or similar services, materials, or articles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication, that:

(1) Overseas jobs for Americans are plentiful in any trade, skill, or profession.

(2) Overseas jobs for Americans have been and are immediately or imminently available.

(3) Overseas jobs for Americans are plentiful in highly desirable areas such as Europe and Australia.

(4) Respondents provide an expert and comprehensive employment service.

(5) Respondents have specific or special knowledge of substantial numbers of job openings or opportunities in the United States or overseas for a significant number of clients.

(6) Respondents have special, unique, exclusive or expert knowledge of the specific employment needs and hiring practices of a substantial number of employers.

(7) Respondents' services include the matching or coordinating of clients' skills with employers needing said skills.

(8) Respondents' clients can expect their pay to be 25 percent - 150 percent higher than it would be in the United States for a comparable position.

(9) Respondents' clients can expect to receive subsistence allowances when working overseas.

(10) Respondents' clients can expect round trip transportation expenses to be paid by the employer.

(11) Respondents' clients can expect their earnings overseas to be exempt from income taxes after 510 days.

(12) Substantially every person who becomes a client of respondents can expect to obtain employment as a result of respondents' services.

B. Misrepresenting in any manner, directly or by implication:

(1) The demand for Americans to fill overseas positions; the availability or immediacy of any employment opportunity; or the availability of jobs for Americans in any geographic areas.

(2) The respondents' professional qualifications; the nature or character of the services provided by respondents; the respondents' knowledge of the needs and hiring practices of employers; or the respondents' knowledge of specific job opportunities.

(3) The services provided by respondents in coordinating clients' skills with employers having a need for such skills; or the likelihood of obtaining employment as a result of the utilization of respondents' services.

(4) The earnings respondents' clients can expect to receive or any other terms, conditions or compensation incident to employment; or the extent to which the earnings of respondents' clients are subject to taxation.

C. Charging or accepting any fee from a client or prospective client prior to the acceptance by the client of a firm offer of employment resulting from the utilization of respondents' services.

Provided, however, that reasonable fees may be charged for the preparation or duplication of a resume prior to the acceptance of an offer of employment, if respondents' resume service is sold independently of any other job search service.

Further provided, that the sale of resume services will not be deemed independent of other job search services unless a notice stating that respondents' services may be purchased separately is: (i) conspicuously posted in respondents' reception area; (ii) conspicuously posted in all areas where prospective clients are interviewed; and (iii) conspicuously stated in all of respondents' contracts. *Further provided,* that the notice in items (i) and (ii) above, shall be in capital block letters no less than one and one-half (1-1/2) inches high; and that the notices required by items (i), (ii) and (iii) above, shall be captioned "IMPORTANT NOTICE - PLEASE READ." Furthermore, said notices shall itemize the various services offered and the prices for each of such services.

D. Entering into any contract or agreement with a client, prior to the time a dispute arises, which requires that disputes arising in connection with the contract or agreement be submitted to arbitration for resolution.

It is further ordered, That respondents maintain at all times in the future, complete business records relative to the manner and form of their continuing compliance with the above terms and provisions of this order.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each operating division, to all present and future franchisees and licensees, and to all of respondents' personnel now or hereafter engaged in the offering for sale, or sale of respondents' job search services or related materials or articles, or in any aspect of the preparation, creation or placing of advertising of such services, materials or articles, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

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

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Decision and Order

the effective date of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each 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 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.

Complaint

90 F.T.C.

IN THE MATTER OF
DAYCO CORPORATION

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

Docket C-2905. Complaint, Oct. 27, 1977 — Decision, Oct. 27, 1977

This consent order, among other things, requires a Dayton, Ohio manufacturer and importer of occupational safety products and equipment to cease misrepresenting that its products meet non-existent "government standards," or that they are approved, endorsed or required by the Occupational Safety and Health Administration (OSHA). The firm is also required to cease using, or licensing the use of the "OSHA-SPEC" trademark, and to take steps to prevent the importation of "OSHA-SPEC" branded goods. Additionally, the order prohibits the company from publishing quotations from the OSHA Act or regulations, without including all relevant portions of the quoted section.

Appearances

For the Commission: *Sharon J. Devine* and *Allan M. Huss*.

For the respondent: *Sara Jane Little*, Dayton, 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 Dayco Corporation, 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 purposes of this complaint, the following definitions shall apply:

(a) "OSHA" means the Occupational Safety and Health Administration, an agency of the United States Government established pursuant to authority granted to the Secretary of Labor by the OSHA Act.

(b) "OSHA Act" includes the Williams-Steiger Occupational Safety and Health Act of 1970, 84 Stat. 1593, 29 U.S.C. 651-678 (1975), and the regulations promulgated thereunder, 29 C.F.R. 1900, *et seq.* (1976).

(c) "Hazardous condition" means a circumstance or set of circumstances against which an employer must take precaution(s) in order to comply with the OSHA Act.

PAR. 2. Respondent Dayco Corporation is a corporation organized,