

Complaint

IN THE MATTER OF

FIRESTONE PHOTOGRAPHS, INC., ET AL.

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

Docket C-2921. Complaint, April 20, 1978 — Decision, April 20, 1978

Consent order requiring a Columbus, Ohio, promoter and seller of photographic equipment and supply franchises, among other things, to cease misrepresenting its repurchase plan, potential profits, connection or affiliation with others, and the training and business assistance provided franchisees. The order further requires the firm to make full and timely disclosures and provide prescribed data regarding any cooling-off periods, cancellation and refund rights, and the financial history of both the corporation and previous franchisees. The firm is additionally required to maintain specific records and to institute a surveillance program designed to ensure compliance with the terms of the order.

Appearances

For the Commission: *Melvin H. Wolovits* and *Noble F. Jones*.

For the respondents: *Harris, Strip, Fargo, Schulman & Hoppers*,
Columbus, 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 Firestone Photographs, Inc., a corporation, Firestone Photo Co., a corporation, and Daniel Firestone, individually and as an officer of said corporations, 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. For the purpose of this complaint and the Agreement Containing a Consent Order to Cease and Desist entered into by the Federal Trade Commission and respondents, the following definitions shall apply:

(1) The term "franchise" shall mean any continuing commercial relationship created by written agreement or understanding where:

(a) A person offers, sells or distributes goods or commodities manufactured, processed or distributed by respondent; and

(b) Respondent directly or impliedly represents, either orally or in writing, that it will assist such person in such person's organization,

promotional activities, management, marketing plan, method of operation or other business activities.

(2) The term "franchisee" shall mean any person to whom a franchise is granted.

(3) The term "business day" means any day other than Saturday, Sunday, or the following national holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

(4) The terms "material," "material fact," and "material change" shall include any fact, circumstance, or set of conditions which would have a substantial likelihood of influencing a reasonable franchisee or a reasonable prospective franchisee in the making of a decision relating to respondents' franchise business or which would have any significant financial impact on a franchisee or a prospective franchisee.

(5) The term "bona fide wholesale price" refers to a price which constitutes a fair payment for goods purchased at the same level of distribution and no part of which constitutes payment for the right to enter into or continue in respondents' franchise business.

PAR. 2. Respondent, Firestone Photographs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principle office and place of business located at 168 North Third St., Columbus, Ohio.

Respondent, Firestone Photo Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principle office and place of business located at 168 North Third St., Columbus, Ohio.

Respondent, Daniel Firestone, is an individual and officer of respondent corporation. He formulates, directs and controls the acts and practices of said business entity, including the acts and practices hereinafter set forth. His address is 168 North Third St., Columbus, Ohio.

PAR. 3. Respondents are now, and for some time in the past have been engaged in the advertising, offering for sale, and sale of franchises which authorize franchisees to sell to members of the public items of merchandise, including but not limited to Kodak film and Firestone Photographs, Inc. prepaid film processing envelopes.

PAR. 4. In the course and conduct of their business, respondents for some time last past have caused, said products, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other states of the United States. In addition, in the course and conduct of their business, respondents have disseminated and caused to be disseminated in newspapers of interstate circulation, advertisements designed to be read by persons

residing outside the State of Ohio and intended to induce such persons to enter into contractual agreements with respondents to purchase franchises and products from respondents. Respondents also introduced into interstate circulation, through the instrumentality of the United States mails, promotional materials, circulars, business papers and other written instruments and communications with the result and effect that members of the public residing outside the State of Ohio, in various other States of the United States did, in fact, purchase respondents' franchises and products, thereby placing respondents' business in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

Respondents have maintained, and at all times mentioned herein maintained, a substantial course of trade in distributorships and products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business as above mentioned and for the purpose of inducing the purchase of their franchises and products, respondents Firestone Photographs, Inc., a corporation, Firestone Photo Co., a corporation, and Daniel Firestone, individually and as an officer of said corporations, engaged in a program of recruitment of franchisees for their franchise program. As part of this program respondents have made numerous statements and representations in promotional materials and in newspaper advertisements.

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

No selling or soliciting required

* * * * *

A 100% GUARANTEE FOR 12 MONTHS

* * * * *

QUALIFIED INDIVIDUAL MALE OR FEMALE

* * * * *

Very Conservative Profit Projections. . .

10 Locations . . . \$5,148 per year

50 Locations . . . \$25,740 per year

PAR. 6. By and through the use of the aforesaid statements and others of similar import not specifically set forth herein, respondents represent directly or by implication that:

(1) A person can expect to earn between \$5,148 and \$25,740 or more per year by devoting part time to his franchise.

(2) There is no selling or soliciting required of a franchisee.

(3) Respondents will repurchase and refund a franchisee's entire investment for any reason within a twelve (12) month period.

(4) Respondents are selective with regard to persons qualified to become franchisees.

PAR. 7. In truth and in fact:

(1) A person cannot expect to earn between \$5,148 and \$25,740 per year by devoting part time to his franchise. Such earnings claims are greatly in excess of the profit that will accrue in a great majority of cases, no matter how much time is devoted to the distributorship.

(2) Selling or soliciting is required of a franchisee if profitable locations are to be obtained.

(3) Respondents have in few cases, if ever, repurchased and refunded a franchisee's entire investment within a twelve (12) month period.

(4) In order to purchase a franchise from respondents, the only qualification existing is that the purchaser have sufficient funds for the franchise investment.

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

PAR. 8. In the further course and conduct of their business aforesaid and in furtherance of their purpose of inducing the purchase of their franchises, respondents direct various newspapers to print advertisements containing the corporate logo of Kodak Corporation. The use of this logo in newspaper advertising and on other printed matter disseminated by respondents represents, directly or by implication, that respondents are closely affiliated with the said corporation.

In fact, respondents are not closely affiliated, nor are they affiliated in any way with the said corporation. Rather, the relationship between respondents and the said corporation is basically that of supplier-purchaser.

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

PAR. 9. In the further course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their franchise and products, respondents, their agents, representatives or employees, or any of them, have made representations, either orally or in writing, that:

(1) A franchisee will earn between \$5,200 and \$52,000 or more per year.

(2) A distributor can recover his entire initial investment within a one year period.

(3) Respondents will obtain and set up profitable sales producing locations in high traffic business establishments and retail store outlets, such as supermarkets and drug stores.

(4) Respondents will obtain and set up permanent locations in business establishments and retail store outlets for franchisees.

(5) Business establishments and retail store outlets will be obtained and set up shortly after franchisees sign a contract or purchase agreement.

(6) Respondents will train and assist franchisees in obtaining and setting up new permanent business establishments and retail store outlets.

PAR. 10. In truth and in fact:

(1) Few, if any, of respondents' franchisees have earned \$5,200 per year or more.

(2) Few, if any, of respondents' franchisees have recovered, from the operation of the franchise, their entire initial investment within one year.

(3) The type of business locations and retail store outlets obtained and set up by respondents are not located in high traffic sales producing locations such as supermarkets and drug stores.

(4) Respondents do not obtain and set up permanent business locations and retail store outlets for franchisees. In fact, in a substantial number of instances, business locations and retail store outlets obtained and set up by respondents, terminate their relationship with the franchisee in sixty (60) days or less from the day they commence operating and through no fault of the franchisee.

(5) Business locations and retail store outlets are not obtained and set up shortly after franchisees sign their contracts. Often there are protracted delays caused by respondents.

(6) Respondents in few instances, if any, assist franchisees in obtaining and setting up additional permanent business locations.

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

PAR. 11. In the further course and conduct of its business, respondents and prospective franchisees enter into franchise contracts and purchase agreements. In a substantial number of these instances, the prospective franchisee is unemployed and without the assistance of counsel and enters said contracts in a state other than Ohio.

PAR. 12. Respondents, as a part of said franchise contract or purchase agreement, include the following "venue waiver" provision:

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The parties further agree that this Agreement shall be deemed to have been executed in the State of Ohio and to submit any dispute or cause of action which may arise, solely to the Courts of the State of Ohio.

PAR. 13. The venue waiver provision is not a bargained-for part of the franchise contract or purchase agreement and is not generally understandable to persons without legal background or experience. By requiring franchisees to waive statutory venue provisions, respondents have deprived and is depriving them of rights otherwise available to them, under the laws of the state where in fact the franchise contract or purchase agreement was executed. Therefore, such use of the "venue waiver" provision is unfair.

PAR. 14. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has been, and now has the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and induce the purchase of respondents' franchises and products by reason of said erroneous and mistaken beliefs, and into the assumption of obligations and the payment of monies, as a result thereof, which they might otherwise not have incurred.

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

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid

for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Firestone Photographs, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 168 North Third St., Columbus, Ohio.

Respondent Firestone Photo Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 168 North Third St., Columbus, Ohio.

Respondent Daniel Firestone is an officer of said corporations. He formulates, directs, and controls the policies, acts, and practices of said corporations, and his address is the same as that of said corporations.

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

It is ordered, That respondent Firestone Photographs, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, Firestone Photo Co., a corporation, and its successors and assigns, and its officers, agents, representatives, and employees, and Daniel Firestone, individually and as an officer of said corporations, directly or through any other corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, contracting, or other promotion of any franchise, distributorship, dealership, license, goods, services, or commodities manufactured, processed or distributed in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing directly or by implication through the use of any means that:

(1) Selling or soliciting is not required to operate a franchise;

(2) Respondents have a connection or affiliation with any manufacturer of products or services available to franchisees, other than that of supplier-purchaser; or misrepresenting, in any manner, respondents' business connection, affiliation or association with other firms, organizations, groups, or individuals;

(3) Prospective franchisees will receive advice, assistance or training for organizing, maintaining or operating their franchise, or misrepresenting in any manner the quality, amount and nature of assistance to be provided by respondents, except as provided for in Paragraph II (9) of this order;

(4) Prospective franchisees will be provided, as a part of its franchise, specific types of business locations or retail store outlets, such as supermarkets or drug stores; or misrepresenting, in any manner, the desirability of any specific business location or retail store outlet to be provided, as stated hereinabove;

(5) Prospective franchisees must be qualified, possess certain skills or experiences in order to be selected or accepted as a franchisee.

B. Using in an advertisement any logo, trademark or seller's emblem of the Eastman Kodak Company or any other company or organization other than respondents; *provided*, that, if respondents use in an advertisement the trade name of any company other than its own, that trade name shall not appear in boldface type and in no greater than two (2) type point sizes smaller than respondents' name.

C. Providing respondents' franchisees with point of sale display racks which fail to disclose clearly and conspicuously respondents' name and its product or service being offered for sale.

D. From making, directly or by implication, orally or in writing, any representation with respect to a prospective franchisee's potential sales, income, gross or net profit, or with respect to a prospective franchisee's potential return of their purchase price within a stated period of time, except as provided for in Paragraph II (7) of this order.

E. Representing, directly or by implication, orally or in writing, any limitation with respect to the county or court in which a franchisee may institute a lawsuit against respondents. This provision shall not preempt any rule of law which limits choice of county or court.

F. Representing, directly or by implication, orally or in writing, that respondents will repurchase, guarantee or otherwise refund

amount of money paid to respondents in connection with the purchase of respondents' franchises, unless in immediate conjunction with the representation, and in each franchise contract or purchase agreement in no less than eight (8) point type size, all conditions and terms of the repurchase plan are clearly and conspicuously disclosed in simple and readily understood language. Such disclosure shall include the following information:

(1) Those products, services or franchise fees included in the repurchase plan, and all exceptions and exclusions of the repurchase plan;

(2) The step by step procedure which the franchisee must take in order to obtain performance under the repurchase plan, including the expenses he must incur; and

(3) The time or period of time in which respondents will perform any obligation under the repurchase plan.

G. Making any claim or representation, either orally or in writing, for which the respondents do not have in their possession valid substantiating data, which data shall be made available to prospective franchisees, and to the Commission or its staff upon five (5) days written notice.

II

It is further ordered, That each prospective purchaser of respondents' franchises receive, at least fifteen (15) business days prior to: (1) the execution of any contract, purchase agreement or other binding obligation in connection with the sale of respondents' franchise; or (2) the payment by or on behalf of the prospective purchaser of any consideration in connection with the sale or proposed sale of respondents' franchise, whichever occurs first:

A. The completed contract, purchase agreement, or other obligation proposed to be used;

B. A copy of the Federal Trade Commission's News Release issued by the Commission in conjunction with its provisional acceptance of this order; and

C. A single disclosure statement, which shall not contain any promotional claims or other information not required by this order. Provided this does not preclude respondents from giving explanatory information in separate literature so long as such explanatory information is not inconsistent with the disclosure statement required by this part.

The statement shall carry a distinctive and conspicuous cover sheet

with the following notice (and no other) imprinted thereon in boldface type of not less than 10 point size:

***INFORMATION FOR PROSPECTIVE DISTRIBUTORS REQUIRED BY
FEDERAL TRADE COMMISSION***

This package of information is provided for your own protection. It is in your best interest to study it carefully before making any commitment.

If you do sign a contract, you may cancel it, and obtain a full refund of any money paid, for any reason within ten (10) business days after signing. Details appear on the contract itself.

The information contained herein has not been reviewed or approved by the Federal Trade Commission. A false, inaccurate or incomplete statement may constitute a violation of Federal law and should be reported to the Federal Trade Commission in Washington, or the Federal Trade Commission's Regional Office nearest you. In addition, there may be laws concerning franchising within your state. It is recommended that you contact your state government for its requirements or regulations.

Such disclosure statement shall contain the following information as of the close of the respondents' last fiscal year. After the close of each fiscal year, respondents shall have a period not exceeding ninety (90) days to prepare a revised disclosure statement, and following such ninety (90) days may distribute only the revised prospectus and no other. Irrespective of the above, a revised prospectus must be prepared and distributed upon the occurrence of any material change in respondents or relating to the franchise business of respondents. As used in this order, the term "fiscal year" shall mean respondents' fiscal year:

(1) The official name(s) and address(es) of respondents and the name under which respondents are doing business.

(2) The business experience of respondents, including the length of time respondents have conducted a business of the type to be operated by the franchisee, or have granted franchises for such business, or have granted franchises, in other lines of business.

(3) Where such is the case, a statement that the respondents or any of its directors, stockholders owning more than ten percent of the stock, or chief executive officers:

(a) Has been held liable in a civil action, convicted of a felony, or pleaded nolo contendere to a felony charge in any case involving fraud, embezzlement, fraudulent conversion, or misappropriation of property during the previous seven (7) fiscal years; or

(b) Is subject to any currently effective court injunctive or restrictive order or ruling relating or affecting franchise activities of respondents as a result of action by any public agency or department;
or

(c) Has filed bankruptcy or been associated with management or any company that has been involved in bankruptcy or reorganization proceedings; or

(d) Is, or has been, a party to any cause of action brought by a franchisee against respondents.

Such statement shall set forth the identity and location of the court, date of conviction or judgment, any penalty imposed or damages assessed, and the date, nature and issuer of each such order or ruling.

(4) The financial history of the corporate respondents, including balance sheets and profit and loss statements for the most recent five-year period; and a statement of any material changes in the financial condition of the corporate respondent since the date of such financial statement.

(5) A statement of the total funds which must be paid to respondents in order to obtain or commence the franchise operation, and the total amount of said funds which is represented by, based upon a bona fide wholesale price, the following:

(a) Film;

(b) Prepaid film processing mailing envelopes;

(c) Other products individually identified.

(6) A statement disclosing with respect to respondents:

(a) The total number of franchises operating at the end of the preceding fiscal year;

(b) The names, addresses, and telephone numbers of the ten franchisees nearest the prospective franchisee's intended location;

(c) The number of franchises voluntarily terminated by franchisees during the preceding fiscal year; and

(d) The number of franchises repurchased or cancelled by respondent during the preceding fiscal year, including the average dollar amount repaid expressed as a percentage of the initial purchase price.

(7) If respondents choose to make a representation with respect to potential sales, income or gross or net profits such representation must be made only in the following manner:

(a) The number and percentage of franchisees which earned or made at least the same sales income or gross or net profits during a period of corresponding length in the immediate past as represented;

(b) The beginning and ending dates for the corresponding time period referred to in (a), above; and

(c) The following statement is clearly and conspicuously disclosed in immediate conjunction therewith, and in not less than ten (10) point boldface type:

THERE IS NO GUARANTEE THAT THESE [SALES] [INCOME] [AND/OR]

[PROFIT] PROJECTIONS WILL BE ACHIEVED BY YOU OR BY ANY SPECIFIC FRANCHISEE. THESE FIGURES ARE MERELY MANAGEMENT'S ESTIMATES OF THE [SALES] [INCOME] [PROFIT] THEY BELIEVE YOU MAY EXPECT FROM THE OPERATION OF THIS FRANCHISE BUSINESS. THERE IS THEREFORE AN ELEMENT OF RISK IN RELYING ON THESE ESTIMATES AS A BASIS FOR DETERMINING WHETHER YOUR DESIRE TO ENTER INTO A FRANCHISE RELATIONSHIP.

(8) All of the information, expressed in simple and readily understood language, as required by Paragraph I (F) of this order.

(9) If the respondents inform prospective franchisees that they intend to provide them with training or assistance, respondents disclose the specific details of such training or assistance to be provided.

(10) A verbatim copy of Paragraph IV (A) and (B) of this order.

(11) The name, address and telephone number of a person designated by respondents to whom franchise inquiries and complaints should be directed.

III

It is further ordered, That:

A. The following "NOTICE" be included immediately above and on the same page as the purchaser's signature line of any contract or agreement establishing or confirming a franchise and in boldface type no less than twelve (12) point type size:

"NOTICE"

(Non-Waiverable)

YOU MAY CANCEL THIS CONTRACT FOR ANY REASON WITHIN TEN (10) BUSINESS DAYS AFTER THE DAY YOU MAILED OR RETURNED THIS CONTRACT TO [COMPANY NAME], OR ITS OFFICER, AGENT, OR EMPLOYEE. If you choose to cancel, you will be entitled to receive a full refund within ten (10) business days after [Company Name] receives notice of your cancellation. In order to cancel this contract and receive a full refund, send a letter which states your name and address and the fact that you cancel the contract. Send this letter by *Certified Mail, Return Receipt Requested* to:

(Company Name)
(Street Name, Number)
(City, State, Zip Code)

B. Respondents shall not fail to cancel contracts and make refunds in accordance with the provisions contained in the "NOTICE" required by subparagraph (A) above.

IV

It is further ordered, That in all contracts, purchase agreements or any other binding obligation in connection with the sale or proposed sale of respondents' franchise, respondents shall clearly and conspicuously include therein the following provisions in at least eight (8) point type size and in the language specifically set forth as follows:

A. [Company Name] agrees to deliver or have delivered all merchandise, supplies and equipment; set up all business locations or retail store outlets; and take all other action as may be necessary to make your franchise fully operational within sixty (60) days from receipt of full payment, or cancel this contract and make refund of all money paid to [Company Name, officer, agent, or employee] within ten (10) business days thereafter.

B. If a business location or retail store outlet established by [Company Name] is terminated at the request of the owner, manager or operator of the said business location or retail store outlet within ninety (90) days from the date the business location or retail store outlet is fully operational and provided that purchaser has called at each said business location or retail store outlet for the purpose of taking inventory, replenishing the business location or retail store outlet with stock and making cash settlement at least once in each two week period since the business location or retail store outlet was fully operational, [Company Name] will, within five (5) business days from the day [Company Name] receives notice of said termination, notify the franchisee of its intention to:

(1) Provide, secure and set up a new business location or retail store outlet, by no later than twenty (20) business days after receiving the notice of termination; or

(2) Provide a refund, within twenty (20) business days from the day [Company Name] receives all of the photographic film and prepaid film processing envelopes remaining and unsold at the terminated business location or retail store outlet. The refund to be provided shall be computed as follows:

The Number of Business Locations or Retail Store Outlets Terminated	X	Total Price Paid to [Company Name] for the Franchise	= Refund
Total Number of Business Locations or Retail Store Outlets as Provided for in the Franchise Contract or Purchase Agreement			

C. Respondents shall not fail to cancel contracts, make refunds and provide new business locations or retail store outlets, in accordance with the provisions contained in subparagraph (A) and (B), above.

V

It is further ordered, That:

A. Respondents shall, within forty-five (45) days after the date this

order becomes final, notify in writing, all past and present franchisees that any provision of respondents' contract or agreement which a franchisee is a party to, and which expressly limits the county or court in which they may institute a lawsuit against respondents, will not be enforced by respondents or used by respondents in defense of any lawsuit brought against respondents: Such written notification shall be made by *certified mail, return receipt requested*, to the last known address of all past and present franchisees. The return receipt for each notification mailed shall be maintained in respondents' files for a period not less than two (2) years from the day this order becomes final and such files shall be made available for inspection by the Commission or its representatives upon five (5) days written notice; and

B. Respondents shall not represent directly or by implication to any franchisee, nor raise in any lawsuit filed by a franchisee, that respondents and the franchisee have by contract or agreement limited the county or court in which a franchisee may institute a lawsuit.

VI

It is further ordered, That respondents shall maintain files, for a period of two (2) years, containing all complaints from prospective franchisees, and respondents' franchisees', and respondents' response thereto, and that such files be made available to employees of the Federal Trade Commission for inspection and copying upon five (5) days written notice.

VII

It is further ordered, That respondents:

A. Deliver a copy of this order to each present and future employee, agent, solicitor, independent contractor, or other person engaged by respondents in the promotion or sale of franchises, or who participate in the establishment of business locations or retail store outlets on behalf of respondents.

B. Obtain from each person identified in Paragraph VII (A), above, as a condition of their position or job, a signed written statement which provides the following: Name, residence address and telephone number and (1) acknowledgement of receipt of a copy of this order; and (2) an agreement to conform his/her practices to the requirements of this order; respondents shall retain such statements for a period of three (3) years subsequent to the termination of their position or job and make each statement available to the Commission's staff for inspection and copying upon five (5) days written notice.

reveal whether each person described in subparagraph A of this paragraph is conforming to the requirements of this order.

D. Discontinue dealing with, or terminate the use or employment of, any person described in subparagraph (A), above, who refuses to sign a statement as described in subparagraph B of this paragraph, or who engages in any act or practice prohibited by this order.

VIII

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 successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

IX

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. 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. 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 out of this order.

X

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.

XI

It is further ordered, That in the event the Federal Trade Commission promulgates a Trade Regulation Rule applicable to respondents' business, this order shall be deemed modified to the extent it contravenes said Rule.

XII

It is further ordered, That respondents shall afford representatives of the Federal Trade Commission, upon five (5) days written notice, access to their records, memoranda, and other documents relating to the provisions contained herein, as may be appropriate to enable the Commission to determine respondents' compliance with this Agreement Containing Consent Order to Cease and Desist.

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Complaint

IN THE MATTER OF

TOWNSMAN-CENCO INTERNATIONAL, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND WOOL PRODUCTS LABELING ACTS

Docket C-2920. Complaint, April 25, 1978 — Decision, April 25, 1978

This consent order, among other things, requires a New York City importer, manufacturer and distributor of clothing products to cease misrepresenting or failing to properly identify the wool and fiber content of their products.

Appearances

For the Commission: *Martin D. Gorman.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Townsman-Cenco International, Ltd., and Newcastle Imports, Ltd., corporations, and Seymour Hertling and George Center, individually and as officers of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it now 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 Townsman-Cenco International, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 105 Fifth Ave., New York, New York.

Respondent Newcastle Imports, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 276 Park Ave. South, New York, New York.

Respondents Seymour Hertling and George Center are officers of Townsman-Cenco International, Ltd. and Newcastle Imports, Ltd. They formulate, direct, and control the policies, acts and practices of the corporate respondents including those hereinafter set forth. Their office and principal place of business is the same as that of respondent Townsman-Cenco International, Ltd.