

Modifying Order

IN THE MATTER OF

ARTHUR MURRAY, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7845. Decision, July 26, 1960—Modifying Order, March 10, 1980

This order modifies an order issued on July 26, 1960, 25 FR 9673, 57 F.T.C. 306, by inserting a Roman numeral one before the preamble of the original order; vacating the *It is further ordered* paragraph therein; and adding new Parts II, III, IV and V. The modified order strengthens the 1960 order by giving consumers the right to unilaterally cancel contracts with the company and receive prescribed refunds within 30 days of cancellation. Respondent is additionally required to direct franchisees and sub-franchisees to comply with the terms of the order, institute a program of continuing surveillance designed to reveal non-conformers, and terminate dealings with such parties.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on September 18, 1979, issued its order to show cause why this proceeding should not be reopened and its order of July 27, 1960 (hereafter sometimes referred to as "the Commission Order of 1960"), modified.

Respondents having consented to the reopening of this proceeding and the modification of the Commission Order of 1960, as set forth in the show cause order and the Commission having considered the comments filed by interested persons,

Now, therefore, *it is hereby ordered*, That the Commission Order of 1960 be, and it hereby is, modified by inserting a Roman numeral one, I, before the preamble of the Commission Order of 1960, by vacating the *It is further ordered* paragraph therein, and by adding new Parts II, III, IV, and V so that the Modified Order will read as follows:

ORDER

I.

It is ordered, That respondent Arthur Murray, Inc., a corporation, and its officers, and respondents Arthur Murray, Kathryn Murray and David A. Teichman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Representing, directly or by implication, by means of radio or television broadcasts, newspaper advertisements, contracts, telephone quizzes, crossword, dizzy dance or zodiac puzzles, "Lucky Buck" contests, or any certificates relating thereto, or any other means, that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value, will be furnished free of charge, at a reduced price, or for any price, unless the period or periods of *bona fide* dancing instruction or other service or thing of value is in fact furnished as represented.
2. Refusing to honor the terms and provisions of any certificate, award or offer.
3. Using (a) by telephone any quiz, puzzle, contest or other device which purports to involve, or is represented as involving, skill, competition or special selection; (b) by other means any promotion which purports to be a *bona fide* quiz, puzzle, contest or other device involving skill, competition or special selection is not involved; or (c) any *bona fide* quiz, puzzle, contest or similar device when a purpose of such promotion is to obtain leads to prospective customers and such purpose is not fully and conspicuously disclosed in the announcement or description of such promotion.
4. Using in any single day "relay salesmanship", that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction.
5. Using "analyses," "tests," "studio competitions," "dance derivatives," or any other artifices purportedly designed to evaluate dancing ability, progress or proficiency when said artifices are not so designed or so used but are in fact to induce the purchase of dancing instruction.
6. Requesting pupils or prospective pupils to sign uncompleted contracts or agreements; evading or refusing to answer inquiries concerning amount due or payable on proposed or completed contracts or agreements; or misrepresenting to pupils or prospective pupils what is or will be due or payable.
7. Falsely representing to or assuring pupils or prospective pupils that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency.
8. Contracting with a pupil or prospective pupil for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such pupil or prospective pupil to sales effort toward the purchase of additional lessons, unless (a) any contract for additional lessons is subject to cancellation by such pupil or prospective pupil, with or without cause, at any time up to and including one week after the completion of the units of dancing

instruction previously contracted for, without cost or obligation, except that a charge may be made for not in excess of two additional lessons furnished during such week and (b) all of such units previously contracted for shall be used or completed prior to the commencement of the additional lessons.

9. Using any technique or practice similar to those set out in paragraphs 4 through 8 hereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dance instruction.

II.

For purposes of this part the following definitions shall be applicable:

"Total contract price" shall mean the total cash price paid or to be paid by the pupil or prospective pupil for the dance instruction or dance instruction services which are the subject of the contract or written agreement.

"Notice of cancellation" shall be deemed to have been provided by a pupil or prospective pupil by mailing or delivering written notification to cancel the contract or written agreement or by failing to attend instructional facilities for a period of five consecutive appointment days on which classes or the provision of services which are the subject of the contract or written agreement were prearranged with the pupil or prospective pupil.

"Reasonable and fair service fee" shall mean no more than 10% of the total contract price for contracts of \$1,000 and under. For contracts over \$1,000, "reasonable and fair service fee" shall mean no more than \$100 plus an amount equal to 5% of the total contract price over \$1,000 (not to exceed \$250 in total).

It is further ordered, That respondent Arthur Murray, Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, or through any licensee, in connection with the solicitation, advertising or sale of dance instruction or dance instruction services which are the subject of a contract or written agreement, do forthwith cease and desist from:

1. Entering into any contract or written agreement for dance instruction or dance instruction services which are the subject of the contract or written agreement unless it clearly and conspicuously discloses in the exact language below that:

This agreement is subject to cancellation at any time during the term of the agreement upon notification by the student. If this agreement is cancelled within three business days, the studio will refund all payments made under the agreement. After three

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business days, the studio will only charge you for the dance instruction and dance instruction services actually furnished under the agreement plus a reasonable and fair service fee.

2. Failing to refund to a pupil or prospective pupil who cancels any contract or written agreement within three business days from the date on which the contract or written agreement was executed, all payments made by the pupil or prospective pupil. Such refunds shall be provided, and any evidence of indebtedness cancelled and returned, within 30 days after receiving notice of cancellation.

3. Receiving, demanding, or retaining more than a pro rata portion of the total contract price plus a reasonable and fair service fee where a pupil or prospective pupil cancels any contract or written agreement after three business days from the date on which the contract or written agreement was executed and within the term of the said contract or written agreement. Seller must, within thirty (30) days of notice of cancellation, provide any refund payment due to the pupil or prospective pupil or must cancel that portion or the pupil's or prospective pupil's indebtedness that exceeds the amount due. The pro rata portion shall be calculated in the following manner:

(a) For the time period preceding notice of cancellation, there must be calculated the number of hours or lessons of dance instruction or dance instruction services received or attended by the pupil pursuant to the contract or written agreement.

(b) This number must be divided by the total number of hours or lessons of dance instruction or dance instruction services which are the subject of the contract or written agreement.

(c) The resulting number shall be multiplied by the total contract price.

(d) For contracts combining a course of dance instruction with dance instruction services, separate prices for the dance instruction and the dance instruction service portions must be designated and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the dance instruction portion and the dance instruction service portion.

4. Misrepresenting in any manner to any pupil or prospective pupil any of the provisions of this order.

III.

It is further ordered, That nothing contained in the Modified Order cease and desist shall be construed to relieve respondent from complying with any provision of any federal, state, or local law, rule, regulation, or order which affords greater protection to pupils or

prospective pupils than the comparable provision of the Commission's order or to waive any legal rights the pupil or prospective pupil may have under the various jurisdictions.

IV.

It is further ordered, That:

1. Respondent corporation deliver a copy of this order to each of its present and future franchisees or sub-franchisees, with directions that such persons promulgate and enforce same.

2. Respondent obtain from each person described in sub-paragraph 1 above a signed statement setting forth his/her intention to conform his/her business practices to the requirements of this order; if respondent is unable to obtain such signed statements, respondent shall notify the Federal Trade Commission of the name of the franchisee or sub-franchisee which will not sign such a statement and report the reason therefore to the Federal Trade Commission.

3. Respondent institute a program of continuing surveillance adequate to reveal whether the business operation of each person described in subparagraph 1 above conforms to the requirements of this order; and

4. Respondent discontinue dealing with or terminate the use or engagement of any person described in subparagraph 1 above who continues, after notice, to engage in a continuous course of conduct involving acts or practices prohibited by this order as revealed by the aforesaid program of surveillance. Respondent is permitted to effect such termination in accordance with applicable state laws in those states which have statutes governing franchise termination.

V.

It is further ordered, That:

1. Respondent corporation forthwith distribute a copy of this order to each of its operating divisions.

2. Respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

3. Respondent corporation, within one hundred fifty (150) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF
GENERAL FOODS CORPORATION

Docket 9085. Interlocutory Order, March 10, 1980

Order denying respondent's motion for review of ALJ's order of Sept. 6, 1979 removing certain exhibits from *in camera* status.

ORDER

General Foods Corporation applies for review of the administrative law judge's order of September 6, 1979, removing certain exhibits from *in camera* status. Pursuant to Commission Rule Section 3.23(b), the law judge certified this appeal to the Commission.

General Foods contends that certain exhibits which disclose cost and profitability information for 1971-1977 for brands of General Foods coffee, a cost accounting manual and an accounting and financial manual used by General Foods constitute trade secrets or confidential commercial information, and that their disclosure is prohibited by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f). Even if they are not trade secrets within the meaning of Section 6(f), General Foods contends that the documents contain confidential information which 18 U.S.C. 1905 forbids the Commission from disclosing unless the disclosure is authorized by law. General Foods argues that the Commission has disclaimed Section 6(f) as a source of authority for disclosures in adjudicative proceedings, citing our opinions in *Bristol-Myers Company*, 90 F.T.C. 455 (1977), and *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961). Finally, General Foods claims that even if disclosure is not prohibited by Section 6(f) of the FTC Act or 18 U.S.C. 1905, application of the criteria in *Bristol-Myers* and *Hood* warrants *in camera* treatment.

We hold that the exhibits at issue do not contain "trade secrets" within the meaning of Section 6(f). As we have recently stated, the legislative history and purposes of the FTC Act demonstrate that the phrase "trade secrets" is primarily limited to secret formulas, processes, and other secret technical information. See *Statement Concerning Nonpublic Disclosure to State Attorneys General of Information Obtained by the Commission*, in *Interco, Inc.*, D. C-2929, at 12-20 (November 9, 1979); *Hood, supra*, 58 F.T.C. at 1188-89. See also *Interco, Inc. v. FTC*, Civ. Action No. 78-2486 (D.D.C. December 21, 1979), where the court accepted the Commission's interpretation of "trade secrets" within the meaning of Section 6(f).¹

¹ In any event, we reiterate here that the prohibition on disclosure of "trade secrets" contained in Section 6(f) does not apply to adjudicative proceedings. *Bristol-Myers*, 90 F.T.C. at 456 n. 2; *Hood*, 58 F.T.C. at 1185-86 and n. 1.