

Modifying Order

96 F.T.C.

IN THE MATTER OF
ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

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

Docket 8908. Decision, March 9, 1976—Modifying Order, Oct. 28, 1980

This order modifies Paragraphs II(A), (B), (D) and (E) of the original Commission order issued March 9, 1976 (41 FR 19301, 87 F.T.C. 421) against respondents. The modifications permit respondents, for a one-year period, to use alternative means of making prescribed disclosures regarding their sales solicitation activities. This action affords respondents further opportunity to propose provisions that will lessen any undue financial impact on them and to demonstrate to the Commission that these provisions will effectively communicate to prospective customers, the disclosures required by the previous order.

ORDER MODIFYING CEASE AND DESIST ORDER

On March 9, 1976, the Commission issued an Order in this docket against Encyclopaedia Britannica, Inc., a corporation, and Britannica Home Library Services, Inc., a corporation. The Order includes, *inter alia*, provisions (Paragraphs II(A) and II(B)) requiring respondent, Encyclopaedia Britannica, Inc., to disclose in certain advertising and in a specified manner that persons who reply as requested may be contacted by a salesperson for the purpose of selling respondent's products. Furthermore, the Order (Paragraphs II(D) and II(E)) requires that when a sales representative of the respondent visits the home or place of business of potential purchasers of respondent's products, such representatives shall, at the time a commission is sought, present a 3 by 5 card which identifies the sales representative and discloses that the purpose of the visit is to sell respondent's products.

On August 2, 1979, the United States Court of Appeals for the Ninth Circuit affirmed and enforced the Commission Order in this docket. On March 17, 1980, the Supreme Court of the United States denied respondents' petition for *certiorari*. Accordingly, pursuant to section 5(g)(3) of the Federal Trade Commission Act, as amended, the Order of the Commission in this docket is now final.

During the time their *certiorari* petition was pending in the Supreme Court, respondents initiated discussion with the staff of the Commission concerning possible modifications of Paragraphs II(A), II(B), II(D) and II(E) of the Commission's Order. On March 18, 1980, Paragraphs II(A), (B), (D), and (E) of the Commission's Order were

stayed until further notice in order to permit the Commission to consider proposed modifications. On March 26, 1980, respondents filed their "Request to Reopen Proceedings and Modify Order." Respondents filed a memorandum in support of this request on May 2, 1980. In their petition and supporting memorandum, respondents asserted that, without such modifications, they would be placed at a competitive disadvantage, resulting in substantial financial harm to their business operations. Respondents also asserted that they have adopted in the last several years new sales procedures, including disclosures in advertising and in business calling cards presented by salespersons at the door of prospective customers, which effectively disclose to prospective customers the direct sales solicitation purpose and nature of such sales activities.

Pursuant to Section 2.51 of its Rules of Practice, the Commission invited public comment on respondents' petition to modify the Order. Having considered respondents' petition and supporting memorandum, and the comments received, the Commission has determined that it would be appropriate to provide respondents further opportunity to (1) propose provisions that would lessen any undue financial impact on them and (2) present evidence demonstrating that such provisions will effectively communicate the information required by the original Order. Furthermore, with respect to the advertising disclosures required by Paragraphs II(A) and II(B), the Commission has determined that, without necessity of further evidence, certain modifications of the advertising disclosures can be ordered which will communicate effectively while allowing respondents alternative methods of making the disclosures.

Therefore, it is ordered, That Paragraphs II(A), (B), (D) and (E) of the Order issued in this docket on March 9, 1976 shall be modified as follows:

1. Paragraph II(A) shall read:

A. Disseminating or causing to be disseminated any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information, unless an such solicitation clearly and conspicuously discloses that a person who replies a requested may be contacted directly by a salesperson for the purpose of selling respondent's products, using one of the following disclosures:

1. IMPORTANT: This card will let you know of my interest and enable your [location designation, if appropriate] sales representative to

(contact me at home)		(information)
(call or visit me)	with	(details)
(contact me in person)		(facts)

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on how I may (purchase) [applicable product].

(buy)

2. IMPORTANT: Returning this card allows me to have your [location designation, if appropriate] sales representative

(contact me at home)

(information)

(call or visit me)

with

(details)

(contact me in person)

(facts)

on how I may (purchase) [applicable product].

(buy)

3. IMPORTANT: Returning this card will enable your [location designation, if appropriate] sales representative to

(contact me at home)

(information)

(call or visit me)

with

(details)

(contact me in person)

(facts)

on how I may (purchase) [applicable product].

(buy)

Upon prior approval in writing of the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection, or his designee, respondent may use any other disclosure that clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products. A request for approval shall be in writing and shall be deemed granted if not disapproved within 30 days after receipt by the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection.

2. Paragraph II(B) shall read:

B. Providing any return card, coupon or other device which is used to respond to any advertisement or promotional material covered by Paragraph II(A) above, unless one of the disclosures set forth in such Paragraph, or a disclosure approved by the Assistant Director of the Division of Compliance or his designee as satisfying the requirements of Paragraph II(A), clearly and conspicuously appears in immediate proximity to the space provided for a signature or other identification of the responding party. During the one (1) year period from the date this Order become final, respondent may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that any proposed modifications of Paragraphs II(A) and I(B) will clearly and conspicuously disclose to potential purchasers of respondent's products that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products. The foregoing sentence shall not be construed as a limitation on respondent's submission of additional information regarding the request to reopen, including information relating to the financial impact of Paragraphs II(A) and II(B) on respondent. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any

other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

3. Paragraph II(D) shall be amended by adding the following proviso at the end thereof:

Provided, however, that for one (1) year from the date this Order becomes final, respondent may, in lieu of the card required by this Paragraph of the Order, substitute a business card of at least 2 inches by 3-1/2 inches containing only the following information:

- (1) the name of the corporation
- (2) the name of the salesperson
- (3) the term "sales representative"
- (4) An address and telephone number at which the corporation or salesperson may be contacted
- (5) the product or the corporation logo or identifying mark.

During this one (1) year period, respondent shall comply in all other respects with the requirements of Paragraph II(D) above. Prior to the expiration of the aforesaid time period, respondent may submit a request to reopen these proceedings pursuant to Section 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that the business card required in Paragraph II(D), as modified above, is effective in communicating to potential purchasers, prior to the entry into their homes or places of business by any of respondent's sales representatives, that the purpose of the sales representative's call is to solicit the sale of respondent's products. The foregoing sentence shall not be construed as a limitation on respondent's submission of additional information regarding the request to reopen, including information on the financial impact of Paragraph II(D) on respondent. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. Respondent may continue to use the business card, as described by this *proviso*, during the time that a request to reopen these proceedings pursuant to this Paragraph is pending, and, if such proceedings are reopened, until the Commission determination of the matter has become final. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

4. Paragraph II(E) shall be amended by striking the words "to direct each such person to read the information contained on such card." The amended Paragraph shall read:

E. Failing to give the card, required by Paragraph II(D) above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

It is further ordered, That the foregoing modifications shall become effective upon service of this Order.

It is further ordered, That the stay issued on March 18, 1980 shall be vacated and Paragraphs II(A), (B), (D) and (E), as modified by this Order, shall have full force and effect upon service of this Order. Commissioner Pitofsky did not participate.

IN THE MATTER OF
UNIVERSAL BODYBUILDING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3048. Complaint, Nov. 5, 1980—Decision, Nov. 5, 1980

This consent order requires, among other things, a Redford, Mich. seller of various bodybuilding and self-improvement courses and products to cease from using adult models and testimonials in advertisements directed to non-adults; and advertising or promoting the sale of bodybuilding products or courses, unless it has tests or studies available which indicate that unsupervised use of its products will not be harmful to non-adults. The firm is further prohibited from making any unfair, deceptive or unsubstantiated product claim in advertising or other promotional material; and required to maintain specified records for a particular period.

Appearances

For the Commission: *Deandra Kraus.*

For the respondent: *Richard B. Poling, Jr., Moore, Sills, Poling, Wooster & Sinn, Birmingham, Mich.*

COMPLAINT

The Federal Trade Commission has reason to believe that Universal Bodybuilding, Inc., a corporation, and Morris Mitchell, individually and as an officer of Universal Bodybuilding, Inc., have violated the provisions of the Federal Trade Commission Act. It appears to the Commission that a proceeding by it would be in the public interest. The Commission hereby issues its complaint as follows:

PARAGRAPH 1. Respondent Universal Bodybuilding, Inc. is a corporation with its principal office and place of business located at 26903 West Eight Mile Road, Redford, Michigan.

Respondent Morris Mitchell is president of Universal Bodybuilding, Inc. He formulates, directs and controls the policies, acts and practices of Universal Bodybuilding, Inc. His address is the same as that of Universal Bodybuilding, Inc.

All allegations made in the present tense include the past tense.

PAR. 2. In the conduct of their business, respondents sell bodybuilding, muscle-building and other self-improvement courses, devices, and products (hereafter products) directly to the purchasing public, including young people under 17 years of age (non-adults),