

Modifying Order

100 F.T.C.

IN THE MATTER OF

ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT*Docket 8908. Final Order, March 9, 1976—Modifying Order, Oct. 5, 1982*

This order reopens the proceeding and modifies the Commission's order issued on March 9, 1976 (87 F.T.C. 421), *modified*, Oct. 28, 1980 (96 F.T.C. 778), by permitting the company's salespeople to use a business card to inform consumers of the reason for their visit, instead of the 3" × 5" card stating, "The purpose of this representative's visit is to solicit the sale of encyclopaedias," as previously required. Additionally, Britannica will no longer have to describe limits on potential earnings during initial interviews with prospective employees, but will be required to disclose, among other things, that these limitations exist, before an applicant accepts a sales position. The modified order also substitutes the original order's restrictions on Britannica's use of the words "free" and "regular" or "retail" price with FTC guidelines on those subjects. The modification also alters the definition of what is considered "truthful."

ORDER MODIFYING CEASE AND DESIST ORDER

The Commission issued its Final Order against respondents on March 9, 1976. The Order became effective on March 17, 1980, upon the United States Supreme Court's denial of respondents' petition for certiorari. On March 18, 1980, the Commission issued a stay of Paragraphs II.A, II.B, II.D, and II.E of the Order to allow the Commission to consider a petition from respondents to modify these provisions. On October 28, 1980, the Commission modified these four paragraphs.

On July 2, 1981, respondents filed another petition to reopen and modify the Order together with an application for a stay of the Order pending the Commission's determination of the petition. The Commission denied the stay application on August 5, 1981. On October 9, 1981, respondents filed a supplemental memorandum in support of their request to reopen the proceedings and set aside or modify the Order. Staff and respondents entered into negotiations which resulted in an agreement on proposed modifications to the Order.

In a separate petition to reopen the proceedings filed October 27, 1981, respondents also sought a permanent modification of Paragraph II.D of the Order. The petition presented persuasive evidence from a consumer survey that presentation of a business card before seeking admission to a customer's home or place of business would

communicate the sales purpose of a representative's call as well as the 3" x 5" card now required by the provision.

The Commission has considered respondents' petitions and staff's recommendations and has determined that the public interest requires that parts of the Order should now be modified.

Therefore, *it is ordered*, that the following paragraphs be modified as follows:

I.

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

* * * * *

(2) persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

* * * * *

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the expenses that may be incurred by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person.

C. Failing clearly and conspicuously to disclose in all advertising offering employment in any way involving door-to-door sales that respondent is recruiting persons for the sole purpose of soliciting or selling.

D. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1) (a) that respondent is recruiting persons for the sole purpose of soliciting or selling;

(b) that the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(c) the basis for compensating persons so engaged;

(2) that conditions or limitations upon the receipt of compensation, if any, do in fact exist, together with an example of such a material condition or limitation, and that all such conditions and limitations will be stated in detail in an interview in the event an offer of employment is made to such person;

* * * * *

(4) that expenses will be incurred by such person in performing required duties, together with an example of such a material expense, and that all such expense items will be stated in detail in an interview in the event an offer of employment is made to such person;

(5) [DELETED]

(6) that such soliciting or selling will be on an "in-home" basis, if such is the fact, or will include soliciting or selling on an "in-home" basis, if such is the fact.

E. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at an interview at which an offer of employment is made and prior to executing any employment agreement with any such person, the following information:

(1) A complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(2) a complete and detailed description of any expense or expenses any such person may incur in performing the required duties;

(3)(a) the total number of sales employees employed by the office offering the position during the most recent calendar quarter, and (b) the number of sales employees employed by the office who, during the prior calendar quarter, received net earnings equivalent to or greater than the amount represented in the advertisement to which the prospective employee is responding; *provided, however*, that if the office has been in existence for less than three months or has fewer than five sales employees, respondents shall provide the information described above pertaining to the Division in which the office is located; *provided further*, that such information need not be furnished if the prospective sales employee contacts respondents more than ten days following the dissemination of the most recent advertisement that contains representations of earnings.

Respondent shall afford any prospective sales employee an adequate

opportunity to review and consider the above information prior to requesting execution of any employment agreement.

F. Failing to furnish to persons at an interview when an offer of employment is made, and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II, III and VI of this Order, together with a cover letter as set forth in Appendix A* attached hereto. Respondent shall afford any prospective sales employee an adequate opportunity to review and consider these provisions of the Order prior to requesting execution of any employment agreement.

II.

A. Representing, directly or by implication, in any advertisement or promotional material that solicits participation in any contest, drawing, or sweepstakes, or solicits any response to any offer of merchandise, service, or information, and that employs any return card, coupon, or other device to respond to such solicitation, that a person who replies as requested will not be contacted directly by a salesperson for the purpose of selling respondents' products, unless such is the fact. Such advertisements or promotional material shall comply with this Paragraph only if they meet the criteria set forth in Appendix B.

B. Failing, upon the written request of the Associate Director for Enforcement or his designee, to (1) submit any advertisement or promotional material or (2) test any such advertisement or promotional material, using the procedure set forth in Appendix B, to determine whether it complies with Paragraph II.A.

C. Failing to disclose clearly and conspicuously, during any telephone contact and before commencing any sales presentation to prospective customers, the fact that the individual making the call is either soliciting the sale, rental, or lease of publications, merchandise, or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, respondents will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental, or lease of said publications, merchandise, or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place of business of such person, a business card of at

* See 87 F.T.C. 421 at 541 (1978).

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least 2 inches by 3½ inches containing only the following information is presented to such person:

- (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.

* * * * *

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

- (1) Any person telephoning or visiting the home of any prospective purchaser is:

* * * * *

(c) telephoning or visiting the home of said prospect for the primary purpose of delivering or disseminating prizes, gifts, gift certificates, chances in any contest, drawing, sweepstakes, educational fund, or any other merchandise or item of chance.

* * * * *

(5) any publication, merchandise, or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of respondents' publications, merchandise, or services, pursuant to any agreement to purchase, rent, or lease any other publication, merchandise, service, or combination thereof from respondent, unless respondent complies with all of the terms of the Federal Trade Commission's "Guide Concerning Use of the Word 'Free' and Similar Representations," 16 C.F.R. 251, which is hereby incorporated into this Order, and with any modifications or changes that are made to this Guide. All of the provisions of the aforesaid Guide shall be construed as mandatory and binding upon the respondents.

* * * * *

I. Representing to any person, directly or by implication, either orally or in writing that:

- (1) any price is the retail, regular, usual or words of similar import or effect, price for any publication in any binding, merchandise or service, unless such price is an actual, bona fide price for

which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

(2) any price is the retail, regular, usual, or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

* * * * *

O. [DELETED]

P. [DELETED]

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

Commissioner Baily voted in the negative.

APPENDIX B

This Appendix sets forth the methodology respondents shall employ to determine whether advertisements or promotional materials represent that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, and the criteria for determining whether such advertisements or promotional materials comply with Paragraph II.A.

1. *Format*—Respondents shall test the comprehension level of advertisements or promotional material by conducting a mall-intercept test, using the questionnaire attached hereto as exhibit 1.

2. *Sample Size*—The sample shall consist of at least 150 subjects.

3. *Demographics*—Test subjects must:

- a) be between 25 and 49 years of age;
- b) have at least one child fifteen years of age or younger living at home;
- c) have household incomes of at least \$15,000 per year; *provided that*, upon respondents' request, the Division of Enforcement shall increase this figure by increments of \$5,000 whenever the percentage of households earning at least the requested amount equals or exceeds the percentage of households that, according to the 1980 United States Census, have household incomes of at least \$15,000 per year. The data for future changes shall be based on the most recently published edition of the *Statistical Abstract of the United States*.

4. *Location of Markets*—The interviewing will be conducted in four geographically dispersed markets. The same central location facilities will be used wherever possible. If it is necessary to change any interviewing facility, the new facility shall have demographic characteristics similar to those of the facility it is replacing.

5. *Criteria for acceptability of new coupon copy*—New coupon copy shall comply

with Paragraph II.A if at least seventy-five percent of the test subjects answer "yes" to question 6(b) of the questionnaire (exhibit 1).

Modifications to this Appendix, including the questionnaire, may be made upon a request by respondents and the approval of the Associate Director for Enforcement.

EXHIBIT 1

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STUDY: COUPON COMPREHENSION STUDY

MARKETS: Cleveland ()-1 Boston ()-3 (9)
 New York ()-2 Kansas City ()-4

CARD:

INTERVIEWER'S NAME: _____

DATE: _____ TIME INTERVIEW BEGINS: _____

Hello, I'm _____ from _____. Today we are conducting
 a survey among men and women between the ages of 25 and 49 years of age.

1. Please tell me your approximate age. (READ LIST) (11)

Under 25.	<u>TERMINATE</u>	40 to 44 years.	()-1
25 to 29 years.	()-1	45 to 49 years.	()-2
30 to 34 years.	()-2	50 years and older.	<u>TERMINATE</u>
35 to 39 years.	()-3	Refused.	<u>TERMINATE</u>

2. Do you have any children living at home 15 years of age or younger?

Yes. () No. () TERMINATE

3. What are the ages of your children who live at home? (CHECK AS MANY AS APPLY) (12)

16 years or above.	()-1
12 years to 15 years.	()-2
8 years to 11 years.	()-3
4 years to 7 years.	()-4
3 years or under.	()-5

4a. Is your total family income:

\$15,000 and above.	()
Below \$15,000.	] <u>TERMINATE</u>
Refused.	

4b. Sex: (12)

Male. ()-1 Female. ()-2

TAKE RESPONDENT TO A PRIVATE INTERVIEWING AREA IN YOUR CENTRAL LOCATION FACILITY FOR THE BALANCE OF THE INTERVIEW.
--

(HOLD UP AD IN A MANNER THAT PERMITS RESPONDENT TO SEE IT - COLOR CODED WITH QUESTIONNAIRE - AND SAY:)

"Suppose you saw this ad, and the coupon that was attached to it".

(HAND COUPON CARD - COLOR CODED WITH QUESTIONNAIRE - TO RESPONDENT AND SAY:)

"Now, using your imagination for a moment, assume you want to fill in and return this coupon which would be part of this ad for ENCYCLOPAEDIA BRITANNICA".

"Read this coupon as though you were interested enough to fill it in".

(DO NOT RUSH RESPONDENT. TAKE COUPON CARD FROM RESPONDENT WHEN HE/SHE HAS FINISHED READING.)

BE SURE TEST COUPON CARD AND AD ARE OUT OF SIGHT BEFORE ASKING:

- 5a. Based on your reading of the coupon, what would you expect to happen if you send in the coupon? (PROBE FULLY AND CLARIFY)

_____(14)_____
_____(15)_____
_____(16)_____
_____(17)_____

- 5b. What else would you expect to happen? (PROBE FULLY AND CLARIFY)

_____(18)_____
_____(19)_____
_____(20)_____
_____(21)_____

- 5c. Is there anything else you would expect to happen?

_____(22)_____
_____(23)_____
_____(24)_____
_____(25)_____

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"Now, I'd like to ask you a few more questions".

(INTERVIEWER: START AT THE "X" MARKED QUESTION AND PROCEED TO NEXT ONE, AND THEN BACK TO THE FIRST ONE, ETC.)

- () 6a. Based on your reading of the coupon, would you expect to receive a free booklet, if you send in the coupon? (26)

Yes. ()-1
No ()-2
Don't Know . . . (VOLUNTEERED). . . ()-3

- () 6b. Based on your reading of the coupon, would you expect a sales representative for ENCYCLOPAEDIA BRITANNICA to contact you, if you send in the coupon? (27)

Yes. ()-1
No ()-2
Don't Know . . . (VOLUNTEERED). . . ()-3

- () 6c. Based on your reading of the coupon, would you expect to get a free book rack, if you send in the coupon? (28)

Yes. ()-1
No ()-2
Don't Know . . . (VOLUNTEERED). . . ()-3

- () 6d. Based on your reading of the coupon, would you expect to get a free globe of the world, if you send in the coupon? (29)

Yes. ()-1
No ()-2
Don't Know . . . (VOLUNTEERED). . . ()-3

IF YES TO Q. 6b

7. If someone sent in the coupon, how likely do you think it would be that a sales representative from ENCYCLOPAEDIA BRITANNICA would contact that person? (READ FIRST FOUR RESPONSES ONLY) (30)

Very Likely. ()-1
Fairly Likely. ()-2
Not Too Likely. ()-3
Not Likely At All. ()-4
Don't Know . . . (VOLUNTEERED). . . ()-5

THANK RESPONDENT FOR HIS/HER COOPERATION.

RESPONDENT'S NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE #: _____ TIME INTERVIEW ENDED: _____
(Area Code)

VALIDATED BY: _____ (31) _____
(32) _____
(33) _____
(34) _____

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IN THE MATTER OF
FRED MEYER, INC.

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

Docket C-3028. Consent Order, July 23, 1980—Modifying Order, Oct. 14, 1982

This order reopens the proceeding and modifies the Commission's order issued on July 23, 1980 (96 F.T.C. 60), by modifying Paragraphs A and B of Section IV, so as to extend from 10 to 14 days the time in which customers have to come into the store to settle their account once the layaway period has expired. The modification also extends from 11 to 15 days the time the store will wait before returning layaway merchandise to stock.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JULY 23, 1980

The Federal Trade Commission having considered the July 19, 1982, petition of Fred Meyer, Inc., a Delaware corporation, successor to Fred Meyer, Inc., an Oregon corporation, to reopen this matter and modify the consent order to cease and desist issued by the Commission on July 23, 1980, and having determined that public interest warrants reopening and modification of the order,

It is ordered, That order Paragraph A and B of Section 4 be revised as follows:

A. Mail to each layaway customer:

1. within twenty (20) days after the end of the period designated in the layaway agreement to make full payment for the merchandise,
2. if the payments received by respondent have not been returned to the customer, and
3. if the merchandise has not been delivered to the customer, and
4. before the merchandise is returned to stock and before making any entries in the layaway account which would close out the account, the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on one side of a single piece of paper, separated from any other written matter:

WE OWE YOU MONEY

(Date of mailing to
be inserted here)

You haven't fully paid for your recent layaway purchase at our (name of store) store. You can fully pay for your purchase within 14 days from the above date. Or you can get a refund from us for the amount you have paid (less 35 cents handling charge).