

IN THE MATTER OF

GROLIER, INCORPORATED, ET AL.

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

Docket 8879. Final Order, March 9, 1982—Modifying Order, Nov. 19, 1984

This Order reopens the proceeding and modifies the 1978 Commission Order, 91 F.T.C. 315, revised December 10, 1981 and made final March 9, 1982, 99 F.T.C. 379, which required a seller of encyclopedias to cease engaging in certain unfair and deceptive trade practices in connection with the sale of its products and the recruitment of door-to-door sales personnel. Pursuant to the company's petition, the Order has been modified to closely conform with the modification granted in *Encyclopaedia Britannica, Inc., et al.*, 100 F.T.C. 500. Among other things, the Order no longer requires the firm to include in employment ads information such as the nature of the employment, the location of the company or the basis of compensation, so long as they provide such information to potential employees during the initial job interview. The company may provide information concerning income and expenses to prospective employees when an actual job offer is made. The Order no longer requires the company to disclose in advertisements and promotional material that a sales representative will contact consumers who return inquiry cards, provided the firm can demonstrate through surveys that most readers of the ads understand this implicitly. The business cards of company's sales representatives may be reduced from three-by-five to two-by three-and-a-half inches, and the respondent may follow relevant Commission guidelines when making "free" offers, and is no longer required to attach lists of prices and free products to encyclopedia contracts.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On October 13, 1983, respondents, Grolier, Incorporated, et al., filed a "Request to Reopen Proceedings To Modify Order and Application for Stay of the Order." ("Request") The Order became effective on October 11, 1983. On August 23, and October 4, 1984, Grolier supplemented the "Request" with a revised Appendix B, which sets out the methodology to be used by Grolier to show compliance with Paragraph II.A. of the proposed Order.

Grolier granted the Commission until November 19, 1984 to decide its "Request". The Commission previously granted Grolier's "Request for Extension of Time" for the Commission to act to allow Grolier more time to complete its surveys bearing on the disclosures required by Paragraphs II.A. and B., which are subject paragraphs of the pending "Request".

Grolier seeks Order modifications virtually identical to those the Commission made to a similar Commission Order against *Encyclo-*

paedia Britannica (Docket No. 8908) [100 F.T.C. 500] on October 5, 1982.

On November 23, 1983 the Commission granted the stay as to Order Paragraphs I C. (2)(3) and (4); I D.; I E.; II A.-E.; II G. (7); II M. (1) and (2); II S.; and Paragraph V, pending resolution of the request for Order modification.

On the basis of the information provided by Grolier and in view of the Order modifications granted to *Encyclopaedia Britannica* the Commission has determined that pursuant to Section 2.51 of the Commission's Rules of Practice changed conditions of fact and the public interest require that the proceedings be reopened and the Order modified. *It is therefore ordered*, That the proceedings be reopened and the Order modified as follows:

I.

* * * * *

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

* * * * *

(2) [DELETED]

(3) [DELETED]

(4) [DELETED]

D. Failing to provide clearly and conspicuously, 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; and

- (5) 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. Respondents 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 and V of this

Order together with a cover letter as set forth in Appendix A attached hereto. Respondents 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.

G. Making, distributing or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of the Order.

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, the respondent concerned 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 least 2 inches by 3 1/2 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 of the corporation logo or identifying mark.

* * * * *

G. 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 any vacation gift certificate, prizes, gifts, gift certificates, chances in any contest, or any other merchandise or item of chance;

* * * * *

- (7) any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of any of respondents' publications, merchandise or services, pursuant to any agreement to purchase, rent or lease any other publication, merchandise, or service, or combination thereof, from such 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.

* * * * *

M. 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.

* * * * *

S. [DELETED]

T. [DELETED]

* * * * *

APPENDIX A

NOTICE

Attached hereto are the *pertinent provisions* of a cease and desist order entered against Grolier, Incorporated and certain of its subsidiaries, including Grolier Interstate, Inc. by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this Order can result in severe monetary penalties to Grolier, Incorporated and Grolier Interstate, Inc. If you are employed by Grolier, Incorporated or any of its subsidiaries, you will be *required* to observe the provisions of this Order. Violation of any provision of this Order by an employee constitutes a violation of a federal law.

You should carefully read this Order before agreeing to any employment arrangement with Grolier, Incorporated or any of its subsidiary companies.

(President)

Grolier, Incorporated

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 or an in-home survey using the questionnaires 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 for 85% of the subjects tested and the remaining 15% must have household incomes of less than \$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. In the case of mall-intercept tests, 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 promotional material copy shall comply with Paragraph II.A if at least seventy-five percent of the test subjects in both the group surveyed with household incomes in excess of \$15,000 and the group with household incomes of less than \$15,000 answer "yes" to question 2 of the questionnaires (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

MALL SCREENER

1-4
S-1

COMPREHENSION STUDY-CARD

Hello, I'm _____ from _____, a national marketing research firm. We're conducting a survey and would like to ask you a few brief questions.

A. Are you the (male/female) head of your household?

Male head of household	1	} (APPLY TO APPROPRIATE QUOTA)
Female head of household	2	

NEITHER...../1/2/3/4/5/6/7/8/9/0/ ("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

B. Which of the following groups best describes your age? Are you (READ LIST)?

Under 25...../1/2/3/4/5/6/7/8/9/0/
("X" FIRST UNUSED BOX, TERMINATE AND RE-USE.)

25-29.....	1	} (CONTINUE)
30-34.....	2	
35-39.....	3	
40-44.....	4	
45-49.....	5	

50 or over...../1/2/3/4/5/6/7/8/9/0/ ("X" FIRST UNUSED BOX,
TERMINATE AND RE-USE.)

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(DO NOT READ) Refused...../1/2/3/4/5/6/7/8/9/0/ ("X" FIRST UNUSED BOX,
TERMINATE AND RE-USE.)

C. And, which of the following groups best describes your annual household income before taxes for 1983? Is it.....(READ LIST)?

Under \$15,0001 }
\$15,000 - \$24,9992 } (APPLY TO APPROPRIATE QUOTA)
\$25,000 or more3 }

(DO NOT READ) Refused...../1/2/3/4/5/6/7/8/9/0/ ("X" FIRST UNUSED BOX,
TERMINATE AND RE-USE)

IF OVER QUOTA - \$15,000 OR MORE, "X" FIRST UNUSED BOX, TERMINATE AND
RE-USE.

/1/2/3/4/5/6/7/8/9/0/

D. How many school age children, 15 years of age or younger, live in your household?

.....

None...../1/2/3/4/5/6/7/8/9/0/ ("X" FIRST UNUSED BOX,
TERMINATE AND RE-USE.)

MALL

COMPREHENSION STUDY - CARDMAIN QUESTIONNAIRE

(HAND RESPONDENT DRAWING CARD)

1. Now I'd like to ask you a few questions about this free drawing card.

Based on what you just read, what would you expect to happen if you filled out the card? (PROBE) What else would you expect to happen?

2. For the purpose of this research, let's suppose that you filled out the card. That is, you are interested in receiving information about the educational materials described. Would you expect to be contacted by a sales representative?

Yes.....1
No2

(TAKE BACK DRAWING CARD)

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THANK RESPONDENT AND TERMINATE.

RESPONDENT'S NAME: _____ TELEPHONE #:() _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

INTERVIEWER'S NAME: _____ DATE: _____

IN THE MATTER OF
THOMPSON MEDICAL COMPANY, INC.

FINAL ORDER, OPINION, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9149. Complaint, Feb. 5, 1981—Final Order, Nov. 23, 1984

This Final Order requires a New York City pharmaceutical company to cease, in connection with the advertising, sale or distribution of over-the-counter (OTC) health care products, using the brand name "Aspercreme" for any product that does not contain a significant amount of aspirin; or misrepresenting by any other means that aspirin is an active ingredient of such product. TV and radio advertising for "Aspercreme" must include an explicit aspirin disclaimer statement and such disclaimer must also be prominently displayed in print advertising and product labeling. The Order further bars the firm from misrepresenting the contents, validity, results or interpretations of tests or studies; and from representing, without prescribed substantiation, the speed or effectiveness of its products in the relief of minor pain and other symptoms of arthritis, bursitis, rheumatism or other musculoskeletal disorders. Additionally, the Order dismisses Paragraph 12(f) of the Complaint.

Appearances

For the Commission: *Elizabeth T. Guarino, Grace Polk Stern, Melvin H. Orlans, Randell C. Ogg, Nancy W. Warder and Teresa A. Hennessy.*

For the respondent: *Stuart L. Friedel, Joseph M. Burke and Patricia Hatry, Davis & Gilbert, New York City; Stephen Kurzman, Nixon, Hargrave, Devans & Doyle, Washington, D.C.*

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 Thompson Medical Company, a corporation, (hereinafter "Thompson"), and Ogilvy & Mather, Inc., a corporation, (hereinafter "Ogilvy"), hereinafter sometimes referred to as respondents, have violated the provisions of the 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. Thompson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New