

Complaint

117 F.T.C.

IN THE MATTER OF

NEW MEXICO CUSTOM DESIGNS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3485. Complaint, Mar. 17, 1994--Decision, Mar. 17, 1994*

This consent order prohibits, among other things, the New Mexico-based corporation and its officer, who claimed to sell beaded earrings, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for which the respondents are offering a work opportunity. In addition, the order sets a redress payment, however, based upon financial statements submitted by the respondents, the redress payments have been suspended.

*Appearances*For the Commission: *Gerald E. Wright* and *Jeffrey Klurfeld*.For the respondents: *Garry Harrell*, Albuquerque, N.M.

COMPLAINT

The Federal Trade Commission, having reason to believe that New Mexico Custom Designs, Inc., a corporation, and Anthony L. Ingram, individually and as an officer of said corporation ("respondents"), have violated Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, alleges:

PARAGRAPH 1. Respondent New Mexico Custom Designs, Inc. is a New Mexico corporation, with its principal office or place of business at 8415 Washington Place, N.E., Suite D, Albuquerque, New Mexico.

Respondent Anthony L. Ingram is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

His principal office and place of business is the same as that of the corporate respondent.

PAR. 2. Respondents have disseminated advertising seeking individuals to assemble craft items and other products at home, and have offered for sale and sold introductory kits and craft materials to individuals who accept their offers to engage in such work.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated, and have caused to be disseminated advertisements, promotional literature, and agreements relating to their income opportunities, including but not necessarily limited to the attached Exhibit A. These materials contain the following statements:

Urgent! Home assemblers needed! Up to \$280 a week! Beaded Earrings!...
Learn to make quality beaded earrings and earn up to \$280.10 a week at home!

PAR. 5. Through the use of the statements contained in the materials referred to in paragraph four, including but not necessarily limited to the materials attached as Exhibit A, respondents have represented, directly or by implication, that:

A. The stated dollar amounts constitute the weekly earnings regularly realized over a substantial period of time by an appreciable number of independent assemblers of respondents' products.

B. Respondents are fulfilling a significant marketplace demand for their products.

PAR. 6. In truth and in fact:

A. Independent assemblers of respondents' products have not regularly realized over a substantial period of time the weekly earnings represented. Only a small percentage of persons who assembled products for respondents have regularly derived earnings from their work, and none has achieved over a substantial period of time the weekly earnings represented.

B. Respondents are not fulfilling a significant marketplace demand for their products.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. The acts and practices of respondents as alleged in this complaint, constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

EXHIBIT A

QUALITY COSTUME JEWELRY

WE PAY UP TO \$280.00 FULL-TIME OR \$150.00 PART-TIME
FOR YOU TO ASSEMBLE EARRINGS IN YOUR HOME

GOOD DAY!

Thank you for inquiring about New Mexico Custom Designs, Inc. It is no wonder in this day and age with the rising costs of child care, transportation, clothing, meals, etc. that so many people are choosing to work from their homes. Some of the main reasons that our assemblers give are: It enables parents to earn money and care for their children without incurring expenses for child care, transportation, or clothing suitable for work outside the home; it provides income opportunities for senior citizens and handicapped persons; it helps to remove single parents from welfare rolls and place them in the work force; and it helps people to earn money and care for sick or elderly family members. But whatever your reasons are, you have come to the right place.

WE NEED YOU!

NO EXPERIENCE IS NECESSARY. If you feel that you can string beads on a needle and thread and then tie a knot, we think this work is for you. We have people from all walks of life who are making an income on a part-time or full-time basis by using basic skills to follow our guidelines and instructions.

WHO ARE WE AND WHAT DO WE DO?

New Mexico Custom Designs, Inc. is a southwestern based family run company. We produce and market various products that are sold and distributed throughout the United States. Most of our products are made by homeworkers like yourself.

WHY DO WE USE HOMEWORKERS?

Because it benefits all of us. Since you are an independent contractor, you are your own boss! That means you can work when you want and take off when you want. Nobody tells you when you have to work. That means vacations can be planned around your family and friends -- not at the company's convenience. You can also choose the time of day you wish to work. For instance, if you have a full time job but you are looking for extra income to pay off some bills or to save for vacation, school, etc. you can participate on a part-time basis. This allows you to do the work in the evening after the kids have gone to bed or during your spare time. You help us because our overhead is lower and our facilities smaller than that of a factory outlet. It is a win-win situation!

PLEASE READ AND FILL OUT THE AGREEMENT (ON REVERSE SIDE) FOR QUICK PROCESSING.

Looking forward to working with you ... and making you a part of our family!

Sincerely,

HERE IS HOW OUR COMPANY WORKS!

We offer part-time and full-time units. Part-time consists of one unit, and full-time consists of two units. You may choose at any time which you prefer. Each unit includes: material for approximately 25 pair of earrings, instructions, photocopy of completed earrings, ear wires, thread, beading needle and beads. If you choose to do one unit we will send you payment of up to \$150.00 and up to \$280.00 for two units. It's that easy.

HOW TO GET STARTED RIGHT AWAY!

Some people know immediately that this type of program is right for them while others might not be so sure that they can assemble these earrings. Therefore, we have put together an intro kit to give everyone a chance to see what we have to offer before committing to anything. This intro-kit includes instructions, photocopy of completed products, unit order form, enough materials for five pair of earrings including ear wires, thread, beading needle and beads. This kit is complete and will give you a good understanding of how to assemble these earrings. The kit must be purchased by every independent contractor and is yours to keep. From that point on you can either purchase materials on your own or from New Mexico Custom Designs, Inc., whichever you choose. Have no Fear! You have 15 days to review the intro kit. If you feel that the work is not for you or you would like to send back the kit for a refund, simply return the kit in the same condition that you received it and we will send you a refund minus a handling charge. Remember you do not have to wait the 15 days to start! If you want to start right away return the unit order form and purchase your own materials at a local crafts store and you are started! The intro kit gets you set up in our program as an independent contractor as soon as you receive it.

WE WANT YOU TO HAVE THE CREDIT!

NMCD, Inc. takes tremendous pride in the high standard of quality of our earrings. People always ask who makes our earrings, and we believe in giving credit where credit is due. Therefore, as an option, those of you who make the earrings to company specifications can request that we send you our display cards for you to autograph so that your initials can be displayed along with your quality work.

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EXHIBIT A

YES!

I am interested in getting started right away with the assembly of costume jewelry for New Mexico Custom Designs, Inc. I understand that I am an independent contractor with New Mexico Custom Designs, Inc. and I am not obligated to produce units unless I want to. I also understand that I can work full-time or part-time, whichever I choose. If I want to do one unit part-time then I will be paid up to \$150; I will be paid up to \$280 full-time for two units, provided that I follow company guidelines and quality control. The enclosed \$29.95 is for my purchase of the IntroKit which includes materials for five sets of earrings, ear wires, thread, beading needle, beads, photocopy, instructions, and unit order form so that I can purchase unit materials for the jewelry. All unit materials will be paid for by me up front and reimbursed in the unit price provided the units pass inspection; breakdown as follows:

One Unit (25 pair) Part-Time		Two Units (50 pair) Full-Time	
Contract Labor	\$130.00	Contract Labor	\$240.00
Reimbursement for Material Fee	20.00 *	Reimbursement for Material Fee	40.00
Total payment to you	\$150.00	Total payment to you	\$280.00

DETAILS FOR A BETTER UNDERSTANDING. If you purchase your own materials then they must be exactly like those in your intro kit. We will not accept different shape beads or colors than those sent to you in the intro kit. If you have any questions, please call us before you buy anything.

No intro kit refunds are given once you participate in the program as an independent contractor or if the intro kit has been used or damaged. If you return the intro kit to us within 15 days for a refund, a handling charge of \$8.95 will be subtracted from the cost of the intro kit for a refund of \$21.00.

You have 60 days to return your units. Any units returned after sixty days from the date of purchase or your last payment will not be accepted. This is due to style changes that may occur.

Please understand that we are in the business of selling good quality products on a wholesale and retail level, therefore we must set certain guidelines for quality control. If the unit does not meet the standards outlined in the instructions, we will not pay for the unit. As a result, we must reserve the right to refuse work that we feel is inferior to our standards. Our guidelines are not unrealistic, just practical. New Mexico Custom Designs, Inc. does not guarantee or represent that it can sell any or all costume jewelry, (however this does not affect your payment). It is also understood that I do not have to sell the earrings for New Mexico Custom Designs, Inc.! Only produce them! Any tax records of earnings, including income taxes, social security benefits, and unemployment insurance is my own responsibility. Termination of this offer may be effected by either party with a 30-day written notice. Void where prohibited by law.

Compare us with the others. Are the weekly amounts that some companies advertise outrageously high? If so the work is probably difficult and requires a lot of time. NMCD, Inc. supplies easy to follow instructions and guidelines. Full-time should not require over forty hours a week. Some companies give refunds, however their time limit of 7 days is so short that by the time you receive the information and review it, you have exceeded the limit and therefore you can not get a refund. NMCD, Inc. offers a full 15 day refund policy. Does the company have a customer service number where you can reach someone if you have a question? NMCD, Inc.'s number is 505-821-2245. It is always important to read and understand the literature of any company before sending any money. We are not responsible for lost or misdirected mail.

MY GOAL IS TO:

1. make a good income at my convenience.
2. not have to sell or advertise the product, unless I choose to.
3. review the program for 15 days before deciding to participate, or receive \$21.00 back by returning the review kit.
4. get started right away!

* Does not include shipping and handling.

REASONS TO PARTICIPATE!

1. We pay up to \$280 full-time for you to work at your home as an individual contractor.
2. You do not have to advertise or sell any products if you choose not to (just assemble).
3. Limited 15 day money-back guarantee -- which gives you time to make a decision.
4. Be your own boss and work when you want or vacation when you want.

SIGNATURE _____ Date _____

TO GET STARTED RIGHT AWAY

Please return this signed and completed Agreement Form to:
New Mexico Custom Designs, Inc. • Intro-Kit • PO Box 27417 • Albuquerque, NM 87125
(505) 821-2245

PLEASE PRINT

Name _____ Social Security Number _____

Address _____

City _____ State _____ Zip _____

Phone () _____

Check Payment Method: ☐ Money Order for \$29.95 Gets you started immediately!
☐ Personal or Business Check (allow 15 business days for clearing)
☐ Special Handling, add an additional \$2.00

AMOUNT ENCLOSED _____ Please Fill In Amount Of Payment

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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 San Francisco 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, their attorney, 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 draft of complaint, a statement that the signing of said agreement is 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 no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent New Mexico Custom Designs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal office and place of business located at 8415 Washington Place, N.E., Suite D, Albuquerque, New Mexico.

Respondent Anthony L. Ingram is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporation.

2. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. 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

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I.

It is ordered, That respondents New Mexico Custom Designs, Inc., a corporation, its successors and assigns, and its officers, and Anthony L. Ingram, individually and as an officer of New Mexico Custom Designs, Inc., a corporation, and respondents, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or
2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. Specimen copies of all materials disseminated which contain such representation;
- B. All materials that were relied upon as substantiation in disseminating such representation;
- C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and
- D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: all written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III.

It is further ordered:

A. That respondent Anthony L. Ingram shall pay to the FTC as consumer redress the sum of one million two hundred thousand dollars (\$1,200,000); provided however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in: a "Financial Statement of Debtor" executed by Anthony L. Ingram on October 20, 1992; a "Financial Statement of Corporate Defendant" relating to New Mexico Custom Designs, Inc. executed by Anthony L. Ingram, as president, on October 20, 1992; the federal income tax returns of New Mexico Custom Designs, Inc., for 1989, 1990 and 1991; the federal income tax returns of Anthony L. Ingram for 1990 and 1991; accounting statements for 1990, 1991 and 1992, referred to in, and enclosed with, a letter from Gary Harrell, Esq., to the Federal Trade Commission, dated 22 March 1993; and a letter from Gary Harrell, Esq., to the Federal Trade Commission, dated 3 May 1993. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million two hundred thousand dollars (\$1,200,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this order.

IV.

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any 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 that may affect compliance obligations arising out of the order.

V.

It is further ordered, That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment.

VI.

It is further ordered, That respondents shall, within sixty (60) days after service of this order on them, and on the first through the fifth anniversaries of the effective date 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

MR. COFFEE, INC.

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

Docket C-3486. Complaint, Mar. 25, 1994--Decision, Mar. 25, 1994

This consent order prohibits, among other things, an Ohio corporation, that manufactures coffee makers, filters and other products, from making false or unsubstantiated environmental claims for any paper product or package it markets.

Appearances

For the Commission: *Kevin M. Bank and Michael Dershowitz.*

For the respondent: *Martin R. Gold, Gold, Farrell & Marks,*
New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mr. Coffee, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent, Mr. Coffee, Inc., is a Delaware corporation with its office and principal place of business located at 24700 Miles Road, Bedford Heights, Ohio.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed coffee-making appliances and coffee filter products to the public, under the trade name "Mr. Coffee" (hereinafter "Mr. Coffee").

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements, including product labeling, and other