

IN THE MATTER OF

HAWTHORNE COMMUNICATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9264. Complaint, Nov. 16, 1993--Decision, Aug. 9, 1994*

This consent order prohibits, among other things, an Iowa corporation from making any representations about the performance, benefits, efficacy, or success rate of any product or service concerning business opportunities unless the respondent possesses competent and reliable evidence that substantiates such representations. In addition, the consent order prohibits the respondent from using any testimonial or endorsement unless it reflects the typical or ordinary experience of consumers who use the product.

Appearances

For the Commission: *Jeffery T. Dahnke.*

For the respondent: *Edward F. Glynn, Jr., Venable, Baetjer, Howard & Civiletti, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Hawthorne Communications Inc. ("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 is an Iowa corporation, with its principal office and place of business at 300 N. 16th Street, Fairfield, Iowa.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Tronsoft, Inc., and has directed, participated in, and assisted others in the creation and dissemination to the public of advertisements that offer for sale Tronsoft's Home Business Starter Kit ("Starter Kit").

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

PAR. 4. Respondent promoted the sale of Tronsoft's Starter Kit by scripting and producing a 30-minute television commercial identified as "Freedom Now," which was broadcast in various areas throughout the United States. The "Freedom Now" commercial contains the following statements and depictions:

(a) Announcer: "A revolutionary, easy to use tool for starting ten new high profit businesses and earning up to six figures a year, without leaving your home. No matter what your age, education or occupation, Ron Way's Home Business Starter Kit can help you put cash in your pockets immediately and it's easy."

(b) Announcer: "Make big money at home in your spare time with an amazing new secret. Introducing Freedom Now with self-made millionaire Ronald Way, a nationally acclaimed computer software expert who's come up with an astonishing new business concept. A new way to make money that you, no matter what your age, background, or occupation can use to earn hundreds, thousands, even millions of dollars, starting tomorrow working right out of your own home." MESSAGE SUPERIMPOSED ON SCREEN: Anyone Can Do It

(c) Ron Way: "[T]hink about it. No matter what your age, occupation, or education is, man or woman, you can make yourself rich providing this lucrative service right out of your own home. No more boss. No more traffic. No more late nights away from your family. Be there while your children are growing up. We're calling it Tronsoft's Freedom Now Plan and it can change your life."

(d) Announcer: "Ron explains how easy his ten different home based business gold mines are - businesses using his powerful analysis reports like the Real Estate Investment Report, Franchise Matching and the Mortgage Reduction Report, a report that over 50 million homeowners could buy from you at a 200% profit or more."

(e) Announcer: "When you order Ron's Home Business Starter Kit, you'll also get these money making tools. Ron Way's 300 page information-packed manual showing you the step-by-step proven system that Ron used to go from being \$40,000 in debt to earning nearly a million dollars a year - in just three years."

(f) Endorser: "I don't have to punch a time clock any more. I don't have to meet a deadline any more. I'm my own boss. I'm my own person. I am self made and I'm growing." MESSAGE SUPERIMPOSED ON SCREEN: "Thanks To Tronsoft, Sending Children To College"

(g) Endorser: "I have the freedom in my life that I've always wanted and never could achieve working for someone else. [I] needed the tools and I needed the advisors to be on my own and be successful on my own and Tronsoft is really the advisor company." MESSAGE SUPERIMPOSED ON SCREEN: "Thanks to Tronsoft, She Owns Her Own Business"

(h) Endorser: "This is just one deal. Twelve grand, actually \$12,383. And I thought I've never seen that much money in one lump and that's not a lot. But I had never seen that kind of money in one lump sum in my life. And there it was. And we sat down - what we did is we got financially free as they say. I took Ron's advice. I paid off all the bills. I still had enough left for Christmas." MESSAGE SUPERIMPOSED ON SCREEN: "Thanks to Tronsoft: Earning Thousands, Working Just Four Days A Week"

(i) Endorser: "I can do \$50, \$95 deals. You know, a couple times a day and I'm making, you know, twice as much as an executive in a large corporation . . . MESSAGE SUPERIMPOSED ON SCREEN: "Earned \$4,000 in one month working only one day a week."

(j) Ron Way: "Right now, I'm going to introduce you to two guests that have made a killing using the Tronsoft secret, and they've done it in two different ways . . . Both of these gentlemen have incredible stories to tell, but before we get started I just wanted to point out that David has used the reports to build his own business and since made himself into a millionaire while Andre Brady on the other hand sells the reports and services and has done incredibly well."

(k) Ron Way: "You actually went from selling water heaters to owning a multimillion dollar company, and operating right out of your own home with the assistance of Tronsoft analysis reports. Is that right?"

Endorser: "That's right. I was able to use one of your reports to help me get a new business idea off the ground." MESSAGE SUPERIMPOSED ON SCREEN: Created His Own Multi-Million Dollar Business

(l) Ron Way: "Folks, you've just seen a couple of examples of how you can make money if you have the advantage if you've got the secret. It's called Freedom Now and here's your chance to put it to work for you."

(m) Ron Way: "[A]nd you can do the same thing. I'm talking about \$20,000 in two months. Earning \$400 for maybe a half day's work on a Saturday morning. Earning six figures a year and never ever leaving your home."

(n) On Screen: Stay Tuned To Find Out How You Can Earn Hundreds Of Dollars A Week At Home In Your Spare Time

(o) Endorser: "In one month, I made about \$25,000 in profit, because I was using Tronsoft."

PAR. 5. Through the use of the statements and depictions contained in the "Freedom Now" commercial referred to in paragraph four, respondent has represented, directly or by implication, that:

(a) Consumers who use the Starter Kit typically readily succeed in starting and operating successful businesses out of their own homes;

(b) Consumers who use the Starter Kit typically earn substantial income;

(c) Endorsements appearing in the "Freedom Now" commercial reflect the endorser's actual experience of starting a business with the aid of Tronsoft's products or services;

(d) Endorsements appearing in the "Freedom Now" commercial reflect the typical or ordinary experience of members of the public who have used Tronsoft's products or services.

PAR. 6. In truth and in fact:

(a) Consumers who use the Starter Kit do not typically readily succeed in starting and operating successful businesses out of their own homes;

(b) Consumers who use the Starter Kit do not typically earn substantial income;

(c) Endorsements appearing in the "Freedom Now" commercial do not reflect the endorser's actual experience of starting a business with the aid of Tronsoft's products or services;

(d) Endorsements appearing in the "Freedom Now" commercial do not reflect the typical or ordinary experience of members of the public who have used Tronsoft's products or services.

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

PAR. 7. Through the use of the statements and depictions contained in the "Freedom Now" commercial referred to in paragraph four, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 8. In truth and in fact, at the time it made the representations set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth

in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Hawthorne Communications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 300 N. 16th Street, in the City of Fairfield, State of Iowa.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

As used in this order, the term "business opportunity" means an activity engaged in for the purpose of making a profit.

I.

It is ordered, That respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any Tronsoft product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, disseminating, or assisting or

encouraging others to sell, broadcast or disseminate the "Freedom Now" commercial described in the complaint.

II.

It is further ordered, That respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Tronsoft's Home Business Starter Kit ("Starter Kit") or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. Consumers who use such product readily succeed in starting and operating successful businesses out of their own homes.

B. Consumers who use such product earn substantial income.

For purposes of this provision, "substantially similar product" means any product or material containing substantially similar information or techniques as the Starter Kit and that purports to instruct consumers how to start and operate a computer-based consulting business at home.

III.

It is further ordered, That respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Starter Kit or any other product or service concerning business opportunities, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, the performance, benefits, efficacy or success rate of any such product or service, unless, at the time of making the representation, respondent possesses and relies upon competent and reliable evidence, which when

appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

IV.

It is further ordered, That respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in Section 255(b), Part 255, Title 16, Code of Federal Regulations) unless respondent has good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no express or implied representations which would be deceptive or unsubstantiated if made directly by respondent.

B. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

V.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions and to each officer, agent and personnel responsible for the preparation, review or placement of advertising, or other materials covered by this order, and shall

secure from each such person a signed statement acknowledging receipt of this order.

VI.

It is further ordered, That respondent shall for a period of five (5) years from the entry of this order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of new corporations or subsidiaries of the respondent, or any other change in the corporation that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That respondent, and its successors and assigns, shall, for five (5) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon by respondent in disseminating any representation covered by this order; and

B. All reports, tests, studies, surveys, demonstrations or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied for such representation, including complaints from consumers.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon it and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

BEVERLY HILLS WEIGHT LOSS CLINICS
INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3515. Complaint, Aug. 11, 1994--Decision, Aug. 11, 1994

This consent order prohibits, among other things, a commercial diet program company from misrepresenting the performance or safety of any diet program it offers in the future, and requires the respondent to possess competent and reliable scientific evidence to substantiate any future claims it makes about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

Appearances

For the Commission: *Gary S. Cooper, Charles La Due and Richard F. Kelly.*

For the respondent: *Gary Buchman, Hassman & Rachstein, Boston, MA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Beverly Hills Weight Loss Clinics International, 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 Beverly Hills Weight Loss Clinics International, Inc. ("Beverly Hills"), is a Virginia corporation, with its principal office or place of business at 200 Highpoint Avenue, Suite B-5, Portsmouth, Rhode Island.

PAR. 2. Respondent advertises, offers for sale, sells, and otherwise promotes throughout much of the eastern United States weight loss and weight maintenance services and products, and makes them available to consumers at numerous "Beverly Hills