

IN THE MATTER OF

THE COUNCIL OF FASHION DESIGNERS OF AMERICA, ET AL.

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

Docket C-3621. Complaint, Oct. 17, 1995--Decision, Oct. 17, 1995.

This consent order prohibits, among other things, a New York corporation and a trade association of fashion designers from entering into, organizing, implementing or continuing any agreement to fix the price, terms or conditions of compensation for modeling or modeling agency services, and requires the respondents to send a letter, along with the Commission's complaint and order, to all members and officers of the organizations, as well as the specified modeling agencies and designer.

Appearances

For the Commission: *Michael E. Antalics, Karen Mills and William Baer.*

For the respondents: *Jack Hassid, Swerdlin & Hassid, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, Title 15, U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, 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. Respondent The Council of Fashion Designers of America (hereinafter "CFDA"), a trade association of fashion designers, is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412

Broadway, New York, New York. CFDA engages in activities in substantial part for the profit of its members.

PAR. 2. Respondent 7th on Sixth, Inc. (hereinafter "7th on Sixth") is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412 Broadway, New York, New York. 7th on Sixth engages in activities in substantial part for the profit of its members.

PAR. 3. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 4. Except to the extent that competition has been restrained as alleged herein, members of CFDA and the members of 7th on Sixth have been, and are now, in competition among themselves and with others as purchasers of model and modeling agency services.

PAR. 5. On or about February 1, 1991, CFDA met and discussed a proposal of one of its members that CFDA should hire an Executive Director who could, among other things, address on their collective behalf the issue of prices paid for model services. On several occasions from February 1, 1991 to date, respondents discussed their desire to reduce competition among themselves for the services of models in order to achieve a reduction in the rates paid for the services of models.

PAR. 6. On or about July 14, 1993, CFDA met and formed, funded and facilitated 7th on Sixth, Inc. CFDA voted that its Executive Director should act as Executive Director of 7th on Sixth while in the employ of CFDA. A legitimate purpose of 7th on Sixth was to produce centralized fashion shows twice a year in New York City in Bryant Park. 7th on Sixth solicited bids from suppliers of various services necessary for the production of the fashion shows: sites, architectural design, production, tents, runway assembly, lighting design and installation, and security. 7th on Sixth selected suppliers, and contracted with them. 7th on Sixth resold the package of services that it had purchased from suppliers to designers interested in using 7th on Sixth venues for their shows, for a set fee that varied only depending on the particular venue chosen. 7th on Sixth did not solicit bids for the purchase of modeling services, did not purchase modeling services, and did not resell modeling services to designers.

PAR. 7. At the July 14, 1993 CFDA meeting, two members of the Board of Directors stated that they wanted to call a special meeting for designers with the heads of all the major modeling agencies to discuss models' fees in connection with the 7th on Sixth fashion shows.

PAR. 8. On or about September 1, 1993, the Executive Director of 7th on Sixth invited fashion designers interested in participating in the 7th on Sixth fashion shows to a meeting on September 14, 1993 to discuss, among other things, an agreement on modeling fees.

PAR. 9. On or about September 14, 1993, designers who were members of respondent CFDA and were interested in participating in the 7th on Sixth fashion shows and staff and counsel for respondents met to discuss various issues relating to the 7th on Sixth fashion shows, including modeling fees. During this meeting, respondents agreed not to compete for modeling services and agreed to determine modeling fees collectively, rather than allow prices to be determined in a competitive market. The Executive Director of CFDA and 7th on Sixth, on behalf of respondents, then invited the major modeling agencies to meet with representatives of the fashion designers the next day to present their collective position on fees.

PAR. 10. On or about September 15, 1993, respondents and their counsel met with representatives of the major modeling agencies. Respondents: (a) demanded that the modeling agencies agree to prices collectively determined by respondents, and (b) threatened to hire models through a collectively organized "open call" procedure which would have the effect of bypassing the modeling agencies and the models they represented. As a result of this threat, the agencies agreed to consider whether they should accommodate the respondents' collective demands.

PAR. 11. Respondents invited the modeling agencies to meet with respondents again on September 22, 1993, to hear whether the modeling agencies had decided to succumb to respondents' collective demands. On or about September 22, 1993, respondents and their counsel met again with representatives of the major modeling agencies. Upon hearing that the modeling agencies were not prepared to acquiesce to the respondents' collective demands, respondents repeated their collective demand regarding prices, and their threat to proceed with a collectively organized "open call." Confronted by this threat, the agencies agreed to negotiate with respondents.

PAR. 12. Between September 22, 1993 and October 12, 1993, respondents continued to press their demands regarding prices. During this time, respondents and their counsel continued to plan for an industry-wide open call so that designers could collectively refuse to deal with models and modeling agencies that refused to acquiesce to their demand regarding prices.

PAR. 13. In early October, 1993, the modeling agencies capitulated and agreed to the modeling fee proposal for the 7th on Sixth fashion shows made to them by respondents. On October 12, 1993, 7th on Sixth memorialized the final agreement on prices and other terms of compensation for modeling services in a letter sent to fashion designers and modeling agencies. Later in October 1993, 7th on Sixth issued a press release in which it claimed credit for reaching an agreement on prices.

PAR. 14. The respondents' agreement as to prices paid for model and model agency services was not ancillary to the legitimate purposes of creating centralized fashion shows, and respondents did not purchase modeling services jointly.

PAR. 15. By engaging in the acts and practices described in paragraph five and paragraphs seven through fourteen, respondents have acted as a combination of their members or conspiracy among their members to eliminate competition among themselves in order to fix prices.

PAR. 16. The acts and practices of the respondents, as herein alleged, have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers in the following ways, among others:

- A. Restraining competition among purchasers of modeling and modeling agency services;
- B. Fixing or stabilizing the prices that are paid to models and modeling agencies; and
- C. Depriving consumers of access to a competitively determined price and quality of modeling and modeling agency services.

PAR. 17. The combination or conspiracy and the acts and practices of respondents, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violation or the effects thereof,

as herein alleged, are continuing and will continue or recur in the absence of the relief herein requested.

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 Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 a 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, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Council of Fashion Designers of America (hereinafter "CFDA"), a trade association of fashion designers, is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412 Broadway, New York, New York. CFDA engages in activities in substantial part for the profit of its members.

2. Respondent 7th on Sixth, Inc. (hereinafter "7th on Sixth") is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its

office and principal place of business located at 1412 Broadway, New York, New York. 7th on Sixth engages in activities in substantial part for the profit of its members.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondents*" means the Council of Fashion Designers of America and 7th on Sixth, Inc.;

B. "*Person*" means any individual, partnership, association, company, or corporation;

C. "*CFDA*" means the Council of Fashion Designers of America, its directors, trustees, officers, members, representatives, committees, subcommittees, boards, divisions, agents, employees, successors and assigns;

D. "*7th on Sixth*" means 7th on Sixth, Inc., its directors, trustees, officers, members, representatives, committees, subcommittees, boards, divisions, agents, employees, successors and assigns.

II.

It is further ordered, That respondents CFDA and 7th on Sixth, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue, any combination, agreement, or understanding, express or implied, for the purpose or with the effect of:

A. Raising, lowering, fixing, maintaining or stabilizing the price, terms or other forms or conditions of compensation paid for modeling or modeling agency services; or

B. Encouraging, advising, pressuring, assisting, inducing, or attempting to induce any person to engage in any action prohibited by this order.

Provided, however, that it shall not be deemed a violation of this order for more than one member of CFDA and/or 7th on Sixth to employ or use the services of the same person where such employment or use is not otherwise in furtherance of any action prohibited by this order.

III.

It is further ordered, That respondents CFDA and 7th on Sixth each shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute by certified U.S. first-class mail a copy of this order and the accompanying complaint, and the notice attached in Appendix A hereto, to:

1. Each of its members, officers, directors, and employees, and each fashion designer who has shown in the fashion shows organized by 7th on Sixth;

2. Each person to whom it has, at any time prior to the effective date of this order, communicated the benefits of membership in 7th on Sixth, or whom it has invited to join 7th on Sixth, as identified in Appendix B hereto;

3. The International Model Managers Association c/o David Blasband, Esq., Deutsch, Klagsbrun & Blasband, 800 Third Avenue, New York, New York;

4. Each of the modeling agencies listed in Appendix C attached hereto; and

B. For a period of five (5) years from the date this order becomes final, cause to be made minutes of all business meetings of its membership, its board of directors, its committees and subcommittees. Such minutes shall (i) identify all persons attending

such meeting, (ii) include a certification, signed by the presiding officer and secretary under penalty of perjury, that states whether prices, terms, or other forms or conditions of compensation paid for modeling or modeling agency services were discussed at the meeting, and (iii) summarize what was discussed at the meeting. If prices, terms, or other forms or conditions of compensation paid for modeling or modeling agency services were discussed at any business meeting subject to this order, then the minutes of such meeting shall identify the participants in the discussion and state in detail the substance of the discussion(s). Minutes and the required certifications shall be retained for a period of five (5) years from the date the minutes were created. Such minutes shall be provided to the Commission upon request.

C. Within sixty (60) days after the date on which this order becomes final, and annually thereafter for five (5) years, on or before the anniversary date of this order,

1. Communicate either orally or in writing to its officers, directors, employees and members concerning their obligations under this order;

2. Obtain from each of its officers, directors, and employees an annual written certification, that he or she (a) has read, understands and agrees to abide by the terms of this order, (b) is not aware of any violation of this order, and (c) has been advised and understands that failure of CFDA or 7th on Sixth, as defined in the order, to comply with this order may subject either or both of the respondents to penalties for violation of the order; and

3. Retain the certifications required by Section III.C.2. Such certifications shall be provided to the Commission upon request.

IV.

It is further ordered, That each respondent shall:

- A. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, bankruptcy, or any other change in the respondent which may affect compliance obligations under this order; and

B. File a written report with the Commission within sixty (60) days after the date the order becomes final, and annually thereafter for five (5) years on the anniversary of the date the order became final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which the respondent has complied and is complying with the order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, each respondent shall permit any duly authorized representative of the Commission:

A. Upon reasonable notice to respondent access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of each respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, employees, or agents of respondent, who may have counsel present.

VI.

It is further ordered, That this order shall terminate on October 17, 2015.

Decision and Order

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APPENDIX A

Dear :

[Respondent] has agreed, without admitting any violation of the law, to the entry of a consent order by the Federal Trade Commission prohibiting certain conduct. A copy of the order is enclosed.

The order spells out [respondent]'s obligations in greater detail, but we want you to know and understand the following:

The Council of Fashion Designers of America and 7th on Sixth, Inc. may not negotiate on behalf of fashion designers collectively with models or modeling agencies for modeling or modeling agency services, and may not enter into or continue any agreement or understanding, express or implied, for the purpose or with the effect of affecting the prices paid for modeling or modeling agency services.

Non-compliance with this order may subject [respondent] to penalties for violation of the order, and may be reported to the Federal Trade Commission.

Sincerely,

[respondent]

Enclosure

THE COUNCIL OF FASHION DESIGNERS OF AMERICA, ET AL. 827

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APPENDIX B

Mr. Victor Alfaro
130 Barrow Street, Suite 105
New York, N.Y. 10014

Mr. Robert Danes
488 Seventh Avenue
New York, N.Y. 10018

Ms. Gemma Kahng
550 Seventh Avenue
New York, N.Y. 10018

Ghost
c/o Showroom Seven
498 Seventh Avenue
New York, N.Y. 10018

Mr. Mark Eisen
214 West 39th Street
New York, N.Y. 10018

Mr. Byron Lars
29 West 57th Street
New York, N.Y. 10019

Ms. Mary McFadden
240 West 35th Street
New York, N.Y. 10001

Magaschioni, Inc.
499 Seventh Avenue
New York, N.Y. 10018

The Next Generation
242 West 38th Street
New York, N.Y. 10018

Mr. Mark Badgley
Badgley Mischka
525 Seventh Avenue
New York, N.Y. 10018

Mr. James Mischka
Badgley Mischka
525 Seventh Avenue
New York, N.Y. 10018

Ms. Jennifer George
Jennifer George, Inc.
530 Seventh Avenue
New York, N.Y. 10018

Mr. Fernando Sanchez
Fernando Sanchez Ltd.
5 West 19th Street
New York, N.Y. 10011

Ms. Joan Vass
Joan Vass NY
117 East 29th Street
New York, N.Y. 10016

Ms. Adrienne Vittadini
1441 Broadway
New York, N.Y. 10018

Mr. Byron Lars
29 West 57th Street
New York, N.Y. 10019

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APPENDIX C

Ms. Bethann Hardison
Bethann Management Co.
36 North Moore Street
New York, NY 10013

Boss Models
317 West Thirteenth Street
New York, NY 10014

Ms. Frances Grill, President
Click Model Management
881 7th Ave., Suite 1013
New York, NY 10019

Mr. Michael Flutie, President
Company Ltd.
270 Lafayette St., Suite 1400
New York, NY 10012

Ms. Monique Pillard, President
Elite Model Management
111 East 22nd Street
New York, NY 10010

Ms. Ellen Harth
Elite Runway
149 Madison Avenue
New York, NY 10016

Joseph Hunter, President
Ford Models, Inc.
344 East 59th Street
New York, NY 10022

Mr. Charles Bennett,
Senior Vice President
International Management Group
170 Fifth Avenue, 10th Floor
New York, NY 10010

Ms. Irene Marie, President
I'M New York
120 Wooster St.
New York, NY 10012

Ms. Irene Marie, President
Irene Marie, Inc.
728 Ocean Drive
Miami Beach, FL 33139

Ms. Milie Pellet, President
Next Management
23 Watts Street, 5th Floor
New York, NY 10013

Now Model Management
568 Broadway, Suite 504-A
New York, New York 10012

Pauline Bernatchez, President
Pauline's
379 West Broadway, 5th Floor
New York, NY 10012

Ms. Natasha Esch, President
Wilhelmina Models, Inc.
300 Park Avenue South, 2nd Floor
New York, NY 10010

Women Model Management
107 Greene Street
New York, NY 10012

Ms. Barbara Lantz, President
Zoli Management
3 West 18th Street
New York, NY 10011

IN THE MATTER OF

J. WALTER THOMPSON USA, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3622. Complaint, Oct. 20, 1995--Decision, Oct. 20, 1995*

This consent order prohibits, among other things, a New York-based advertising agency, which prepared advertisements for Jenny Craig, Inc., from claiming that any weight-loss program is recommended, approved, or endorsed by any person, group, or other entity, unless it possesses and relies upon competent and reliable scientific evidence to substantiate the representation. In addition, the consent agreement prohibits the respondent from misrepresenting the existence, results, or interpretations of any test, study, or survey.

Appearances

For the Commission: *David M. Newman.*

For the respondent: *Stuart Fridel, Davis & Gilbert, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that J. Walter Thompson USA, Inc., a corporation ("JWT" or "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. JWT is a corporation, organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office or place of business at 466 Lexington Avenue, New York, New York.

PAR. 2. JWT is now, and at all times relevant to this complaint has been the advertising agency of Jenny Craig, Inc., and Jenny Craig International, Inc. ("Jenny Craig"). JWT has prepared and disseminated advertising material to promote the sale of the Jenny Craig Weight Loss Program.