

Complaint

IN THE MATTER OF

THE TED WARREN CORPORATION, ET AL.

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

Docket C-4078; File No. 9923298
Complaint, April 29, 2003--Decision, April 29, 2003

This consent order addresses practices used by Respondents The Ted Warren Corporation, The Ken Roberts Institute, Inc., The Ken Roberts Company, and Ken Roberts (as an officer of the corporations) to advertise and sell materials (“Investment Courses”) – such as the “TWC Stock Course” for trading stocks; the “KRI Investment Portfolio” for creating an investment portfolio; the “KRC Commodity Course” for trading commodity futures contracts and options; and the “Jim Banks Probate Course” for purchasing real estate and personal property through probate proceedings – through a number of Internet Web sites. The order, among other things, prohibits the respondents from misrepresenting that purchasers of “investment courses” who make profitable “paper trades” are likely to make profitable actual trades when their funds are invested in the market. The order also requires the respondents to disclose, for all investment courses, the warning that futures trading, stock trading, currency trading, and options trading, as applicable, “involves high risks and YOU can LOSE a lot of money.” In addition, the order requires the respondents to disclose other warnings with respect to investment courses in particular areas.

Participants

For the Commission: *Dan Salsburg, Stephen Gurwitz, Tara M. Flynn, and Eileen Harrington.*

For the Respondents: *Michael R. Pinatelli, Jr., and Neil Goteiner, Farella Braun & Martel, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Ted Warren Corporation, The Ken Roberts Institute, Inc., and The Ken Roberts Company, corporations, and Ken Roberts, as an officer of the corporations (“proposed respondents”) have violated the provisions of the Federal Trade Commission Act, and it

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appearing to the Commission that this proceeding is in the public interest, alleges:

- 1.a. Respondent The Ted Warren Corporation ("TWC") is an Oregon corporation with its principal office or place of business at 128 S.W. "I" Street, Grants Pass, OR 97526.
- 1.b. Respondent The Ken Roberts Institute, Inc., ("KRI") is an Oregon corporation with its principal office or place of business at 333 S.W. 5th Street, Grants Pass, OR 97526.
- 1.c. Respondent The Ken Roberts Company ("KRC") is an Oregon corporation with its principal office or place of business at 333 S.W. 5th Street, Grants Pass, OR 97526.
- 1.d. Respondent Ken Roberts is an officer of TWC, KRI, and KRC. As an officer, Ken Roberts, individually or in concert with others, formulates, directs, or controls, the policies, acts, or practices of TWC, KRI, and KRC.
2. Respondents have advertised, offered for sale, sold, and distributed materials ("Investment Courses") that purport to teach purchasers how to profitably trade stocks, commodity futures and options, and real estate. The Investment Courses sold by respondents include the "TWC Stock Course" for trading stocks, the "KRI Investment Portfolio" for creating an investment portfolio, the "KRC Commodity Course" for trading commodity futures contracts and options, and the "Jim Banks Probate Course," pursuant to a marketing agreement with J.G. Banks, Inc., for purchasing real estate and personal property through probate proceedings. Respondents have sold these Investment Courses through the Internet web site www.kenroberts.net and related web sites.
3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

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4. In their Internet Advertisements, Respondents have represented by implication, that purchasers of the Investment Courses who make profitable “paper trades” – practice trades in which no funds are actually invested – using techniques described in the Investment Courses during one time period are likely to make profitable actual trades when their funds are invested in the market during a later time period.
5. In truth and in fact, successful “paper trading” during one time period does not predict successful actual trading during a later time period. Therefore, the representation set forth in Paragraph 4 was, and is, false or misleading.
6. In numerous instances, Respondents’ Internet advertisements fail to disclose in a clear and conspicuous manner material facts concerning the likelihood that purchasers of the Investment Courses will make substantial profits trading stocks, commodity futures and options, and real estate and the significant risk of loss that accompanies investments in these markets/products. Specifically, the Respondents have failed to disclose that:
 - (a) investments made pursuant to the Investment Courses involve high risks and that purchasers can lose a lot of money;
 - (b) successful paper trading using techniques contained in the Investment Courses does not mean that purchasers will be able to trade successfully in actual market conditions when their funds are at risk;
 - (c) investments in securities can result in the loss of all of the money invested;
 - (d) investments involving commodity futures contracts or the granting of options can result in the loss of more than the money invested;

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(e) investments in commodities entail significant risk of loss and that according to many experts most individual investors who trade commodity futures or options lose money; and

(f) past results are not necessarily indicative of future results.

The failure to disclose and/or failure to disclose adequately these material facts, in light of the representations made, was, and is, a deceptive practice.

7. 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.

THEREFORE, the Federal Trade Commission this twenty-ninth day of April, 2003, has issued this complaint against Respondents.

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DECISION AND ORDER

The Federal Trade Commission (“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 the complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

Respondents 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, 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 Commission having thereafter considered the matter and having determined that it had reason to believe that 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 thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Ted Warren Corporation (“TWC”) is an Oregon corporation with its principal office or place of business at 128 S.W. “I” Street, Grants Pass, OR 97526.
2. Respondent The Ken Roberts Institute, Inc., (“KRI”) is an Oregon corporation with its principal office or place of business at 333 S.W. 5th Street, Grants Pass, OR 97526.

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3. Respondent The Ken Roberts Company ("KRC") is an Oregon corporation with its principal office or place of business at 333 S.W. 5th Street, Grants Pass, OR 97526.

4. Respondent Ken Roberts is an officer of TWC, KRI, and KRC. As an officer, Ken Roberts, individually or in concert with others, formulates, directs, or controls, the policies, acts, or practices of TWC, KRI, and KRC. His principal places of business are the same as those of TWC, KRI, and KRC.

5. 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:

1. "Clearly and conspicuously" shall mean as follows:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it.
 - b. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size

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and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

- c. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.
2. In the case of advertisements disseminated by means of an interactive electronic medium such as the Internet or other online services, "in close proximity" shall mean on the same Web page and proximate to the triggering representation, and not on other portions of the Web site, accessed or displayed through hyperlinks or other means.
3. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
4. "Investment Course" shall mean any program, service, course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, real estate through probate proceedings, or other financial instruments or investments.
5. Unless otherwise specified, "respondents" shall mean: TWC, its successors, assigns, and its officers; KRI, its successors, assigns, and its officers; and KRC, its successors, assigns, and its officers; Ken Roberts, as an officer of TWC, KRI, and KRC; and each of the above's agents, representatives, and employees.

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I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Investment Course, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that purchasers of Investment Courses who make profitable “paper trades” – practice trades in which no funds are actually invested – are likely to make profitable actual trades when their funds are invested in the market.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Investment Course, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the financial benefits of such Investment Course, unless they disclose, clearly and conspicuously, and in close proximity to the representation,

- A. For all Investment Courses: **“WARNING: [FUTURES TRADING, STOCK TRADING, CURRENCY TRADING, OPTIONS TRADING, ETC., as applicable] involves high risks and YOU can LOSE a lot of money.”**
- B. For all Investment Courses in which purchasers are advised or instructed to “paper trade” or otherwise practice making investments without investing actual funds: **“Being a successful PAPER TRADER during one time period does not mean that you will make money when you actually invest during a later time period. Market conditions constantly change.”**

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- C. For all Investment Courses involving securities or the purchasing of options: **“When investing in [securities or the purchasing of options, as applicable] you may lose all of the money you invested.”**
- D. For all Investment Courses involving futures or the granting of options: **“When investing in (futures or the granting of options, as applicable) you may lose more than the funds you invested.”**
- E. For all Investment Courses involving futures and commodity options: **“Trading in commodity futures or options involves substantial risk of loss. According to many experts, most individual investors who trade commodity futures or options lose money.”**
- F. For all Investment Courses in which claims are made regarding past performance: **“Past Results are not necessarily indicative of Future Results.”**

Provided, the disclosures required by this Part are in addition to, and not in lieu of, any other disclosure that respondents may be required to make, including but not limited to any disclosures required by state or federal law or by a self-regulatory organization. The requirements of this Part are not intended to, and shall not be interpreted to, exempt respondents from making any other disclosures.

III.

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;

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B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

IV.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers of TWC, KRI, and KRC, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondents shall maintain and upon request make available to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after creation.

V.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change in TWC, KRI, or KRC that may affect compliance obligations arising under this order, including but not limited to the formation of a corporation, the proposed filing of a bankruptcy petition, or a change in the company name or address.

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VI.

IT IS FURTHER ORDERED that Ken Roberts, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include his new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

VII.

IT IS FURTHER ORDERED that respondents TWC, KRI, and KRC shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on April 29, 2023, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

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Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IX.

All notices required to be sent to the Commission pursuant to this Order shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attn.: In the Matter of The Ted Warren Corporation, Inc.

___By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from The Ted Warren Corporation, The Ken Roberts Institute, Inc., and The Ken Roberts Company, corporations, and Ken Roberts, as an officer of the corporations (together, “respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Respondents advertise and sell materials (“Investment Courses”) that purport to teach purchasers how to profitably trade stocks, commodity futures and options, and real estate. The Investment Courses sold by respondents include the “TWC Stock Course” for trading stocks, the “KRI Investment Portfolio” for creating an investment portfolio, the “KRC Commodity Course” for trading commodity futures contracts and options, and the “Jim Banks Probate Course,” pursuant to a marketing agreement with J.G. Banks, Inc., for purchasing real estate and personal property through probate proceedings. Respondents have sold these Investment Courses through the Internet web site www.kenroberts.net and related web sites.

This matter concerns respondents’ allegedly deceptive representation that purchasers of the Investment Courses who make profitable “paper trades” – practice trades in which no funds are actually invested – using techniques described in the Investment Courses during one time period are likely to make profitable actual trades when their funds are invested in the market during a later time period. This matter also concerns the respondents’ alleged failure to disclose the risks associated with the trading techniques described in the Investment Courses.

Analysis

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed consent order prohibits the respondents from misrepresenting that purchasers of “investment courses” who make profitable “paper trades” are likely to make profitable actual trades when their funds are invested in the market. The term “investment courses” is defined as “any program, service course, instruction, system, training, manual, computer software, or other materials involving the purchase or sale of stocks, currencies, commodity futures, options, real estate through probate proceedings, or other financial instruments or investments.”

Part II of the proposed consent order requires the respondents to make the following six risk disclosures:

1. For all Investment Courses: **“WARNING: [FUTURES TRADING, STOCK TRADING, CURRENCY TRADING, OPTIONS TRADING, ETC., as applicable] involves high risks and YOU can LOSE a lot of money.”**
2. For all Investment Courses in which purchasers are advised or instructed to “paper trade” or otherwise practice making investments without investing actual funds: **“Being a successful PAPER TRADER during one time period does not mean that you will make money when you actually invest during a later time period. Market conditions constantly change.”**
3. For all Investment Courses involving securities or the purchasing of options: **“When investing in [securities or the purchasing of options, as applicable] you may lose all of the money you invested.”**

Analysis

4. For all Investment Courses involving futures or the granting of options: **“When investing in (futures or the granting of options, as applicable) you may lose more than the funds you invested.”**
5. For all Investment Courses involving futures and commodity options: **“Trading in commodity futures or options involves substantial risk of loss. According to many experts, most individual investors who trade commodity futures or options lose money.**
6. For all Investment Courses in which claims are made regarding past performance: **“Past Results are not necessarily indicative of Future Results.”**

Parts III and IV of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part V requires TWC, KRI and KRC to notify the Commission of any changes in their corporate structures that might affect compliance with the order. Part VI requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part VII requires TWC, KRI and KRC to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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IN THE MATTER OF

**EDUCATIONAL RESEARCH CENTER OF AMERICA,
INC., ET AL.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4079; File No. 0223249
Complaint, May 6, 2003--Decision, May 6, 2003*

This consent order addresses representations by Respondent Educational Research Center of America, Inc. – a student survey company that provides student data to colleges and universities and other entities for recruitment and marketing purposes – and its officer, Respondent Marian Sanjana, and Respondents Student Marketing Group, Inc. – a commercial list broker that supplies names for youth marketing campaigns – and their respective officers, Respondents Marian Sanjana and Jan Stumacher – about how detailed, personal information collected from middle, junior high, and high school students through a survey would be used. The order, among other things, prohibits the respondents – in connection with the collection of personally identifiable information from an individual – from misrepresenting how such information is collected or will be used or disclosed. The order also prohibits the respondents – in connection with the collection of personally identifiable information from students for any “noneducational-related marketing purpose” – from using or disclosing such information unless they disclose (1) the existence and nature of such noneducational-related marketing purpose, (2) the types or categories of any entities to which the information will be disclosed, and (3) that the information used or disclosed is personally identifiable. In addition, the order prohibits the respondents from using or disclosing for any noneducational-related marketing purpose any personally identifiable information that was collected through surveys distributed prior to July 30, 2002. The order also requires the respondents to delete all personally identifiable information collected through surveys from any student who was under the age of thirteen at the time of collection.

Participants

For the Commission: *Laura Mazzarella, Gregory A. Ashe, Jessica L. Rich, and Joel Winston.*

For the Respondents: *Patrick McElhinney, Kirkpatrick & Lockhart, LLP.*