of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding any fur product by failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing any fur product by failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as 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 which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

ARTHUR MURRAY STUDIO OF WASHINGTON, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8776. Complaint, Apr. 3, 1969—Decision, Feb. 23, 1971

Order requiring four Arthur Murray dance studios located in the Washington-Baltimore area to cease conducting contests purportedly based on the skills or abilities of contestants, inducing persons to come to studios without disclosing that the purpose of the visit is to sell dance lessons, falsely misrepresenting that lessons will be furnished free or at reduced prices, offer-

ing membership in party clubs without disclosing that a substantial number of dance lessons is also required, misrepresenting a student's progress through "dance analysis" tests, subjecting students to additional sales pressure before completion of a current series of lessons, using "relay salesmanship" in a single day, entering into dance contracts at one time in excess of $1,500, entering into such contracts which do not contain a seven day cancellation provision, and subjecting current students to pressures for additional contracts unless the new contract is expressly cancellable.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Arthur Murray Studio of Washington, Inc.; Arthur Murray Studio of Baltimore, Inc.; Arthur Murray Studio of Bethesda, Inc.; and Arthur Murray Studio of Silver Spring, Inc.; corporations, and Victor F. Horst and Edward Marandola, also known as Edward Mara, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Arthur Murray Studio of Washington, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business formerly located at 724 14th Street, Northwest, in the city of Washington, District of Columbia.

Respondent Arthur Murray Studio of Baltimore, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business formerly located at 217 North Charles Street, in the city of Baltimore, State of Maryland.

Respondent Arthur Murray Studio of Bethesda, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business formerly located at 4923 Elmo Drive, Bethesda, Maryland.

Respondent Arthur Murray Studio of Silver Spring, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business formerly located at 934 Ellsworth Drive, Silver Spring, Maryland.

Respondents Victor F. Horst and Edward Marandola, also known as Edward Mara, are individuals and are officers of all the corporate respondents. They formulated, directed, and controlled the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Respondent Victor F. Horst's business address is the Racket Club, 7930 East Drive, Harbour Island, Miami Beach, Florida. Respondent Edward Marandola, also known as Edward Mara, maintains his business address at 9 West Washington, Chicago, Illinois.

PAR. 2. The individual respondents, are now, and for some time last past have been engaged in the operation of dance studios and in the advertising, offering for sale, and sale of courses of dancing instruction to the public. The corporate respondents for some time last past have been, engaged in the operation of dance studios and in the advertising, offering for sale, and sale of courses of dancing instruction to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents for some time last past have caused, their advertising matter to be published in newspapers of interstate circulation and their promotional materials to be sent or otherwise conveyed to various prospective customers residing in the States of Maryland and Virginia and the city of the District of Columbia. Advertising matter, contracts, letters, checks or other written instruments and communications have been sent and have been received between the respondents at their former places of business located in Washington, D.C., and in various other States of the United States. In addition, written communications and instruments, including payroll records, contracts, payment records and other documents, have been passed between the aforesaid studios and a bookkeeping firm located in the State of Florida, owned by the individual respondents. As a result of said interstate advertising and promotion and as a result of said transmission and receipt of said written instruments and communications, respondents have maintained a substantial course of trade in said courses of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents have made certain representations in newspaper advertisements, and by other means, including social security number contests, "special selection" offers, and "Can You Spell" contests, in which the winner is awarded a gift certificate entitling him or her to a specified number of Arthur Murray lessons purportedly worth from $35-$65. The representations made in newspaper advertisements

have included those which relate to special or introductory offers purporting to furnish the first lesson of a course of dance instruction or a short course in dancing either at a reduced price or free of charge.

Typical and illustrative, but not all inclusive, of such representations made by respondents are the following:

CAN YOU SPELL

WIN A $65.00 DANCE COURSE IF YOU CAN FIND THE MISSPELLED WORDS

* * * * * * *

Arthur Murray's is making this amazing offer to show some lucky winners the fun and good times to be had with them. The winners will receive a $65.00 Dance Course at the exciting Arthur Murray Studio.

* * * * * * *

WIN PRIZES WORTH
$300 $250 $200 $150 $100 $75

PLAY THE EXCITING NEW *SOCIAL SECURITY* GAME

WINNERS EVERY WEEK

SOCIAL SECURITY GAME RULES.

Every week there will be WINNERS in each prize category.

The winning number will be selected from among social security numbers sent to us * * *

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication, that:

1. Said contests are based on abilities and skills of the contestants or upon chance and that a winner will be chosen on one of these bases.

2. The winner of said contests will receive a gift certificate worth a stated amount or, either without charge or at a reduced price, a *bona fide* course of dancing instruction or a specified number of *bona fide* dancing lessons.

PAR. 6. In truth and in fact:

1. Said contests are not based on skills or abilities of the contestants or upon chance, nor are winners chosen on any of these bases. The purported contests are so simple of solution or the winning thereof so easy, as to remove them from the categories of competition, skill, or special selection, and are such that substantially everyone, if not all, can qualify and win. Rather the purported

quizzes, puzzles, and contests are designed to attract members of the purchasing public for the purpose of obtaining leads to prospective purchasers of dance instruction.

2. The winners of said contests do not receive a gift certificate worth the stated amount, or a *bona fide* course of dancing instruction or a specified number of *bona fide* dancing lessons. Although they receive some dance instruction in the beginning of the specified time, the balance of the course is devoted to salestalk designed to induce the purchase of further dancing lessons or the signing of a long term dancing instruction contract.

Therefore, the statements, representations and practices as set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, respondents have made certain representations on postal cards sent through the United States mail.

Typical and illustrative, but not all inclusive, of such representations are the following:

Your Telephone Number was selected today, and this entitles any adult to a Wonderful Gift, fully paid for by our Advertising Department * * * No obligation or charge to you.

Please call *783-0880* between 3:00 p.m. and 9:00 p.m., Monday through Friday, to tell us the name and address of the person entitled to the gift.

PAR. 8. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication, that the recipient has been selected to receive a valuable and unconditional gift.

PAR. 9. In truth and in fact the recipient has not been selected to receive and will not receive a valuable or unconditional gift. After dividing the local telephone directory into certain sections, respondents' representatives send cards to each name listed therein, for the purpose of obtaining leads to prospective purchasers of dancing instruction. The recipient of respondents' "gift" is lured into one of respondents' studios under the guise of receiving a "dance certificate" supposedly entitling him to a number of free dancing lessons. Instead, he is thereupon subjected to a sales talk to induce the purchase of a course of dancing instruction.

Therefore, the statements and representations as set forth in Paragraphs 7 and 8 herein were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of their aforesaid business, respondents have made representations concerning adult social clubs in newspaper advertisements appearing in the Washington, D.C.,

area of which the following are typical and illustrative, but not all inclusive thereof.*

PAR. 11. By and through the use of the aforesaid statements and representations, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the Party Time Club and the Holiday Club were *bona fide* adult social clubs offering members a program of activities such as daily and weekly social events and gala night club parties.

PAR. 12. In truth and in fact, the Party Time Club and the Holiday Club were not *bona fide* adult social clubs offering members a program of activities such as daily and weekly social events and gala night club parties. These clubs were devices used as a means of obtaining the names of prospective students and of luring prospects into the studios where the sales presentation for dancing instruction purchases may be made. Unless a member contracted to purchase a substantial amount of dance instruction, usually between $450–$5,000, there were no activities in which he might participate irrespective of any club registration which he may have paid.

Therefore, the statements and representations as set forth in Paragraphs 10 and 11 hereof were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of their aforesaid business, respondents, directly or through their representatives and employees, have used various unfair and deceptive techniques and practices as a means of selling initial or supplemental courses of dance instruction. Typical and illustrative, but not all inclusive, of such techniques and practices are the following:

1. The use of sham "dance analysis tests" for the alleged purpose of evaluating the student's ability, progress or proficiency, when in fact all students and prospective students are given the same test results regardless of dancing ability, aptitude or proficiency.

2. Respondents represent to students or prospective students that upon completion of a given course of dancing instruction the student will have achieved a specified standard of proficiency, whereas, in fact, before the given course of dance instruction is completed and before the specified standard of proficiency has been achieved, the prospect or student is subjected to further coercive sales efforts toward the purchase of additional instruction in dancing.

3. The use of "relay salesmanship," involving successive efforts of a number of different Arthur Murray representatives who, in a

*Three pictorial newspaper advertisements were omitted in printing.

single day by force of number and unrelenting sales talks, and aided occasionally by hidden listening devices monitoring conversation with the prospect or student, attempt to persuade and do persuade a lone prospect or student to sign a contract for dancing instruction.

4. The use of intense, emotional, and unrelenting sales pressure to persuade a prospect or student to sign a contract obligating such person to pay for a substantial number of dancing lessons at substantial cost without affording such person a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved. Such contracts often provide for more than 100 hours of dancing instruction with a cost to the prospect or student in excess of $1,500, and such person is insistently urged, cajoled, and coerced to sign such a contract hurriedly and precipitately through the use of persistent and emotionally forceful sales presentations which are often of several hours duration.

Therefore, these statements, representations and practices as hereinabove set forth were and are unfair and deceptive.

PAR. 14. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of dancing lessons of the same general kind and nature as those sold by respondents.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of dancing instruction by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Donald L. Bachman, and *Mr. Edward D. Steinman* supporting the complaint.

Mr. Tom M. Schaumberg, *Gadsby & Hannah*, Wash., D.C., for respondents.

470-536—73——27

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

JULY 16, 1970

STATEMENT OF THE PROCEEDINGS

The complaint in this matter issued April 3, 1969, and charges certain alleged acts and practices by the named respondents were all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Respondents filed answers on May 16, 1969, and a prehearing conference was held on June 16, June 27 and July 3, 1969. Subsequent to the prehearing conference of July 3, 1969, a joint motion by respective counsel, that the matter be withdrawn from adjudication and a settlement agreement containing a consent order to cease and desist be accepted, was certified to the Commission without recommendation on July 11, 1969.

The principal difference between the order to cease and desist in the proposed consent settlement and the form of the order to cease and desist set forth in the Notice of the complaint was as to Paragraph 9 of the complaint order which prohibited the respondents from entering into one or more contracts or written agreements under which a student or other party is obligated to pay a total amount which at any one time exceeds $1,500. In contrast, the order to cease and desist in the proposed consent settlement read in this regard as follows:

> 9. Entering into one or more contracts or written agreements for dance instruction or any other service provided by respondents' dance studios when such contracts or written agreements obligate any party to pay a total amount which at any one time exceeds $4000.

The matter was contingently withdrawn from adjudication by Commission order of August 11, 1969, which stated an acceptable order to cease and desist for settlement purposes would include the following:

> 9. Entering into one or more contracts or written agreements for dance instruction or any other service provided by respondents' dance studios when such contracts or written agreements obligate any party to pay a total amount which at any one time exceeds $1,500.

Motions filed by respective counsel for Commission reconsideration of Paragraph 9 of the order to cease and desist in the proposed con-

sent settlement were denied by Commission order of October 9, 1969, and the matter was directed to be returned to adjudication.

The prehearing conference was reconvened on November 5, 1969, and a stipulation of facts between the parties encompassing Paragraphs One through Fifteen of the complaint was entered on the record.[1] The form of an order was jointly agreed upon by the parties except for the inclusion of the words "or other services" contained in the preamble and the $1,500 indebtedness limitation contained in Paragraph 9 of the order to cease and desist proposed by complaint counsel.[2] Legal briefs were filed by the parties and oral argument was held thereon following which the record for the reception of evidence was ordered to be closed at the prehearing conference on December 19, 1969.

Complaint counsel on January 5, 1970, moved to reopen the record for the reception of further evidence in support of and confined to the above proposed Paragraph 9 of the order to cease and desist. Said motion by complaint counsel stated in part:

> Complaint counsel will introduce evidence through consumer and expert witnesses to demonstrate the unconscionable nature of respondents' contracts in excess of $1500. Evidence will be adduced from members of the dance industry to show that $1500 is a fair balance between the practical business need of an operator of a dance studio and an equitable and fair amount which a person should be indebted for dance instruction.

Respondents' application for permission to file an appeal from the order reopening the record for such limited purpose was denied by Commission order of February 17, 1970. On February 20, 1970, the prehearing conference was ordered reconvened on March 2, 1970, and the hearing was set for March 23, 1970. Upon the unopposed request of counsel for the respondents the hearing was reset for March 30, 1970.

The hearing on the case-in-chief was held March 30, 31, April 2, 3, 6, 7, 9, 10, 13 and complaint counsel rested their case at the hearing on April 14, 1970. The hearing on the defense was held April 16, 17, 21, 22, 23 and defense counsel rested his case at the hearing on April 23, 1970. No rebuttal hearing was held and the record for the reception of evidence was closed by order of the hearing examiner entered April 27, 1970.

The names, addresses and occupations of the various type witnesses and the transcript location of their testimony are as follows:

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[1] Tr. 102–113 of the prehearing conference of November 5, 1969.
[2] Tr. 113–121 and 123 of the prehearing conference of November 5, 1969.

CASE-IN-CHIEF

1. Mrs. Eleanor Lee Templeman, 3001 Pollard Street, Arlington, Va., Writer and Publisher (Dance Student) Tr. 347–463.

2. Mrs. Dorothy A. Lockhart-Mummery, 134 Chanel Terrace, Falls Church, Va., Librarian (Dance Student) Tr. 463–610.

3. Mrs. Elise McKee, 3601 Connecticut Avenue, Washington, D.C., Retired (Dance Student) Tr. 610–660.

4. Mrs. Katherine Hailman, 800 4th Street, S.W., Washington, D.C., Retired (Dance Student) Tr. 660–697.

5. Mrs. Winifred Lapin, 2121 Virginia Avenue, N.W., Washington, D.C., Retired (Dance Student) Tr. 697–767.

6. Mrs. Gertrude M. Stambaugh, 3900 Connecticut Avenue, Washington, D.C., Retired (Dance Student) Tr. 768–814.

7. Mr. David G. Crocco, 336 Eastside Avenue, Ridgewood, New Jersey, Claims Attorney, Tr. 818–984.

8. Mr. Perry S. Gregory, 4373 Lee Highway, Arlington, Virginia, Dance Studio Operator and Professional Dance Instructor, Tr. 1109–1172.

9. Mr. Billy Orvis Shelton, 1810 Midlothian Court, Vienna, Virginia, Dance Studio Operator and Professional Dance Instructor, Tr. 1173–1221.

10. Mrs. Beatrice H. Riddle, 2908 Naylor Road, S.E., Washington, D.C., Secretary (Dance Student), Tr. 1225–1314.

11. Miss Kathleen Bare, 2461 Wisconsin Avenue, Washington, D.C., Professional Dance Instructor, Tr. 1345–1493.

12. Mr. John Wells, 3511 Lancer Drive, Hyattsville, Maryland, Accountant, Tr. 1496–1512.

13. Mr. James Graham, 101 Kennedy Street, Alexandria, Virginia, Dance Studio Operator and Professional Dance Instructor, Tr. 1515–1607.

14. Mr. Joseph J. Koman, Jr., 118 Hazel Drive, Manassas, Virginia, F.T.C. Investigation Attorney, Tr. 1611–1673.

DEFENSE

1. Mr. Frank Regan, Wayne, Pennsylvania, Professional Dance Instructor, Tr. 986–1107.

2. Miss Kathleen Bare, 2461 Wisconsin Avenue, Washington, D.C., Professional Dance Instructor, Tr. 1493–1495.

3. Mrs. Francis Diane Shane, 500 N. Roosevelt Blvd., Falls Church, Virginia, Administrative Assistant (Dance Student), Tr. 1689–1768.

4. Mr. John Saionz, 100 Truesdale Drive, Croton on the Hudson, New York, N.Y., Dance Studio Operator, Tr. 1769–1910.

5. Mr. Ward Thomas Chapman, 4505 Brentwood Drive, Kansas City, Missouri, Dance Studio Operator, Tr. 1913–2020.

6. Mr. James E. McCormick, 4166 Fleethaven Road, Lakewood, California, Dance Studio Operator, Tr. 2021–2046.

7. Mr. Philip A. Trout, 11215 Oakleaf Drive, Silver Spring, Maryland, Electronics Engineer (Dance Student), Tr. 2049–2099.

8. Mrs. Olive Carr, 305 Redding Avenue, Rockville, Maryland, Retired (Dance Student), Tr. 2101–2172.

9. Mrs. Margaret J. Leary, 1204 Oakview Drive, Silver Spring, Maryland, Secretary (Dance Student), Tr. 2193–2211.

10. Mr. Richard J. Lurito, 4814 North 20th Place, Arlington, Virginia, Assistant Professor Economics, Tr. 2233–2349.

The record, in addition to such testimony, embraces a substantial number of documentary exhibits, all of which have been considered in this initial decision, together with the proposed findings of fact, conclusions, briefs and the replies thereto by respective counsels. Proposed findings of fact, conclusions and order as submitted by respective counsel and not hereinafter adopted or found in substance or form are rejected as being irrelevant, immaterial or not supported by the facts of record.

Following a thorough review of the record in this proceeding and based upon both observation of all witnesses testifying and consideration of their overall testimony, the following Findings of Fact, Conclusions and Order are hereby made and issued:

FINDINGS OF FACT

1. Respondent Arthur Murray Studio of Washington, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business formerly located at 724 14th Street, Northwest, in the city of Washington, District of Columbia.

Respondent Arthur Murray Studio of Baltimore, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business formerly located at 217 North Charles Street, in the city of Baltimore, State of Maryland.

Respondent Arthur Murray Studio of Baltimore, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business formerly located at 4923 Elmo Drive, Bethesda, Maryland.

Respondent Arthur Murray Studio of Silver Spring, Inc., is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business formerly located at 934 Ellsworth Drive, Silver Spring, Maryland.

Respondents Victor F. Horst and Edward Marandola, also known as Edward Mara, are individuals and are officers of all the corporate respondents. They formulated, directed, and controlled the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Respondent Victor F. Horst's business address is the Racket Club, 7930 East Drive, Harbour Island, Miami

Beach, Florida. Respondent Edward Marandola, also known as Edward Mara, maintains his business address at 9 West Washington, Chicago, Illinois.[3]

2. The individual respondents are now, and for some time last past have been, engaged in the operation of dance studios and in the advertising, offering for sale, and sale of courses of dancing instruction to the public. The corporate respondents for some time last past have been engaged in the operation of dance studios and in the advertising, offering for sale, and sale of courses of dancing instruction to the public.[4]

3. In the course and conduct of their business as aforesaid, respondents for some time last past have caused their advertising matter to be published in newspapers of interstate circulation and their promotional materials to be sent or otherwise conveyed to various prospective customers residing in the States of Maryland and Virginia and the city [of Washington in] of the District of Columbia. Advertising matter, contracts, letters, checks or other written instruments and communications have been sent and have been received between the respondents at their former places of business located in Washington, D.C., and in various other States of the United States. In addition, written communications and instruments, including payroll records, contracts, payment records and other documents, have been pased between the aforesaid studios and a bookkeeping firm located in the State of Florida, owned by the individual respondents. As a result of said interstate advertising and promotion and as a result of said transmission and receipt of said written instruments and communications, respondents have maintained a substantial course of trade in said courses of dancing instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.[5]

4. In the course and conduct of their aforesaid business, respondents have made certain representations in newspaper advertisements, and by other means, including social security number contests, "special selection" offers, and "Can You Spell" contests, in which the winner is awarded a gift certificate entitling him or her to a specified number of Arthur Murray lessons purportedly worth from $35–$65. The respresentations made in newspaper advertisements have included those which relate to special or introductory offers purporting

[3] Paragraph One of the complaint admitted by stipulation between counsel at Tr. 98–103.

[4] Paragraph Two of the complaint admitted by stipulation between counsel at Tr. 103.

[5] Paragraph Three of the complaint admitted by stipulation between counsel at Tr. 103–104.

to furnish the first lessons of a course of dance instruction or a short course in dancing either at a reduced price or free of charge.

Typical and illustrative, but not all inclusive, of such representations made by respondents are the following:

CAN YOU SPELL

WIN A $65.00 DANCE COURSE IF YOU CAN FIND THE MISSPELLED WORDS

* * * * * * *

Arthur Murray's is making this amazing offer to show some lucky winners the fun and good times to be had with them. The winners will receive a $65.00 Dance Course at the exciting Arthur Murray Studio

* * * * * * *

WIN PRIZES WORTH

$300 $250 $200 $150 $100 $75

PLAY THE EXCITING NEW *SOCIAL SECURITY* GAME

WINNERS EVERY WEEK

SOCIAL SECURITY GAME RULES.

Every week there will be WINNERS in each prize category.

The winning number will be selected from among social security numbers sent to us. . . .[6]

5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication, that:

(1) Said contests are based on abilities and skills of the contestants or upon chance and that a winner will be chosen on one of these bases.

(2) The winner of said contests will receive a gift certificate worth a stated amount or, either without charge or at a reduced price, a *bona fide* course of dancing instruction or a specified number of *bona fide* dancing lessons.[7]

6. In truth and in fact:

(1) Said contests are not based on skills or abilities of the contestants or upon chance, nor are winners chosen on any of these bases. The purported contests are so simple of solution or the winning thereof so easy, as to remove them from the categories of competition, skill, or special selection, and are such that substantially everyone, if not all, can qualify and win. Rather the purported

[6] Paragraph Four of the complaint admitted by stipulation between counsel at Tr. 104–105.

[7] Paragraph Five of the complaint admitted by stipulation between counsel at Tr. 106.

quizzes, puzzles, and contests are designed to attract members of the purchasing public for the purpose of obtaining leads to prospective purchasers of dance instruction.

(2) The winners of said contests do not receive a gift certificate worth the stated amount, or a *bona fide* course of dancing instruction or a specified number of *bona fide* dancing lessons. Although they receive some dance instruction in the beginning of the specified time, the balance of the course is devoted to salestalk designed to induce the purchase of further dancing lessons or the signing of a long term dancing instruction contract.

Therefore, the statements, representations and practices as set forth in Findings 4 and 5 hereof were and are false, misleading and deceptive.[8]

7. In the course and conduct of their aforesaid business, respondents have made certain representations on postal cards sent through the United States mail.

Typical and illustrative, but not all inclusive, of such representations are the following:

Your Telephone Number was selected today, and this entitles any adult to a Wonderful Gift, fully paid for by our Advertising Department. . . . No obligation or charge to you.

Please call *783–0880* between 3:00 p.m. and 9:00 p.m., Monday through Friday, to tell us the name and address of the person entitled to the gift.[9]

8. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented, directly or by implication, that the recipient has been selected to receive a valuable and unconditional gift.[10]

9. In truth and in fact the recipient has not been selected to receive and will not receive a valuable or unconditional gift. After dividing the local telephone directory into certain sections, respondents' representatives send cards to each name listed therein, for the purpose of obtaining leads to prospective purchasers of dancing instruction. The recipient of respondents' "gift" is lured into one of respondents' studios under the guise of receiving a "dance certificate" supposedly entitling him to a number of free dancing lessons. Instead, he is thereupon subjected to a sales talk to induce the purchase of a course of dancing instruction.

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[8] Paragraph Six of the complaint admitted by stipulation between counsel at Tr. 106–107.

[9] Paragraph Seven of the complaint admitted by stipulation between counsel at Tr. 107–108.

[10] Paragraph Eight of the complaint admitted by stipulation between counsel at Tr. 108.

Therefore, the statements and representations as set forth in Findings 7 and 8 herein were and are false, misleading and deceptive.[11]

10. In the course and conduct of their aforesaid business, respondents have made representations concerning adult social clubs in newspaper advertisements appearing in the Washington, D.C., area of which the following appearing in the pictured advertisements at pages 7, 8 and 9 of the complaint are typical and illustrative, but not all inclusive thereof.[12]

11. By and through the use of the aforesaid statements and representations, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the Party Time Club and the Holiday Club were *bona fide* adult social clubs offering members a program of activities such as daily and weekly social events and gala night club parties.[13]

12. In truth and in fact, the Party Time Club and the Holiday Club were not *bona fide* adult social clubs offering members a program of activities such as daily and weekly social events and gala night club parties. These clubs were devices used as a means of obtaining the names of prospective students and of luring prospects into the studios where the sales presentation for dancing instruction purchases may be made. Unless a member contracted to purchase a substantial amount of dance instruction, usually between $450–$5.000, there were no activities in which he might participate irrespective of any club registration which he may have paid.

Therefore, the statements and representations as set forth in Findings 10 and 11 hereof were and are false, misleading and deceptive.[14]

13. In the course and conduct of their aforesaid business, respondents, directly or through their representatives and employees, have used various unfair deceptive techniques and practices as a means of selling initial or supplemental courses of dance instruction. Typical and illustrative, but not all inclusive, of such techniques and practices are the following:

(1) The use of sham "dance analysis tests" for the alleged purpose of evaluating the student's ability, progress or proficiency, when in fact all students and prospective students are given the same test results regardless of dancing ability, aptitude or proficiency.

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[11] Paragraph Nine of the complaint admitted by stipulation between counsel at Tr. 108–109.

[12] Paragraph Ten of the complaint admitted by stipulation between counsel at Tr. 109.

[13] Paragraph Eleven of the complaint admitted by stipulation between counsel at Tr. 109.

[14] Paragraph Twelve of the complaint admitted by stipulation between counsel at Tr. 109–110.

(2) Respondents represent to students or prospective students that upon completion of a given course of dancing instruction the student will have achieved a specified standard of proficiency, whereas, in fact, before the given course of dance instruction is completed and before the specified standard of proficiency has been achieved, the prospect or student is subjected to further coercive sales efforts toward the purchase of additional instruction in dancing.

(3) The use of "relay salesmanship," involving successive efforts of a number of different Arthur Murray representatives who, in a single day by force of number and unrelenting sales talks, and aided occasionally by hidden listening devices monitoring conversation with the prospect or student, attempt to persuade and do persuade a lone prospect or student to sign a contract for dancing instruction.

(4) The use of intense, emotional, and unrelenting sales pressure to persuade a prospect or student to sign a contract obligating such person to pay for a substantial number of dancing lessons at substantial cost without affording such person a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved. Such contracts often provide for more than 100 hours of dancing instruction with a cost to the prospect or student in excess of $1,500, and such person is insistently urged, cajoled, and coerced to sign such a contract hurriedly and precipitately through the use of persistent and emotionally forceful sales presentations which are often of several hours duration.

Therefore, these statements, representations and practices as hereinabove set forth were and are unfair and deceptive.[15]

The evidence of record discloses the following as to:

(1) *The sham "dance analysis tests."*

Persons responding to the various advertising and promotional devices disseminated by respondents or prospective students coming to the studio other than in response to such advertising and promotional material were directed to studio personnel known as "analysts" (Tr. 820, 826, 918). The function of the analysts was to give the prospect a test allegedly for the purpose of evaluating the prospect's initial dancing capability (Tr. 826–827). In reality, the analyst would be reciting from an elaborate script from which the analyst was required to memorize quotations to be used on each and every prospective student (Tr. 820; CX 58 A–58 B).

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[15] Paragraph Thirteen of the complaint was admitted by the stipulation between counsel at Tr. 110–112. Upon the reopening of the case for further evidence, counsel for the respondents over objection by complaint counsel made a disclaimer of the stipulation as to Paragraph Thirteen. See Tr. 358–362, 373–374, 474–480, 529–539, 1327–1328. Absent the stipulation, however, the evidence herein introduced by complaint counsel amply supports the allegations of the said paragraph.

After approximately one-half hour of purportedly evaluating the prospect's dancing ability, the analyst would introduce the prospect to a dance studio employee known as a supervisor (Tr. 827). The function of the supervisor was to sell the prospect a moderately expensive dance instruction program (Tr. 896). Once the prospect purchased a dance instruction program, the new student would be assigned to an interviewer or junior who would schedule the student for the four hour junior procedure (Tr. 828; CX 59 A–59 H).

During the four hour junior procedure, the interviewer would attempt to find out personal background information which would form the basis of an emotional appeal to sell instruction (Tr. 839). Mr. David G. Crocco, a former interviewer at respondents' studio in Baltimore, Maryland, testified that he was able to discover the prospect's background by responses to questions posed to the prospect concerning her "social life," "contacts," "attitudes toward people" and "attitudes toward dancing" (Tr. 838). This fact finding was facilitated by having the prospect fill out a background questionnaire (Tr. 847, 855).

The interviewer prepared a plan of instruction for the individual and introduced the student to a number of dance steps which had to be mastered and demonstrated to the satisfaction of the supervisor prior to approval of the dance instruction program (Tr. 847–849, 853–862). The approval test was allegedly given to determine whether the student could achieve the planned dance standard within the hours set forth by the interviewer.

Upon being advised of passing the approval test, the student would be taken into the "closing room" to secure an executed contract. Mr. Crocco described the physical and mental appearance of the students at closing as follows:

> Most of them were emotionally drained at that time. I had built up the test to such an importance in the prospect's mind that they often told me it had assumed the importance of an appearance before a judge and jury. (Tr. 869.)

At this high emotional state, the student was persuaded to purchase dance instruction. The amount of the contract would depend on the finances of the student which were ascertained during the junior procedure. The aim of the studio was to sell the student the largest possible program (Tr. 874).

Students were also given alleged dance analysis tests at other times during the course of instruction, such as prior to a proposed extension of an existing dance instruction program or as a prerequisite to qualifying to be a member of respondents' purportedly elite clubs respectively termed the "500 Club" and the "Tiffany Club"

(Tr. 373, 375, 378, 395, 437, 471–472, 500, 506, 658, 703, 853, 1124, 1235). Messrs. Crocco and Perry S. Gregory both former employees of respondents' dance studios, described such tests as a "sham" and "of no importance" (Tr. 853, 1124). Mr. Marandola advised his employees that "nobody flunks" the tests (Tr. 1126).

It is noted that respondents' use of sham "dance analysis tests" is to be prohibited by identical language in Paragraph 6 of the order to cease and desist proposed by complaint counsel and Paragraph 6 in the order to cease and desist proposed by counsel for respondents. This paragraph of the order reads as follows:

> 6. Using "dance analysis" tests or any other device purportedly designed to evaluate dancing ability, progress, or proficiency when such test or device is not so designed and so used; or misrepresenting in any manner a student's or prospective student's dancing ability, or the progress made or proficiency achieved by a student during the course of or as a result of taking respondents' courses of instruction.

(2) *The sales of additional dance instruction before the current contracted for course of instruction is completed.*

The twenty-eighth proposed finding by complaint counsel asks for a finding that:

> 28. Respondents have regularly and systematically obtained dance instruction contracts from students who had outstanding contracts with untaught hours of dance instruction.

The reply by counsel for the respondents to this proposed finding states:

> While respondents have obtained contracts from students who had contracts outstanding, the agreed-to order makes such further contracts unconditionally cancelable.

The controversy between respective counsel arises over the modification of Paragraph 11 in the order to cease and desist submitted by complaint counsel in their proposed findings of fact filed June 5, 1970. Respondents' reply filed June 19, 1970, contains in Appendix A a letter from complaint counsel dated August 29, 1969, forwarding a draft of a proposed Paragraph 11 to be adopted in the non-contested provisions of the proposed order to cease and desist agreed upon between respective counsel. This provision was adopted in complaint counsel's brief before the hearing examiner filed November 18, 1969, and in the brief of counsel for the respondents filed December 8, 1969.[16] The same provision is also submitted in the proposed order to cease and desist in the respondents' Proposed Findings of Fact and Brief filed June 8, 1970. The provision as originally agreed

[16] Tr. 113–121 of the prehearing conference on November 5, 1969.

upon between respective counsel will be adopted in the order to cease and desist hereinafter being entered.

It will here be further noted that complaint counsel have also departed from the form of other of the noncontested provisions agreed upon and further have submitted several new provisions in their proposed order to cease and desist which are not related to the limited purpose for which the proceeding was reopened.[17] The paragraphs in questions are 1, 10, 12, 13, 14, 15, 18 and 19. Paragraphs 1, 10, 18 and 19 will be adopted in their original agreed upon form in the order to cease and desist hereinafter being entered. New Paragraphs 12, 13, 14 and 15 will be rejected. It will be observed as to proposed new Paragraphs 12 and 13 that the complaint makes no allegation nor do the terms therein set forth find adequate record support.[18] As to new proposed Paragraph 14 the complaint contains no allegation as to such a limitation and it is also apart from the $1,500 limitation herein specifically litigated. The same can also be said as to the proposed new Paragraph 15 for inclusion in the order to cease and desist being entered.

(3) *The use of "relay salesmanship."*

The use of "relay salesmanship" involved the consecutive sales efforts of a number of different Arthur Murray representatives who by force of number and continuing sales talks attempted to persuade and did persuade prospective and actual students to sign contracts for dance instruction. Hidden listening devices were utilized by respondents to assist in persuading prospective and actual students to execute dance instruction contracts (Tr. 861–862, 888, 1357). "Relay salesmanship" was a common device used by respondents to procure dance instruction contracts from prospective and actual students (Tr. 379–382, 506, 897–898, 1235–1236).

It is noted that respondents' use of "relay salesmanship" is to be prohibited by identical language in Paragraph 8 of the order to cease and desist proposed by complaint counsel and Paragraph 8 in the order to cease and desist proposed by counsel for the respondents. This paragraph of the order reads as follows:

> 8. Using in any single day "relay salesmanship," that is, consecutive sales talks or efforts of more than one representative to induce the purchase of dancing instruction.

(4) *Respondents' sales pressures relating to the entry into dance instruction contracts aggregating in excess of $1500 owing at any one time.*

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[17] See pages 1–6 of respondents' reply filed June 19, 1970.

[18] Proposed Paragraph 13 appears intended to correspond with Section 1812.97 of Title 2.5 of the California Civil Code entitled Contracts for Health or Dance Studio Services.

The first complaint witness a divorcee age 57 at the time period herein concerned [19] testified at length as to the various representations made to her to induce her to join the respondents' 500 Club and the sales pressures exerted to cause her to join, together with the excuses made for the refusal of the allowance to her of any time for consideration of the financial obligations involved. A particular inducement according to the witness was that "if I joined the 500 Club they would include at no extra expense a trip to Acapulco with the staff, with my teacher going along as my escort, for a wonderful week in Mexico." (Tr. 377–382.) According to the witness she paid out approximately $11,000 to the respondents during the course of the year 1964 (Tr. 387–390).[20]

The second complaint witness a divorcee age 47 at the time period herein concerned, testified that from the first dance instruction contract with the respondents in March 1964 to her last in August 1965 she had signed for 696 hours of dance instruction and paid a total amount of from $12,000 to $13,000 (Tr. 468–469 and CX 15–CX 27). The witness quite vividly described her sales pressure ordeal and the results obtained by the respondents (Tr. 482–484, 499–517, 587). As regard CX 19 in the amount of $1,332.80 the witness recognized that it provided for "a weekend trip to the World Fair, with dinner at the Tavern of the Green and the Roseland Ballroom dancing * * * I was importuned by my instructor to do this. As with all the other importunings, I agreed." (Tr. 482.) According to the witness her trip expenses and those of her instructor were included in the contract amount paid (Tr. 483–484).

As to CX 26 signed August 24, 1965, in the amount of $6,377 and paid for in cash, the witness entered a strong protest as to the sales pressures causing her to sign such contract for a 500 Club membership which the respondents refused to cancel (Tr. 524–527 and CX 29 and 30). As to CX 20 in the amount of $1,803 the witness also recognized it provided for membership in respondents' 500 Club and inclusion in its social activities (Tr. 486). Under cross-examination the witness testified "As a rule of thumb, I would say that every contract for a sizeable sum was entered under extreme pressure or what I interpreted as extreme pressure. To me it was extreme pressure" (Tr. 547) and "I did not of my own volition sign any of these sizeable contracts without extreme pressure being exerted upon me. I resisted every step of the way." (Tr. 548.)

The third complaint witness a widow age 69 at the time period concerned entered into 7 dance contracts with the respondents be-

[19] See tabulation of witnesses in order of appearance at page 410, *supra*.

[20] See CX 1–14 and Tr. 363–364, 373–382, 394–400.

tween December 1964 and December 1965 which totaled approximately $17,820 (Tr. 613–614 and CX 33-CX 39). At Tr. 620 the witness testified that CX 34 entered in December 1964 in the amount of $8,033.50 represented $6,033.50 for dance lessons and a $2,000 overcharge for a sponsored trip by the respondents to Hawaii. Commission Exhibit 34 discloses on its face that it was for 350 hours of dance instruction and a membership in the 500 Club. Commission Exhibit 34 bears the morbid statement "Hours may be willed in case of death." As to entering into this contract the witness testified "Well, it was hard not to sign on the dotted line, because I was more or less pressured into doing it. It was to take a trip to Hawaii, plus the 350 hours of lessons. And it was a combination of wanting to go, but not wanting to buy as many hours as that." (Tr. 620.) As to the "Hours may be willed in case of death," the witness testified "Well, I had been very ill, very bad operation, a year and a half or so before that, and didn't really know whether I would get through with these number of hours. So I was determined that I would at least be able to will them to somebody. And I specified that I wouldn't sign unless I did and they wrote that in." (Tr. 621.) As to the $2,000 overcharge the witness testified "It paid my way, a teacher's way, an escort to Hawaii, and back, plus the expenses for meals and hotels and entertainment. It covered everything except some small items." (Tr. 625.) Testifying as to another of the contractual arrangements with the respondents involving a European trip, the witness stated that the $4,734.10 paid by her represented $2,734.10 for 150 hours of dance instruction and a $2,000 overcharge covering the expense of the trip for the teacher and herself. The witness stated the 150 hours of dance instruction was not used on the trip and when asked why she signed up for additional hours when she already had 467 unused hours outstanding, the witness replied "Well, its the same story, to go on the trips they required to buy some hours. That is what I was told, that if I went on the trip I would have to purchase this amount of hours." (Tr. 632–633.)

The fourth complaint witness a widow age 62 at the time period herein concerned, testified to having entered into 8 different dance contracts between January 1967 and November 1967 with the respondents. The contracts totaled approximately $11,000 which the witness testified to having paid (Tr. 669–670 and CX 40–CX 47). Her testimony in such connection is succinct and graphic "No matter how long you danced, they always said you weren't good enough and you needed all of these lessons. So I had to keep on paying money to take more lessons." (Tr. 670.) Commission Exhibit 45 in the

amount of $4,428 provided for membership in the respondents' 500 Club. As to this contract and why she signed it, the witness stated "I just get kind of hypnotized by the whole thing. And I kept on wanting to go on." (Tr. 678.)

The witness also testified to having signed still a ninth contract in November 1967 in the amount of $7,740 paid by check (CX 48) on which she stopped payment. The circumstances surrounding the induction of the witness in respondents' Tiffany Club and the stoppage of payment on the $7,740 check are set forth in the testimony of the witness at Tr. 685–688, 695. Further see, Tr. 688–693 and CX 49. As to the sales pressures directed by respondent Horst in connection with the Tiffany Club see Tr. 394–399, 447–451.

A fifth complaint witness and a divorcee for some 29 years pasts testified as to her entry during October 1963 into CX 50, a 500 Club dance contract, calling for the payment of $4,300 to the respondents. At Tr. 700–701 the following appears:

> Well, at that time, I had been asked to, invited to join the 500 Club, which involved 500 hours and 12 special parties at the studio—I mean with studio teachers. But I found that I couldn't possibly raise that amount for 500 hours, which was about $7,000. So I decided I couldn't do it. Then I came into the studio and I was asked to have a talk with Mr. Mara. So he talked to me in one of the small offices and tried to persuade me and impress on me how, what a wonderful opportunity this was and that I would be very foolish not to do it and I would be sorry for the rest of my life if I didn't sign up.
>
> I tried to say no and get out of it and I got very, very upset because I got frightened at paying out all that money and having nothing to fall back on. I remember I started crying and couldn't stop crying. All I thought of was getting out of there.
>
> So finally after—I don't know how much time, Mr. Mara said, well, I could sign up for 250 hours, which was half the 500 Club, which would amount to $4300.
>
> So I finally signed it, because I was—
>
> * * * * * * *
>
> HEARING EXAMINER SCHRUP: Go ahead. Finish your statement.
>
> THE WITNESS: I had entered into that contract for $500—500 hours, I mean—at the end of September before I actually found out whether I could raise the money. After that, I tried to raise the money from the bank and found I couldn't get a loan for that amount and I didn't have any savings and I had to get a bank loan to pay for it. That was when I went back and asked him to cancel that contract. But Mr. Mara said that he couldn't cancel it, but they did agree to make it just half of it, the 250 hours.
>
> HEARING EXAMINER SCHRUP: The Mr. Mara you speak of, do you recognize him as being present in the hearing room?
>
> THE WITNESS: Yes.

See the further testimony of the witness as to the "closing" of her contract with respondent Mara at Tr. 706 and the corroborating

testimony of the witness Gregory in this and other contract "closings" of like nature at Tr. 1124–1128.

The sixth complaint witness age 70 at the time period herein concerned, testified as to the circumstances of her joining the respondents' 500 Club (Tr. 775–784). Commission Exhibit 54 is the letter of recommendation by her instructor to Mr. Mara and Staff and CX 55 is the congratulatory letter to the witness from Mr. Mara on her acceptability. Commission Exhibit 53 is her 215-hour contract in the amount of $4,000 entered into on September 20, 1963, and paid with a $100 down payment, $2,700 on September 24, 1963, and the balance of $1,200 in 60 days according to the witness (Tr. 786). The witness further described the circumstances of her entry into another dance instruction contract during September 1964 originally proposed to her as being for 100 hours as a cost to her of $2,600 but reduced to 50 hours at a term price of $1,332.80 when she demurred to signing. The witness testified she finally settled for and paid a cash price in the amount of $1,248.84 (Tr. 787–790). The contract was for additional dance instruction hours for a proposed exhibition movie including the witness allegedly to be used by the respondents on TV plus a sponsored weekend dance student group visit to New York and the World's Fair with dance instructor escorts. The witness stated as to payment of the expenses of the instructor escorts, "I presume it came out of what we paid for these contracts." (Tr. 791.)

The seventh complaint witness who was single and age 42 at the time period herein concerned, testified as to the circumstances surrounding her signing and paying for CX 64 dated January 4, 1965, being a Holiday Club membership purchased for $438 and CX 65 dated January 9, 1965, in the amount of $5,118.18 for a 500 Club membership (Tr. 1232–1242). At Tr. 1236 the witness testified as to her entry into the 500 Club:

Q. Can you tell us why you characterized it as an unpleasant experience?

A. First of all, I did not want the lesson, and I think it was unpleasant because I had three, maybe four, people, as I say, pressuring me to buy something by a certain time, and I do recall asking that I be let to think, let me think it over, and I was told that the contest would end at 6 o'clock or something to that effect and if I did not sign by a certain time it would be too late.

Q. Did you sign by that time?

A. I think we got under the deadline by maybe a minute or two.

Under cross-examination the witness reiterated her direct testimony that she signed dance instruction contract CX 65 under ad-

verse circumstances and that she had wanted time to think it over. At Tr. 1299–1300 the following appears in this connection:

Q. I am now asking you if your wish had been granted, how do you believe this would have affected that contract and your signing of it?

THE WITNESS: If I had been given time to think, I would not have signed that contract.

At the hearing of April 7, 1970, a ruling was entered upon the record that the remaining dance studio customer witnesses designated by complaint counsel who would be cumulative to the testimony of the preceding dance studio customer witnesses called by complaint counsel and accordingly that the testimony of the said remaining witnesses would not be heard (Tr. 1320–1325).

Contested Paragraph 9 proposed for inclusion in the order to cease and desist to be entered herein reads as follows:

9. Entering into one or more contracts or written agreements for dance instruction or any other service provided by respondents' dance studios when such contracts or written agreements obligate any party to pay a total amount which at any one time exceeds $1,500.

It will be noted that the above prohibition is not limited to dance instruction alone but includes any other service provided by respondents' dance studios.

14. Mr. Frank Regan, professional dance instructor and consultant to Arthur Murray, Inc.,[21] testified as a defense witness and explained the Arthur Murray dance instruction brochures entitled "Bronze Intermediate and Bronze Medal Standard" (RX 1); "Silver Intermediate and Silver Medal Standard" (RX 2); "Gold Intermediate and Gold Medal Standard" (RX 3); "Gold Bar Intermediate and Gold Bar Medal Standard" (RX 4). According to the witness the Bronze type instruction brochure (RX 1) embraces the popular social dances, such as the fox trot, waltz, swing, morang, rhumba, cha-cha, tango and samba. The witness stated a degree of proficiency in these dances to the extent that one can execute them in time to the music and lead a partner efficiently on the floor represents the Bronze Medal Standard. As to the hours of dance instruction that might be necessary to be taken, the witness stated it would be somewhere in the region of about 25 to 30 hours to perform each dance to a level where one might be socially adequate on the dance floor (Tr. 1004). The following appears at Tr. 1010–1011:

Q. Mr. Regan, you gave the example before of the young lady that might come in and ask you to teach her the waltz because she is planning to get

[21] The expert qualifications of Mr. Regan appear at Tr. 986–1000 and his connection with Arthur Murray, Inc., appears at Tr. 1022–1023.

married at some time in the future. Is it typical for a student to want to learn how to dance to come in and ask about only one dance, or are the students typically interested in learning a number of dances when we are speaking about this social level of dancing?

A. Yes, yes, it is quite a common occurrence, I would say.

Some people come in who perhaps just want to be able to dance a little bit of foxtrot because that is all that is played at their country club affairs, you know. Or perhaps they have been exposed to some of the Latin rhythms and in their dancing environment cannot execute them, so they want to learn a little cha-cha, rumba, samba, whatever. Or perhaps they just come in and want to learn discotheque dancing.

The witness testified that the "Bronze Intermediate and Bronze Medal Standard" as employed by both the Arthur Murray Studio system and other dance studio systems had the same characteristics and that a pupil who could dance the Bronze Medal system proficiently could go into another school, not an Arthur Murray School, and dance with pupils who were proficient in their own Bronze Medal system (Tr. 1013). The witness stated that he personally could get a student with average ability satisfactorily through a Bronze Medal test in less than 100 hours of dance lessons but that he would not attempt to do so in a 50-hour period. A 50-hour time period according to the witness would result in only a minimum passing grade and as to a 75-hour time period the witness stated "Well, you see, you can pass an examination with a 65 percent score or pass it with a 90 percent score" (Tr. 1093–1094).

In explaining what RX 2 the next higher Silver Intermediate and Silver Medal Standard of dance instruction seeks to accomplish, the witness stated the following at Tr. 1025:

A. We now get out of the realm of social dancing and we now start to involve ourselves in something that is not social dancing as such, but is really in the Silver Medal Standard, the beginnings of an art form which eventually will evolve through the medium of the Gold Medal, Gold Bar and Gold Star, into an art form on a very high level.

We are now discussing the type of dancing that is executed by couples who compete in competitions, not dancing that is suitable for the night club floor, but dancing that is geared toward competitive or exhibition style dancing, dancing of a more extroverted, interpretive nature.

Mr. Perry S. Gregory, a dance studio operator and professional dance instructor,[22] formerly employed at respondents' Washington Dance Studio, testified that his present studio operated under student dance instruction contracts not in excess of 50 hours at one time and that depending on the ability of the student, from 50 to 200 hours would allow sufficient time to teach the Bronze Medal Standard of

[22] Mr. Gregory's expert qualifications appear at Tr. 1110–1117.

dancing proficiency. According to Mr. Gregory 200 hours would represent a very slow learner and the student average would be between 125 and 150 hours. Mr. Gregory further testified that the method of payments for dance lessons would not affect his ability to teach a student to achieve a Bronze Medal Standard of proficiency. (Tr. 1135–1136, 1139.)

Mr. Billy Orvis Shelton, a dance studio operator and professional dance instructor,[23] formerly employed at respondents' Washington Dance Studio, testified that respondents' so-called 500 Club operation was merely a money making operation. The witness described the procedure used by the respondents to induce students to join this allegedly exclusive membership club "was simply to enroll as many people as you could, get the cash as fast as you could, with no real regard as to what the person would get for the amount of money they were spending. The test itself was not a real test." (Tr. 1174–1175.)

Mr. Shelton testified to the following at Tr. 1184:

Q. Then, would it be accurate for me to say that a student who has agreed to take 25 hours towards a Bronze level proficiency—that that would not affect your ability to teach him to reach that ultimate proficiency?

A. No, we would teach them each hour as though they were working towards the Bronze.

Mr. James Graham, a Washington, D.C., dance studio operator and professional dance instructor,[24] formerly employed at respondents' Washington, D.C. Dance Studio[25] testified that the financial arrangement or method of payment by a dance studio customer would not affect the ability of the student to achieve the Bronze Medal standard of proficiency nor the effectiveness of the dance instruction being given. Mr. Graham's dance studio would accept customers willing to contract for only 25 hours of dance lessons at one time (Tr. 1537–1540). Mr. Graham's dance studio overall contracts average around $400 to $500 owing by a student at any one time with the average sale being $347, some more some less, and according to the witness "It is whatever the persons wants to take." (Tr. 1542, 1594.) The studio had less than ten contracts outstanding on which the students were obligated in excess of $1500 and these were special contracts combining the Bronze and Silver standards. (Tr. 1542–1543, 1592–1594.)

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[23] Mr. Shelton and the witness, Mr. Gregory, are partners in the operation of an Arlington, Virginia, dance studio.

[24] Mr. Graham's expert qualifications appear at Tr. 1515–1523.

[25] Mr. Graham's comments on his employment appear at Tr. 1529–1530 of his testimony.

The studio sponsored weekend trips to dance contests and in 1969 a 2-week trip to England. The students paid their own expenses and Mr. Graham paid the accommodations and expenses of the instructors for the weekend contests and the international trip. (Tr. 1543, 1595.) According to Mr. Graham the students did not have to purchase additional hours of instruction for such purposes, stating "No, they already had those" (Tr. 1543).

Mr. Graham testified that the hourly rate for dance instruction lessons at his studio was approximately $20 and that the hourly rate decreases as the student progresses from the Bronze standard to the higher standards of Silver, Gold Medal, Gold Bar and so on because they have been continuous customers and thus get a rate reduction. According to Mr. Graham a student being taught the Bronze program would not currently also be solicited by the studio to enroll in the higher Silver standard program (Tr. 1570–1571). At Tr. 1571–1572, the following colloquy occurred:

HEARING EXAMINER SCHRUP: Mr. Graham, in your opinion, would the course of instruction which encompasses just the Bronze category, would that type, give a person sufficient dance proficiency for a normal everyday social life?

THE WITNESS: Yes. Bronze would. It would not be exciting dancing; it would not be professional-looking dancing or exhibition-type dancing, but good, comfortable, all-around competent dancing anywhere in the world. That is what we represent, a solid foundation of dancing.

Mr. John Saionz, a dance studio operator and defense witness, testified that he was formerly associated with the Arthur Murray, Toledo, Ohio, school of dancing about 10 years ago and since then had purchased three Fred Astaire franchised schools of dancing located in New York City, White Plains, New York, and Philadelphia, Pennsylvania (Tr. 1769–1770).

This defense witness testified that approximately 90 percent of the students entering his studios came primarily for dance instruction and about 10 percent additionally came to attend social activities (Tr. 1784). The witness estimated about 40 percent of his dance studio contracts were in excess of $1,500,[26] and that there was a self-imposed contract limit of $5,000 (Tr. 1799). The remaining 60 percent of dance studio contracts would not be anywhere near $1,500 (Tr. 1801–1802) and according to the witness most of his studio customers stopped half-way through the Bronze standard category.

[26] The record does not show the acts and practices of the studios of the witness in obtaining dance instruction contracts in excess of $1,500 to be the same as the unfair and deceptive acts and practices employed by the respondents in such regard. (Tr. 1834–1844.)

Most students interested in fully achieving the final Bronze standard of dancing proficiency would buy and pay for successive 50-hour dance lesson units rather than pay for all dance lessons as some others have in advance, but in making part payments according to the witness they did, however, obtain logical units for completion of their dance instruction such as would be comparably obtained by successive school semesters (Tr. 1908–1909). The monetary advantage to a student in purchasing a full dance instruction program rather than a contract for a lesser amount of hours would be a decrease in the hourly rate charged for the fuller program. (Tr. 1891, 1904–1905.)

Mr. Ward Thomas Chapman, a dance studio operator and defense witness, testified to being an Arthur Murray, Inc., franchise holder operating dance schools in Kansas City, St. Louis, Phoenix and Scotsdale, Arizona (Tr. 1913). The witness stated he was the largest operator in the Arthur Murray chain (Tr. 1960). Mr. Chapman testified that his studios tried to sell the new student being initiated a program of about 40 to 45 hours of dance instruction not to exceed $1,000 in cost, and that about half way during the course of such instruction an attempt would be made to sell a Bronze program (Tr. 1932–1933). According to the witness to teach a beginner the entire Bronze program would run between 150 hours for a person of excellent ability to about 350 hours for a person with poor ability (Tr. 1934).

The witness stated his studios do not have a sliding rate scale but a flat rate of $22 per hour of instruction and that the purchase cost of the entire Bronze program would run somewhere between $3,200 to $7,000 depending on the individual and based on private hours of instruction (Tr. 1934–1935). The witness testified that a 50-hour unit of instruction would cost the student $1,100 (Tr. 1937), and that out of a student body of 1,000 a little over 100 in number would have entered into dance contracts in excess of $1,500 [27] and the balance of approximately 900 student contracts remaining would range from $55 up to $1,000 (Tr. 1949–1950). When questioned as to student customers who cannot afford to buy a full Bronze program and pay in advance, the witness testified at Tr. 2019–2020:

A. The fortunate ones we are talking about are roughly 28 to 35 people a year that buy a bronze program and pay cash, and the rest of them are not

[27] Under cross-examination by complaint counsel the following appears at Tr. 2001:

Q. During your testimony several questions have been propounded relating to a $1500 contract. Are you aware that this $1500 contract limitation or provision has no bearing upon your operations at this point?

A. Yes, I am.

that fortunate, they buy it in many stages or don't buy it at all and the school is geared to service all types of dancing, not just the people that can afford the medal programs.

His dance studios according to the witness established a 300 Club to encourage enrollment in the Bronze program and still further dance instruction. Club membership entitles the students to certain privileges paid for by the studios. These include hotel dance parties every 6 weeks for which the studio pays the first two years after which the students each contribute $10 per year in club dues. According to the witness the cost of these hotel dance parties are not incorporated in the charge to the students for dance instruction but the student must have enrolled for a full Bronze program to be a 300 Club member. The witness estimated that if the students were paying for these parties on their own, it would cost each student about $100 the first two years. (Tr. 1938–1939.)

The witness testified his dance studios sponsored student vacation trips to glamorous vacation places where dancing is available—Puerto Rico, Hawaii and coming up were Mexico City, Guadalajara and Puerto Vallarta. The trip is elective to the student. The student pays the entire amount charged by the studio to him or her which includes the expenses of the escort instructor plus a week's salary paid by the studio to the instructor for such service. (Tr. 1968–1971.)

15. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of dancing lessons of the same general kind and nature as those sold by respondents.[28]

16. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of dancing instruction by reason of said erroneous and mistaken belief.[29]

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over the respondents.

2. The complaint herein states a cause of action and the proceeding is in the public interest.

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[28] Paragraph Fourteen of the complaint admitted by stipulation between counsel at Tr. 112–113.

[29] Paragraph Fifteen of the complaint admitted by stipulation between counsel at Tr. 113.

3. The aforesaid acts and practices of the respondents as found in the foregoing Findings of Fact were and are to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

FOREWORD TO ORDER

In *Luria Brothers and Company* v. *Federal Trade Commission*, 389 F. 2d 847, *cert. denied*, 393 U.S. 829 (1968), the United States Court of Appeals for the Third Circuit in its opinion relative to the Commission's order to cease and desist stated in part at pp. 861–862 as follows:

In reviewing the propriety of the various provisions of the order, we are mindful of the language of the Supreme Court in Federal Trade Commission v. National Lead Co., 352 U.S. 419, 428, 77 S.Ct. 502, 509, 1 L.Ed.2d 438 (1956):

"The Court has held that the Commission is clothed with wide discretion in determining the type of order that is necessary to bring an end to the unfair practices found to exist. In *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608 [66 S.Ct. 758, 90 L.Ed. 888] (1946), the Court named the Commission 'the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.' Id. [327 U.S.], at 612–613 [66 S.Ct. at 760]. Thereafter, in *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 726 [68 S.Ct. 793, 815, 92 L.Ed. 1010] (1948), the Court pointed out that the Congress, in passing the Act, 'felt that courts needed the assistance of men trained to combat monopolistic practices in the framing of judicial decrees in antitrust litigation.' In the light of this, the Court reasoned, it should not 'lightly modify' the orders of the Commission. Again, in *Federal Trade Commission* v. *Ruberoid Co.*, *supra* [343 U.S. 470], at 473 [72 S.Ct. 800, at 803, 96 L.Ed. 1081], we said that 'if the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.' We pointed out there that Congress had placed the primary responsibility for fashioning orders upon the Commission. These cases narrow the issue to the question: Does the remedy selected have a 'reasonable relation to the unlawful practices found to exist'?"

Petitioners' contention that the language "exclusive or substantially exclusive" is too vague cannot be accepted. The order, when interpreted in light of the record, is clear and not subject to attack on that ground. It is necessarily general. Anything more specific would be subject to evasion. E. B. Muller & Co. v. Federal Trade Commission, 142 F.2d 511, 520 (6 Cir. 1944). Furthermore, the Commission's order is not required to "chart a course for the petitioner." Zenith Radio Corp. v. Federal Trade Commission, 143 F.2d 29, 31 (7 Cir. 1944).

Petitioners raise several hypothetical situations in their attack on the Commission's order. However, this avenue has been closed by the Supreme Court.

"Respondents pose hypothetical situations which they say may rise up to plague them. However, 'we think it would not be good judicial administration,' as our late Brother Jackson said in *International Salt Co.* v. *United States*, 332 U.S. 392, 401 [68 S.Ct. 12, 17, 92 L.Ed. 20] (1947), to strike the contested paragraph of the order to meet such conjectures. The Commission has reserved jurisdiction to meet just such contingencies. As actual situations arise they can be presented to the Commission in evidentiary form rather than as fantasies. And we might add, if there is a burden that cannot be made lighter after application to the Commission, then respondents must remember that those caught violating the Act must expect some fencing in. *United States* v. *Crescent Amusement Co., supra* [323 U.S. 173], at 187 [65 S.Ct. 254, at 261, 89 L.Ed. 160]." *Federal Trade Commission* v. *National Lead Co., supra*, 352 U.S. at page 431, 77 S.Ct. at page 510.

Further and as appropriately stated in the Commission opinion of April 1, 1969, in D. 8738 *In the Matter of All-State Industries of North Carolina, Inc., et al., affirmed*, 423 F. 2d 423 (1970), at page 11 [75 F.T.C. 465, 491]:

The Commission, in short, is expected to proceed not only against practices forbidden by statute or common law, but also against practices not previously considered unlawful, and thus to create a new body of law—a law of unfair trade practices adapted to the diverse and changing needs of a complex and evolving competitive system.[16] [See footnote below]

The words "or other services" contained in the preamble of the order to cease and desist being entered make the provisions of the order applicable (except the $1,500 limitation) to any other type business activities entered into by the individual named respondents. See the opinion of the Commission and final order entered February 23, 1968, in Docket 8713, *In the Matter of General Transmissions Corporation of Washington, et al.* [73 F.T.C. 399], sustained on ap-

[16] "Courts have always recognized the customs of merchants, and it is my impression that under this act the Commission and the courts will be called upon to consider and recognize the fair and unfair customs of merchants, manufacturers and traders, and probably prohibit many practices and methods which have not heretofore been clearly recognized as unlawful." 51 Cong. Rec. 11593 (1914) (remarks of Senator Saulsbury). See, *e.g.*, *F.T.C.* v. *Texaco, Inc.*, 393 U.S. 223, 89 S.Ct. 429 (1968); *F.T.C.* v. *Brown Shoe Co.*, 384 U.S. 316 (1966); *Atlantic Refining Co.* v. *F.T.C.*, 381 U.S. 357 (1965); *F.T.C.* v. *R. F. Keppel & Bro., Inc.*, 291 U.S. 304 (1934); *F.T.C.* v. *Algoma Lumber Co.*, 297 U.S. 67 (1934). In the words of Judge Learned Hand, describing the Commission's power in the field of deceptive and unfair practices: "The Commission has a wide latitude in such matters: its powers are not confined to such practices as would be unlawful before it acted; they are more than procedural; its duty in part at any rate, is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop" *F.T.C.* v. *Standard Education Society*, 86 F.2d 692, 696 (2d Cir., 1936), rev'd on other grounds, 302 U.S. 112 (1937).

peal in *Walter Dlutz* v. *Federal Trade Commission*, 406 F. 2d 227, *cert. denied*, 395 U.S. 936 (1969).

A disputatious question posed in this matter is whether or not the rescission provisions of Paragraph 10 in the proposed order to cease and desist eliminates the need for or prevents the inclusion of the provisions of Paragraph 9. The answer is that the inclusion of Paragraph 9 in the order is not to be made dependent on conjecture as to the sufficiency of the rescission opportunities of Paragraph 10 to effect an adequate cure. Paragraph 10 does not eradicate the root of the evil and comes into play only after the purposes of the respondents' unfair and deceptive acts and practices have been perpetrated. Paragraph 9 is a necessary and reasonable safeguard to forestall and stop in their incipiency the respondents' unfair and deceptive acts and practices before their purposes become fulfilled. Particularly apt under the record facts herein is the old adage—"An ounce of prevention is worth a pound of cure." [30]

As recently stated in the June 17, 1970, opinion of the Commission in D. 8810, *In the Matter of Zale Corporation and Corrigan-Republic, Inc.* [77 F.T.C. 1635, 1636]:

> The selection of an appropriate remedy, and the admissibility of evidence with regard thereto, are governed by the unlawful practices actually found to exist, and not by the allegations of the complaint. *Cf. Federal Trade Commission* v. *National Lead Co., et al.*, 352 U.S. 419, 427 (1957). An appropriate remedy is one which bears a reasonable relation to the unlawful practices found to exist. *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608 (1946).

Further, Paragraph 9 cannot be held to unreasonably impinge on the contractual rights of either the respondents or their prospective or actual student customers in the presence of the overriding public interest that an adequate protective order to cease and desist be entered in this matter. The answer to the question of whether or not the respondents' contracts in excess of $1,500 are "unconscionable" upon the facts of record herein and within the meaning of the interpretative tests to be applied under the few decided legal precedents is not necessary of being reached under the disposition of this matter hereinbefore made. Still another question arising herein was whether or not the respondents' dance studios could profitably operate under the provisions of Paragraph 9. This is beside the point. Economic feasibility does not act to insulate or excuse the respondents' chal-

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[30] For an example, see the attempt at recission by complaint witness No. 2, *supra*, at Tr. 524–527 and CX 29 and CX 30. This witness at Tr. 596 testified:

I did consult counsel. I did enter a suit. I did receive two judgments against Arthur Murray.

HEARING EXAMINER SCHRUP: Were those judgments satisfied?

THE WITNESS: No, they were not. I received not one penny.

lenged acts and practices from the requirements of the law nor allow the respondents to obtain the ill-gotten gains of their unfair and deceptive acts and practices.

ORDER

It is ordered, That respondents Arthur Murray Studio of Washington, Inc.; Arthur Murray Studio of Baltimore, Inc.; Arthur Murray Studio of Bethesda, Inc.; and Arthur Murray Studio of Silver Spring, Inc.; corporations, and their officers, and respondents Victor F. Horst and Edward Marandola, also known as Edward Mara, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, solicitation, offering for sale, or sale of dancing instruction, or other services, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or otherwise offering or conducting any quiz, contest, or other device which purports to base the selection of the winner upon skills or abilities of the contestants or upon chance, unless such are the facts.

2. Using any promotion for the purpose of obtaining leads to prospective purchasers of dancing instruction or to induce people to come to respondents' studios unless respondents disclose fully and conspicuously in each and every announcement or description of such promotion (a) that the purpose of such promotion is to induce prospective purchasers of dancing lessons to come to respondents' studios, and (b) that, once at respondents' studios, the prospective purchaser will be subjected to attempts by respondents, through their employees or representatives, to sell said prospective purchasers a course of dancing instruction.

3. Representing, directly or by implication, by means of social security number contests, "special selection offers," "Can you Spell" contests, or any other promotion offer or contest or any certificates relating thereto, or by any other method or means, that a course of dancing instruction or a specified number of dancing lessons, or any other service or thing of value will be furnished free of charge, at a reduced price, or for any price, unless the entire period or periods of *bona fide* dancing instruction or other service or thing of value is in fact furnished in every instance as represented.

4. Representing on any postal cards sent through the United States mail or in any other manner, that the recipient has been selected to receive a gift unless in every instance the gift is in

fact given without the imposition of any condition or limitation, and there is clear and conspicuous disclosure at the outset in immediate conjunction with any such representation of:

(a) The nature of the gift the recipient is to receive, and

(b) The full name and address of the offeror of the gift, and

(c) The manner in which such recipient has been selected.

5. Representing, directly or by implication, that the Party Time Club or the Holiday Club, or any other club, group or organization offers members a program of activities such as daily or weekly social events or gala night club parties, or any other activities, unless there is clear and conspicuous disclosure in connection with each offer that such activities are available only upon the purchase of a substantial amount of dancing lessons and the total cost of such lessons is disclosed.

6. Using "dance analysis" tests or any other device purportedly designed to evaluate dancing ability, progress, or proficiency when such test or device is not so designed and so used; or misrepresenting in any manner a student's or prospective student's dancing ability, or the progress made or proficiency achieved by a student during the course of or as a result of taking respondents' courses of instruction.

7. Representing, directly or by implication, that upon completion of a given course of instruction in one specific dance, a specified standard of proficiency will be achieved when, before the specified course is completed or the given standard has been achieved, the student is or will be subjected to sales efforts to induce the purchase of additional dance instruction.

8. Using in any single day "relay salesmanship," that is, consecutive sales talks or efforts of more than one representative to induce the purchase of dancing instruction.

9. Entering into one or more contracts or written agreements for dance instruction or any other service provided by respondents' dance studios when such contracts or written agreements obligate any party to pay a total amount which at any one time exceeds $1,500.

10. Entering into any contract or written agreement for dance instruction or any other service provided by respondents' dance studio unless such contracts or written agreements, regardless of the obligation incurred, shall bear the following notation in at least 10-point bold type:

"Notice: You may rescind (cancel) this contract, for any reason whatever, by submitting notice in writing of your

intention to do so within seven (7) days from the date of making this agreement.

"If you rescind (cancel) this contract, the only cost to you will be a fair charge for any lessons or services actually furnished during the period prior to rescission, and all moneys due will be promptly refunded."

11. Contracting with a student or prospective student for a specific course of dancing instruction and thereafter, prior to the completion of the given course, subjecting such student or prospective student to sales effort toward the purchase of additional dance lessons, unless:

(a) Any additional contract for lessons shall expressly state therein that such contract is subject to cancellation by such student or prospective student, with or without cause, at any time up to and including one week after the completion of the units of dancing instruction previously contracted for, without cost or obligation, except that a charge may be made for not in excess of two additional lessons furnished during such week; and

(b) Any additional contract for lessons shall expressly state that any moneys or other consideration, except as exempted in subparagraph (a) hereof, tendered to the respondents for additional dance lessons will be promptly returned when such contract is cancelled within the time period specified in subparagraph (a) hereof; and

(c) Any additional contract for lessons shall expressly state that all such units of dance lessons previously contracted for shall be used or completed prior to the commencement of the additional lessons; and

(d) Any additional contract for lessons shall expressly state the number of lesson hours remaining under the existing contract.

12. Failing to deliver to each party a copy of every contract entered into by such party providing for dancing instruction or other services.

13. Failing to deliver a copy of this order to cease and desist to all present and future employees, instructors, or other persons engaged in the sale of respondents' services, and failing to secure from each employee or other person a signed statement acknowledging receipt of said order.

14. Failing to post in a prominent place in each studio a copy of this cease and desist order, with the notice that any student or prospective student may receive a copy on demand.

15. Failing, after the acceptance of the initial report of compliance, to submit a report to the Commission once every year during the next three years describing all complaints of which respondents have notice respecting unauthorized representations, all complaints of which respondents have notice respecting representations by salesmen which are claimed to have been deceptive, the facts uncovered by respondents in their investigation thereof and the action taken by such respondents with respect to each such complaint.

OPINION OF THE COMMISSION

FEBRUARY 23, 1971

BY DIXON, *Commissioner:*

This matter is before the Commission on cross appeals of respondents and counsel supporting the complaint from an initial decision holding that respondents had violated Section 5 of the Federal Trade Commission Act.

The complaint charges four corporations and two indviduals with numerous unfair and deceptive practices in connection with the sale of dance instruction courses. The alleged unlawful conduct includes the following practices: obtaining leads to prospective purchasers of dance instruction by awarding gift certificates for such instruction either through the use of so-called "contests" in which all participants can win or by falsely representing that a person has been "selected" to receive a free course of instruction; failing to provide the full number of "free" hours of dance instruction promised but instead devoting much of the time to promoting the sale of dancing lessons; representing that certain clubs sponsored by respondents are bona fide adult social clubs when in fact such clubs are devices used to obtain leads to prospective students and to lure prospects into respondents' studios where a sales presentation could be made; using sham "dance analysis tests" where all prospective students are given passing grades regardless of dancing ability, aptitude or proficiency; using "relay salesmanship" which involves successive efforts by a number of different salesmen in a single day to persuade a prospective student to sign a contract for dancing instruction; and using "intense, emotional, and unrelenting" sales pressure to persuade a prospective student to sign a contract for a substantial number of dancing lessons without affording the prospect a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligations involved.

Answers to the complaint were filed by the respondents who averred, *inter alia*, that the corporate respondents are no longer in business. Thereafter, at a prehearing conference held on November 5, 1969, counsel for both sides entered into a stipulation of facts which encompassed allegations 1 through 15 of the complaint and, except for two of the provisions thereof, counsel also agreed upon a form of order to cease and desist. Respondents would not agree to include the words "or other services" in the preamble of the order nor would they consent to the prohibition contained in Paragraph 9 of the order to cease and desist set forth in the notice of the complaint which would prevent respondents from "entering into one or more contracts or written agreements under which a student or other party is obligated to pay a total amount which at any one time exceeds $1500."

After briefs had been filed and oral argument held, the hearing examiner on December 19, 1969, ordered that the record be closed for the reception of evidence. On January 5, 1970, complaint counsel moved to reopen the record for the reception of evidence in support of the order provision placing a $1,500 limitation on respondents' contracts for dance instruction. This motion stated in part:

> Complaint counsel will introduce evidence through consumer and expert witnesses to demonstrate the unconscionable nature of respondents' contracts in excess of $1500. Evidence will be adduced from members of the dance industry to show that $1500 is a fair balance between the practical business need of an operator of a dance studio and the equitable and fair amount which a person should be indebted for dance instruction.

The examiner granted this motion over respondents' objection and the Commission subsequently denied respondents' application for permission to file an interlocutory appeal from the examiner's order reopening the record. Hearings were then held to permit counsel supporting the complaint to introduce evidence supplementing the stipulation of facts in support of the requested prohibition against contracts in excess of $1,500.

The hearing examiner, in an initial decision based upon the stipulated facts and the evidence adduced in support of the $1,500 contractual limitation, found that the charges in the complaint had been sustained and issued his order to cease and desist. This order is the same as that originally agreed to by counsel, except that it includes the words "or other services" in the preamble and also contains the $1,500 limitation on respondents' contracts.

In their appeal from the initial decision respondents do not contest the examiner's findings or his conclusions that the challenged

practices are illegal. They address themselves only to two aspects of the order to cease and desist. The first and by far the more important of the two major issues raised by their appeal is whether the order may properly prohibit respondents from entering into contracts for an amount in excess of $1,500 for dance instruction or any other service provided by respondents' dance studios.

Respondents argue in this connection that counsel supporting the complaint did not prove either the unconscionability of respondents' contracts in excess of $1,500 or the fairness of such a limitation when the economics of operating the dance studio are balanced against a "fair amount which a person should be indebted for dance instruction." In the absence of proof of the illegality of such contracts, according to respondents, the Commission has no authority to issue an order banning their use. Respondents further contend that the hearings added very little, if anything, to the case-in-chief in support of the complaint—that respondents had stipulated to all facts upon which the essential findings of the initial decision were based. They further argue that despite the examiner's statement that he did not reach the issue of unconscionability, his holding that the $1,500 contractual limitation is necessary to prevent recurrence of the practices is tantamount to saying that contracts in excess of $1,500 are unconscionable because their negotiation is dependent upon the use of illegal selling acts and practices.

We agree with respondents that most of the evidence adduced by counsel supporting the complaint does not go beyond the facts originally stipulated by counsel. Certainly much of this evidence is redundant. We also agree that counsel supporting the complaint did not prove that all contracts for dance instruction in excess of $1,500 are unconscionable. We do not agree however that the evidence adduced is not relevant to the question of whether a $1,500 contractual limitation should be imposed; nor do we agree that the record does not support the imposition of such a limitation.

It should be emphasized first of all, contrary to the arguments advanced by respondents, that the Commission's remedial powers under Section 5 are not restricted to the prohibition of only those acts and practices found to be unlawful. The purpose of a Commission order is to prevent the continuance of such practices but, to accomplish this end, the Commission may, if it deems necessary, forbid acts lawful in themselves. In *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946) the Supreme Court held that the Commission has wide discretion in determining what remedy is necessary to eliminate unfair or deceptive practices which have

been disclosed, and in *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952) the Court stated that "if the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its roadblock to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity." The Court also upheld the Commission's order suppressing the use of a "lawful device" for the purpose of preventing the continuation of a price fixing conspiracy in *Federal Trade Commission* v. *National Lead*, 352 U.S. 419, 510 (1959) concluding that "the Commission was justified in its determination that it was necessary to include some restraint in its order against the individual corporations in order to prevent a continuance of the unfair competitive practices found to exist." [1]

It is apparent from a review of the initial decision that the hearing examiner believed that the $1,500 limitation should be imposed, not because contracts in excess of that amount are unconscionable or *per se* illegal, but because a restriction of this type would be necessary to prevent a recurrence of unfair acts and practices employed by respondents to induce members of the public to execute long-term contracts. Having found that the order without the $1,500 limitation "does not eradicate the root of the evil," he concluded that such a limitation "is a necessary and reasonable safeguard to forestall and stop in their incipiency the respondents' unfair and deceptive acts and practices before their purposes become fulfilled." (Initial decision, p. 432.)

We agree with this conclusion. Without the $1,500 limitation the order will not, in our opinion, effectively deter respondents from engaging in many of the unfair practices which they have used to sell dancing lessons. It is important to note, in this connection, that the order contained in the initial decision does not specifically prohibit all the practices alleged as unfair in the complaint, as respondents contend. The complaint charges in Paragraph 13 that respondents have used "intense, emotional and unrelenting sales pressure" to persuade a prospect or student to sign a long-term contract and that "such person is insistently urged, cajoled, and coerced to sign such a contract hurriedly and precipitatedly through use of per-

[1] In arguing that the Commission cannot prohibit a practice, such as a contract in excess of $1,500, which it has not specifically found to be unlawful, respondents quote passages from the Circuit Court's opinions in *Cotherman* v. *FTC*, 417 F. 2d 589 (5th Cir. 1969) and *The Sperry & Hutchinson Company* v. *FTC*, 432 F. 2d 146 (5th Cir. 1970). Respondents' reliance on these cases is misplaced, however. Neither of them is in point since neither addresses itself to the question of whether legitimate practices may be prohibited by the Commission for the purpose of curing the ill effects of unlawful conduct or of preventing the continuance of other practices found to be illegal.

sistent and emotionally forceful sales presentations which are often of several hours' duration." The record fully supports this charge. The unfair pressure tactics used by respondents to persuade students to sign contracts for dance instruction are disclosed in the testimony of students and former employees of respondents' studios. However, except for "relay salesmanship," these unfair pressure tactics, some of which are described below, are not prohibited either specifically or in general terms.

A former employee of respondents' Baltimore studio testified with respect to a procedure used routinely by respondents to exert pressure on the prospective student. This witness testified that in his capacity as interviewer and dance analyst he would attempt to gain the confidence of a student for the purpose of obtaining information about the student's past which could be used to persuade her to sign a contract. According to him, the sales approach or technique used by respondents assumed that many of the people who come to dance studios do so for some more deep-seated reason than simply a desire to learn to dance. Respondents referred to this reason as the "X-Factor" and assigned to the interviewer the task of discovering it. This factor could be loneliness, marital difficulties, or some unpleasant experience or unhappiness in the prospect's past which could be exploited for the purpose of selling dance instructions. The information obtained by the interviewer would be passed on to the studio manager, who would sometimes eavesdrop on the interview and instruct the interviewer by telephone how to conduct the interrogation. Thereafter, the student would be given a sham dance analysis test and then brought to a small room where the studio manager would close the deal. Prior to closing, members of the staff would attempt to make the student as nervous and confused as possible. Also prior to closing, the interviewer would extract a promise from her that she would not tell the studio manager that she needed or wanted time to think about signing the contract. The interviewer would then stand beside the student at the closing, sometimes holding her hand, and would pretend to speak in her behalf, leading her to believe that he was persuading the studio manager to accept her as a student. By making this feigned appeal to the manager and by appearing extremely solicitious of her welfare, the interviewer would attempt to bring the student to a highly emotional state. Often the student would break down and cry and on one occasion a young woman actually "dropped down on one knee and asked the studio manager to please let her enroll." (Tr. 866.)

To apply additional pressure the more recalcitrant students the studio manager would falsely state at the closing that the decision

to enter into the contract must be made immediately and that the student would not be permitted to sign after a specified hour. Sometimes the studio manager would block the door to prevent the student from leaving, and once respondent Mara pushed a chair in front of the door. In some cases, the closing would last three to four hours.

Even after a student had obligated herself for lessons costing thousands of dollars she was still constantly harassed and badgered to sign up for more hours. One student, a woman 62 years old, who had over 300 unused hours of dance instruction testified that she was under considerable pressure to take a test to determine whether she would qualify to join respondents' "Tiffany Club" which would cost an additional $8000. She testified that she had no intention of buying more hours but that she took the test because she had learned that a student was "practically ostracized at the studio" (Tr. 395) if she refused to do so. Although she "insisted through the entire thing that [she] was not going to make any further investment" she nevertheless signed a contract for the additional lessons "to relieve the pressure." (Tr. 397)

Another student described her closing experience as follows:

> I tried to say no and get out of it and I got very, very upset because I got frightened at paying out all that money and having nothing to fall back on. I remember I started crying and couldn't stop crying. All I thought of was getting out of there.
>
> So finally after—I don't know how much time, Mr. Mara said, well, I could sign up for 250 hours, which was called the 500 Club, which would amount to $4300.
>
> So I finally signed it * * *" (Tr. 700.)

Another testified, "I was confused, I was confounded, I was beset, I was frantic, I didn't want it, and I couldn't get out of it, and I signed this contract and practically went off the deep end after it. . . ." She further stated that she had "begged and pleaded with these people to leave [her] alone." (Tr. 506–508.)

The difficulty in fashioning an order which will effectively stop respondents from engaging in practices of the type described above is apparent. Respondents suggest that "The remedy . . . is clearly to outlaw the pressure." But this is not easily done. An order which would enjoin the particular acts and practices previously used by respondents could be avoided by a change in tactics, and one which would prohibit generally the use of excessive or unfair pressure would be virtually impossible to enforce. Since the selling practices involved here almost invariably take the form of oral representations made privately to a student, violations of an order addressed to such practices would be extremely difficult to discover and prove.

In view of respondents' demonstrated proclivity to utilize such sales methods, we have no doubt that they would continue to use them if they believed they could do so without detection. They would, however, have considerably more difficulty circumventing an order which would prohibit them from entering into contracts in excess of $1,500.[2]

Respondents argue, however, that there is no reasonable relation between the prohibition and the practice found to be unlawful—that a bar on contract size bears no reasonable relationship to the unfair and deceptive practices used to secure such contracts. We do not agree. Human nature being what it is, we think that respondents are far more likely to apply excessive pressure to secure a large contract than a small one. The greater the gains or rewards respondents will reap, the greater their incentive will be to engage in these practices or to devise new and more elaborate methods to accomplish the desired end. There is, moreover, testimony in the record indicating that such is the case. As one witness testified, "As a rule of thumb, I would say that every single contract for a sizable sum was entered into under extreme pressure . . ." (Tr. 547) and that "The more sizable ones would have, in my interpretation, more pressure than the lesser size."[3] (Tr. 548) But if we are wrong on this point, and we later learn that respondents are engaging in the objectionable practices despite the $1500 limitation, we can consider at that time what monetary limitation will have the desired effect on their behavior.

Respondents also content that the public is adequately protected by the provision in the order which requires them to include in all

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[2] There is other evidence of record which strongly supports an order imposing a monetary limitation on respondents' contracts with students. Several witnesses testified that after a student had executed a long-term contract the quality of service provided by respondents to that student deteriorated. The prohibition may well have the added salutary effect therefore of deterring respondents from taking advantage of "captive" students.

[3] There is some testimony, however, that respondents use equally objectionable methods to make a small sale. The following testimony was given by one woman student concerning a related technique:

"There were many things that I found objectionable. The unremitting, relentless pressure of the sales tactics, first and foremost, was objectionable.

"Secondly, the rude ridicule that occasionally was used to help make a sale was objectionable. . . .

". . . I was on the dance floor with my instructor, Raymond McCurdy, at one time when a carnival was coming up. I did not join the carnival. I did not wish to join the carnival, and while it was only an additional $55, I had no desire to join. There were a great many pupils on the dance floor dancing with their teachers. He went over and switched off the record player and there was dead silence, and he asked everyone in the room to sit down and he stood up in a circle around me and stood me up in that circle, in the middle of the circle, and said, 'Everybody, I want you to look at this woman here who is too cheap to join the carnival. Here she is, a 500 Club member and working on her Bronze Medal,' and so forth, and so forth, 'and she is too cheap to join the carnival. I just want you to look at a woman like that. Isn't it awful?'

"Well, that was an objectionable feature, and I was absolutely horrified." (Tr. 515, 516.)

contracts a statement to the effect that the student may rescind the agreement for any reason by submitting written notice of their intention to do so within seven days from the date of execution thereof. While this provision will of course be of value, we have no reason to believe that all students who succumb to respondents' unfair practices will demand within seven days to be released from the contract merely because there is a notation in the contract that they may do so. Moreover, it is quite apparent from the testimony that many of the students are in such a confused and highly emotional state when they execute the contract that it is unlikely that they are even aware of the notation.

We turn next to respondents' contention that the prohibition under consideration will impose upon them dire economic hardship. The hearing examiner, having found that the prohibition is necessary to prevent unfair practices, held that whether or not respondents can operate profitably under this provision of the order is beside the point—that "Economic feasibility does not act to insulate or excuse the respondents' challenged acts and practices from the requirements of the law nor allow the respondents to obtain the ill-gotten gains of their unfair and deceptive acts and practices." (Initial decision, pp. 432–3.) We find no error in this ruling. As the Supreme Court stated in *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 327, with respect to an order requiring divestiture, "the Government cannot be denied the latter remedy because economic hardship, however severe, may result. Economic hardship can influence choice only as among two or more effective remedies."

In any event we find no substance to respondents' contention that the evidence shows that the imposition of a contractual limitation is tantamount to denying the individual respondents the opportunity to engage in the dance business in the future. Testimony of studio owners called by respondents that they could not exist without long-term contracts is for the most part based on the assumption that they would lose all the income they were receiving from students under such contracts.[4] This is of course an unfounded assumption since

[4] For example, one Arthur Murray franchisee testified as follows:

"Q. Could you tell us what percentage of your total sales in your most recent, either calendar or fiscal year, were accounted for by contracts which exceeded $1500?

"A. I would say very close to 50 percent.

* * * * * * *

"Q. The examiner asked you what effect a $1500 limitation would have on your profit. Do you recall what your response was?

* * * * * * *

"A. Well, I think if you start out with the fact that 50 percent of our volume is over, then you have to reduce our volume 50 percent, is that right? * * *" (Tr. 1941–1956.)

there is no reason to believe that this income would be lost if the students were released from the long-term contracts or if they had not signed them in the first place.[5]

Other witnesses called by respondents failed to give a plausible explanation of why it is necessary to the successful operation of a dance studio for the student to be *obligated* to take hundreds of hours of dancing instruction. The principal advantage to the studio may well be that the student who has executed a long-term contract is less likely to drop out, even though he may desire to do so, than one who has not so obligated himself. Understandably, respondents do not make this argument.

Respondents also try to establish that the student will suffer if he is denied the right to enter into a long-term contract. The gist of the testimony on which they rely is that a student must sign up for a complete program of several hundred hours in order to achieve a certain proficiency, *e.g.*, the Bronze Medal which may take more than three hundred hours. It appears from the testimony of respondents' witnesses, however, that the only reason the student cannot achieve the same proficiency by obligating himself for fewer hours at a time is that the studio would not permit it. The testimony of complaint counsel's witnesses on the other hand reveals quite clearly that from the standpoint of the student long-term contracts are wholly unnecessary.

One final point on this phase of respondents' appeal should be mentioned. Respondents suggest that the Commission act on an industrywide basis under its trade regulation rule procedure to impose the $1,500 limitation on dance studios. This suggestion would have merit only if we would hold that contracts for dance instruction in excess of $1,500 are unlawful. We do not so hold, however. We have not found that other firms are engaging in the type of practices used by respondents and we would not impose the restriction in question except on the basis of a record showing circumstances similar to those existing here.

Respondents have also appealed from the examiner's inclusion of the words "or other services" in the preamble of the order, contending that the initial decision does not provide an adequate basis for this extension of the order. This argument is also rejected. First of all, the order is not as broad as respondents indicate. Most of the provisions, including that imposing the $1,500 contractual limitation, are so worded that they apply only to the sale of dancing

[5] Under the prohibition in question, respondents will be free to renew a student's contract indefinitely so long as the student's obligation does not exceed $1,500 at any time.

instructions or other services provided by dance studios. Secondly, the unfair or deceptive practices prohibited by the remaining provisions of the order can be readily adapted to the advertising and sale of other services. The hearing examiner apparently believed that on the basis of their past conduct respondents might well engage in the prohibited practices in some other field of endeavor and should be prevented from doing so. It is not essential that he make separate findings on this point as respondents' brief suggests. Certainly respondents have given no valid reason why the scope of the order should not have been so broadened.

Counsel for the complaint have appealed from the hearing examiner's ruling denying their request to modify the agreed-to order to cease and desist by changing certain of the provisions thereof and by adding others. Complaint counsel contend in this connection that after the record had been reopened to permit them to introduce evidence supplementing the stipulation of fact in support of the provision in the order prohibiting contracts in excess of $1,500, respondents were permitted to withdraw that part of the stipulation which encompassed the allegations of Paragraph 13 of the complaint. They argue, therefore, that by permitting this withdrawal or disclaimer of part of the stipulation, the hearing examiner "released complaint counsel from their acceptance of provisions of the agreed-to-order evolving from the withdrawal of stipulated facts." Thus, according to complaint counsel, they were free to propose more stringent prohibitions than those originally agreed to.

Respondents' counsel contend, however, that they sought to withdraw from the stipulation solely because complaint counsel had insisted on examining witnesses with regard to matters that had already been stipulated and that they considered it "almost unethical" to cross-examine witnesses on these points. They further contend that they had no intimation that evidence was being introduced by complaint counsel for any purpose other than for the limited purpose of showing the need for the $1,500 contractual limitation.

We concur in the examiner's ruling. Respondents were not placed on notice that evidence introduced by complaint counsel which amplified previously stipulated facts would be used as a basis for expanding the order. Moreover, we do not interpret the hearing examiner's ruling as releasing complaint counsel from the non-contested provisions of the agreed-to order. The examiner was correct in refusing to adopt complaint counsel's proposed modification.

The appeals of respondents and counsel supporting the complaint are denied. The hearing examiner's initial decision is adopted as

the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

Respondents and counsel supporting the complaint having filed cross appeals from the initial decision of the hearing examiner, and the matter having been heard upon briefs and oral argument; and the Commission having rendered its decision denying the appeals and adopting the initial decision:

It is ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

NATIONAL ASSOCIATION OF WOMEN'S AND CHILDREN'S APPAREL SALESMEN, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8691. Complaint, July 11, 1966—Decision, Feb. 25, 1971*

Order requiring a trade association of organizations and groups of salesmen engaged in the wholesale selling of women's and children's wearing apparel with headquarters in Atlanta, Ga., to cease refusing to display at any trade show the goods supplied by any manufacturer who is represented by a member of NAWCAS or to hinder, interfere with or restrict any company or person eligible to display goods at such a trade show; using any "uncooperative manufacturers list" to discourage, prohibit or forbid the display of merchandise at such show; refusing to accept into NAWCAS membership any individual otherwise eligible; withdraw from files all lists of uncooperative firms previously barred and report to the FTC the destruction of such lists; and no later than the next annual convention, revise the bylaws, articles of incorporation and rules and regulations of NAWCAS to incorporate each prohibition contained in subparagraphs 1 through 17 of Part I of this order.

STATEMENT OF THE COMMISSION

FEBRUARY 25, 1971

The Commission has entered a final order in this case based upon its study of the record and the proposals made by complaint coun-

*For complaint and initial decision in this case, see 77 F.T.C. 988.