

IN THE MATTER OF  
ILLINOIS CONTINENTAL  
MACHINE CORPORATION ET AL.

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

*Docket 6615. Complaint, Aug. 20, 1956—Decision, Nov. 15, 1957*

Order dismissing for lack of proof complaint charging two corporate promoter-sellers located in Chicago and Laguna Beach, Calif., and their common officer, with making false representations in advertising in magazines and periodicals of national circulation designed to elicit the interest of private individuals as purchasers and operators of their vending machines, and the cooperation of civic organizations as sponsors therefor.

*Mr. S. F. House* for the Commission.

*Defrees, Fiske, O'Brien, Thompson & Simmons*, by *Mr. Thomas J. Johnson, Jr.*, of Chicago, Ill., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

THE COMPLAINT

On August 20, 1956, the Federal Trade Commission issued the complaint in this proceeding, charging the Respondents with the dissemination of various false representations relative to the easy work and high profits to be gained from the purchase and operation of Respondents' candy and chewing-gum vending machines. The specific charges may be summarized as follows:

1. That, contrary to Respondents' representations, large profits rarely, if ever, accrue to persons who purchase and operate Respondents' vending machines;

2. That, contrary to Respondents' representations, purchasers are generally not able to earn \$100.00 per week in their spare time, and do not recoup their original investment in fifteen months;

3. That, contrary to Respondents' representations, purchasers are required to engage in extensive canvassing and selling;

4. That, contrary to Respondents' representations, purchasers of Respondents' machines are not required to have a car and good references in order to qualify therefor, but only to have the purchase price of the machine;

5. That, contrary to Respondents' representations, purchasers are not given exclusive sales territories;

6. That, contrary to Respondents' representations, Respondents do not give financial assistance to purchasers for expansion; that such

persons can expand only by purchasing additional machines from Respondents;

7. That, contrary to Respondents' representations, Respondents do not manufacture the vending machines sold by them; and, in effect, that such representation is misleading in that "There has long been a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer in the belief that lower prices, elimination of middleman's profits, superior products, and other advantages can thereby be obtained";

8. That, contrary to Respondents' representations, the vending machines are often not placed for the purchaser in a satisfactory location, and, when it becomes necessary to relocate them, the relocation must be done by the purchaser;

9. That the statement "Insured for property and liability by 'Lloyds of London'—plus fire and theft insurance and a 100% Money Back Guarantee" is false in that it fails to disclose that the purchaser of Respondents' vending machine must pay an additional sum for such insurance and for such profit guarantee.

#### THE ANSWER

On September 20, 1956, Respondents submitted their answer to the above charges. They admit their identity as alleged except that they assert that the address of Respondent Lawrence F. Ellison is 545, instead of 945, Diamond Street, Laguna Beach, California. Respondents, in their answer, also admit that they have been engaged for more than two years in the sale and distribution of vending machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, and that they have been in substantial competition with others so engaged.

Respondents deny that they sell their vending machines through sales representatives or agents as alleged, but aver that all sales of their products are made through independent distributors who are not agents of Respondents, but are independent contractors for whose acts and practices the Respondents are not responsible. They admit the dissemination of national advertisements, but deny any responsibility for the local advertisements disseminated by the individuals whom they call their "independent distributors." Finally, Respondents deny the dissemination of any false advertisements and the doing of any act or practice in violation of the Federal Trade Commission Act.

#### IDENTITY OF RESPONDENTS

Respondent Illinois Continental Machine Corporation is an Illinois corporation, with its principal office and place of business located at

105 North Clark Street, Chicago, Illinois. Respondent Copperrite, Inc. is a California corporation with its principal office and place of business located in the home of Respondent Lawrence F. Ellison, 545 Diamond Street, Laguna Beach, California, and its Chicago office in the same space occupied by the other corporate respondent, but using the address, 74 West Washington Street, Chicago, Illinois, because the building is located at the corner of Washington and Clark Streets in Chicago. Individual Respondent Lawrence F. Ellison, the manager and former president of Respondent Illinois Continental Machine Corporation and the sole stockholder of Respondent Copperrite, Inc., actively directs and controls the policies and practices of both the corporate respondents.

Respondents are, and for more than three years last past have been, engaged in commerce in the business of promoting, selling and distributing vending machines and supplies therefor. Their course of trade therein is substantial, and they have been and now are in competition with other persons, corporations, firms and partnerships similarly engaged.

#### RESPONDENTS' METHOD OF OPERATION

Respondents have represented themselves to be manufacturers of vending machines, and have prepared a sales kit for use in promoting the sale of such vending machines, which contains, among other things, a photograph depicting a factory interior, entitled "One Corner of Assembly Line." In fact, however, Respondents have not operated a factory, but their machines have been manufactured for them, according to their specifications, by W. G. Parrish & Company of Chicago, Illinois. The completed machines are delivered either to the Respondents or, upon their order, to places designated by them. In promoting the sale of their vending machines, Respondents place advertisements in various magazines and periodicals, such as the Boilermakers' and Blacksmiths' Journal, the American Legion Magazine, Pilot Log, the Optimist Magazine, the V.F.W. Magazine, the U.S. Junior Chamber of Commerce Magazine, the Rotarian, and the Saturday Evening Post. These advertisements are designed to elicit the interest of private individuals as operators of Respondents' vending machines, and the cooperation of civic organizations as sponsors therefor. All of these magazines have national circulation, although most of them are directed particularly to the members of certain fraternal, civic or industrial associations. Typical of such advertisements are the following:

\$\$ OPPORTUNITY \$\$  
FOR CLUB MEMBERS—OR MEMBERS'  
RELATIVES AND FRIENDS

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Own your own business! Earn up to \$100 per week spare time; much more full time. No selling or canvassing. Operate from own home. No experience needed. Work under sponsorship of local service, civic organization. Minimum cash required: \$1500 to \$4950 (depending on size of operation). We extend help as you grow up to \$20,000. Must furnish satisfactory references for honesty and reliability to meet civic club requirements. This plan will stand your bank's inspection. Write for complete details free!

Operate these proved MONEY-MAKERS with sponsor emblem on each unit—and watch your income soar. . . . Remember: each \$1,000 sales—your profits after cost of merchandise approx. \$530.00.

\$1,500 to \$5,000 cash starts you in this exceptional income business depending on size of operation. Immediate weekly earnings. No specialized experience necessary.

Sales of Respondents' vending machines are effected throughout the country by salesmen whom the Respondents designate as "Independent Distributors," who are supplied by Respondents with the sales kit mentioned above, containing copies of national advertisements, bank references, recommended sales talks, suggested advertisements for insertion in local newspapers, and contract and order blanks. These "distributors" are also supplied by Respondents with a sample vending machine, which they are required to purchase.

Respondents' salesmen call upon civic, fraternal, service and union organizations and propose that they sponsor the installation of Respondents' vending machines by procuring suitable locations therefor in local business establishments, and by allowing their insignia to be placed on the machines. In consideration therefor, the association or organization is offered 10% of the proceeds to be derived from the operation of the vending machine, to be donated to the association's favorite charity, which is also designated on the machine. After securing a commitment for such sponsorship, the salesman generally inserts in the local newspaper an advertisement, the format of which has been supplied to him by Respondents' offering Respondents' vending machines for sale as a business opportunity sponsored by the local civic organization. Typical of such advertisements are the following:

You will operate this business from your home without employees or office expense and you do no selling. You will be associated AND SPONSORED BY A LOCAL CIVIC ORGANIZATION TO HANDLE WHOLESALE HERSHEY'S, SUCHARDS, ADAMS, DENTYNE, BEEMAN'S, BEECH-NUT, CHLOROPHYLL GUM and other world advertised brands. Business is set up for you: Only supervision needed. Requires \$4,950 now. This will enable you to have 100 locations which will be secured by the sponsor. Good references, car. An all-cash, profitable, and depression-proof business. Financial assistance enables rapid expansion. High income starts immediately. Want individual capable of earning \$10,000 to \$20,000 yearly.

A BUSINESS OF YOUR OWN  
WITH 100%  
MONEY BACK GUARANTEE

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Victoria and most cities in Texas. You will operate this business from your home without employees or office expenses, and you do no selling. You will be associated with and sponsored by a local civic organization. Insured for property and liability by "LLOYDS OF LONDON" \* \* \* plus fire and theft insurance, and a 100% MONEY BACK GUARANTEE! To handle Wholesale HERSHEY'S, PETER PAUL, DENTYNE, BEECH-NUT, and other world advertised brands. Business is set up for you. Only supervision needed. Required \$4000 to \$8000 now. Good references, car. An all cash, profitable and depression-proof business. Income starts immediately. Thereafter will assist you in financing up to \$20,000 for expansion. Write giving full details of yourself and telephone number to P.O. Box 11601, Dallas, Texas.

When a prospective "operator" answers this advertisement, the sales plan is described to him, and, if he agrees to purchase Respondents' vending machines, a three-party sponsorship contract is entered into by the salesman as "independent dealer of the Illinois Continental Machine Corporation," the sponsoring organization, and the prospective "operator." In this contract the contractual obligations of each are set forth. The sponsor agrees to obtain suitable locations for the installation of the vending machines to be purchased by the "operator," and, if relocation is necessary, to procure such new locations, for which service the sponsor is to receive 10% of the proceeds derived from each machine. The "dealer" agrees to sell to the "operator" a certain number of machines, together with supplies therefor. The "operator" agrees to purchase the machines and to service them and pay the sponsor 10% of the proceeds.

Upon completion of such sponsorship contract, the "operator" is required to sign a purchaser order agreement whereby he purchases from the "independent dealer" a certain number of vending machines for which he is required either to make a payment in full with order, or to pay one-half with order and the remainder C.O.D. The order is signed by the purchaser, by the "independent dealer," and by one of the respondent corporations, and a copy is forwarded to the respondent corporation for its signature. Payment is required to be made to one of the respondent corporations, and must be in the form of cash or its equivalent.

At the time of purchase the "operator" is offered the option of obtaining insurance as offered in the advertisement, for an additional sum. If he applies for this insurance, the application therefor is sent to one of the respondent corporations, and thereafter transmitted by it to the insurance company.

The machines purchased are delivered from Respondents' establishment in Chicago to the city in which the "operator" resides. Thereafter the "operator" may either install the machines himself in locations of his own selection, or they may be installed for him

by the "independent dealer" in locations procured by the sponsor, for which service \$3.00 per machine is withheld by the Respondents out of the purchase price of the machines. This money is refunded to the "operator" by Respondents if he declines to avail himself of this service, and instead installs his own machines.

After the machines are installed, a form, styled "Completion Sheet," must be signed by the purchaser or "operator," listing the locations of his machines and stating that with the instruction and assistance he has received from the "independent distributor," he "feels capable of following through with" his "Coin Automatic Merchandising Machine operations." A copy of this completion sheet is forwarded to Respondents, and by Respondents to the insurance company in the event that the "operator" has purchased such insurance. The insurance does not become effective until the insurance company receives this form. Thereafter, Respondents have no further contact with the "operator" unless such "operator" desires to "expand" by purchasing additional vending machines, in which event the Respondents will, if desired, assist him in such expansion by extending him credit up to the amount of \$20,000.00.

#### THE ISSUES ANALYZED AND RESOLVED

Analysis of the complaint, the answer, and the evidence raise factual and legal issues as hereinafter set forth. In considering and resolving these issues, we must remember that counsel supporting the complaint bears the burden of proof and must sustain each allegation of the complaint by reliable, probative and substantial evidence. Substantial evidence has been judicially defined as meaning

\* \* \* such reliable evidence as a reasonable mind would accept as adequate to support a conclusion. It must be of such character as to afford a substantial basis of fact from which the fact in issue can be reasonably inferred. It excludes vague, uncertain or irrelevant matter, \* \* \* It implies a quality and character of proof which induces conviction and makes a lasting impression upon reason" (*Carlay Company*, 153 F. 2d 493, 496).

Therefore all the evidence in the record must be evaluated in the light of this basic definition, and in consonance with the rule relating to the burden of proof. Should the evidence fail to meet the requirements enunciated therein, the burden of proof has not been sustained, and the allegations of the complaint remain unproven. Only by firm and faithful observance of this cardinal principle can justice be dispensed in administrative law.

Thus, we now proceed to the consideration and resolving, seriatim, of the issues herein.

