

Complaint

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IN THE MATTER OF

UNIVERSAL INTERCHANGE, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 6938. Complaint, Nov. 8, 1957—Decision, Aug. 2, 1963*

Order requiring eight corporations—with respective offices in Los Angeles, Chicago, Dallas, New York, Boston, Seattle and Denver—jointly engaged in selling advertising in the "U.S. Buyers Digest", published by the first named respondent, and other advertising media, and other services in connection with the sale and purchase of farm and business properties, to cease—in soliciting and collecting substantial sums of money as fees for, the listing of property for sale and advertisements therefor to be published in said bulletin—making false representations concerning clients' opportunities for sales and profits, services afforded, affiliates, success, refunds, terms, etc., as in the order below set out.

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 the corporations and individuals named in the caption hereof, 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. Universal Interchange, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4477 Hollywood Boulevard, Los Angeles, California. Respondent Theodore M. Bernardi, whose address is 114 East 32nd Street, New York, New York, is president; respondent Maurice Salomon, whose address is 8556 Trumbull Street, Skokie, Illinois, is vice president, and respondent Paul M. Guyer, whose address is 2412 N. Commonwealth, Los Angeles, California, is secretary-treasurer of respondent corporation Universal Interchange, Inc.; respondent United Interchange, Inc., of Illinois is a corporation organized, existing and doing business under and by virtue of the laws of Illinois with its office and principal place of business located at 1 North LaSalle Street, Chicago, Illinois; respondent United Interchange, Inc., of Texas is a corporation, organized, existing and doing business under and by virtue of the laws of Texas, with its office and principal place of business located at 4232 Herschel Avenue,

Dallas, Texas. Respondents Maurice Salomon and Lillian Salomon are individuals and officers of said corporate respondents United Interchange, Inc., of Illinois and United Interchange, Inc., of Texas. Their address is 8556 Trumbull Street, Skokie, Illinois.

Respondent United Interchange, Inc., of New York is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 114 E. 32nd Street in the city of New York, New York.

Respondent United Interchange, Inc., of Massachusetts, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 80 Boylston Street, Boston Massachusetts.

Respondents Theodore M. Bernardi and Pauline B. Bernardi are individuals and officers of said New York and Massachusetts corporations. Their address is 114 E. 32nd Street, New York, New York.

Respondent Union Interchange, Inc., of Washington is a corporation organized, existing and doing business under and by virtue of the State of Washington with its office and principal place of business located at 821 Securities Building in the city of Seattle, Washington.

Respondent Union Interchange, Inc., of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 4477 Hollywood Boulevard in the city of Los Angeles, California.

Respondent Union Interchange, Inc., of Colorado is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado with its office and principal place of business located at Guaranty Bank Building in the city of Denver, Colorado.

Respondents Paul M. Guyer and Francelene A. Guyer are individuals and officers of the aforesaid Washington, California and Colorado corporations. Their address is 2412 North Commonwealth, Los Angeles 27, California.

The individuals named as officers of the aforesaid corporations formulate, direct and control the acts and practices of the corporations of which they are officers. All of the respondents have cooperated and acted together in the performance of the acts and practices hereinafter set forth.

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PAR. 2. Respondents are now and for more than one year last past have jointly been engaged in the operation in commerce of business enterprises which offer advertising for sale in bulletins published by Universal Interchange, Inc., and other advertising media and other services and facilities in connection with the offering for sale, selling, buying and exchanging of farm and business properties. In connection therewith, the respondents have been and are now transmitting and receiving through the United States mail, and otherwise disseminating in commerce, advertising matter, pamphlets, circulars, letters, contracts, checks, money orders, and other printed or written instruments which are sent and received between respondents' places of business in the States of California, Colorado, Washington, Texas, Illinois, New York and Massachusetts, and sent to and received from persons, firms and corporations located in various States of the United States, thereby engaging in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been and is substantial.

PAR. 3. Respondents' said business enterprise is conducted in the following manner: Universal Interchange, Inc., publishes and distributes, at intervals, a publication designated as "U.I. Buyers Digest," in which various properties are listed for sale. The other corporate respondents act as soliciting agents for Universal Interchange, Inc., and solicit the sale of advertising and the listing of property owned by others in said publication. They pay a portion of the cost of publishing and distributing said publication.

PAR. 4. In the course and conduct of their business, respondents, through post cards, circulars, contract forms and other written instrumentalities, and through oral representations made by their salesmen, solicitors, or representatives for the purpose of obtaining listings of property for sale and advertisements of such to be published in "U.I. Buyers Digest," and collecting substantial sums of money as fees for the listing and advertising of property, have represented, directly and by implication, to persons who had property for sale, that they have available prospective buyers who are interested in the purchase of their specific properties; that the property is underpriced and the price should be increased; that the listing will result in the sale of the property within 30 to 90 days or a short time, or else the fee will be refunded, or the customer will not be charged for the service; that the property will be nationally advertised in newspapers and periodicals; that they maintain a list of prospective buyers of such property; that others who have used

their listing sold their property within a short time as a result of said listing; that over 1,000 real estate brokers are affiliated with respondents; that State and other officials endorse respondents' activities and publication; and that if the listed property were sold through their listing, the payment of broker's commission would be avoided

PAR. 5. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, respondents do not and have not had prospective buyers interested in and available to purchase the specific properties listed. The purpose and effect of increasing the owner's asking price for the property was not that it was undervalued, but, on the contrary, to increase the fee to be collected by respondents. Respondents do not and have not refunded any fees collected from the property owners when the property is not sold within 30 to 90 days or at any other time; on the contrary, respondents attempt to collect any unpaid balance claimed from the property owners for their service whether or not the property is sold. Respondents do not and have not used national advertising to sell the specific listed property. Respondents do not maintain or circulate a list of prospective buyers of listed or other property. Purchasers of respondents' services have not generally or usually sold their property in a short time and the great majority of such purchasers have not been able to sell their property by purchasing respondents' advertising. Respondents are not affiliated with 1,000 or any other number of real estate brokers. Respondents' activities and publications are not and have not been endorsed by state or other officials. Purchasers of respondents' advertising or services do not avoid payment of real estate broker's commissions when the property is sold through a broker.

PAR. 6. The use by respondents of the aforesaid unfair and deceptive acts and practices in connection with the conduct of their aforesaid business, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the public and to induce many owners of property, because of said false, deceptive and misleading representations, to enter into contracts respecting the sale of their properties, and to pay substantial sums of money to respondents.

PAR. 7. The acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Initial Decision

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Mr. John W. Brookfield, Jr., and *Mr. Berryman Davis* for the Commission.

Mr. Arthur Litz, of New York, N.Y., for respondents United Interchange, Inc., of New York, United Interchange, Inc., of Massachusetts, and *Mr. Theodore M. Bernardi*, individually, as an officer of said corporations, and as an officer of Universal Interchange, Inc., and *Mrs. Pauline M. Bernardi*, individually and as an officer of United Interchange, Inc., of New York, and United Interchange, Inc., of Massachusetts.

Mr. Alvin G. Greenwald of Los Angeles, Calif., for all other respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

PRELIMINARY STATEMENT

On November 8, 1957, the Federal Trade Commission issued its complaint against Universal Interchange, Inc., a corporation (hereinafter called Universal), Theodore M. Bernardi, Maurice Salomon, and Paul M. Guyer, individually and as officers of Universal; United Interchange, Inc., of Illinois, a corporation, United Interchange, Inc., of Texas, a corporation, Maurice and Lillian Salomon, individually and as officers of said corporations; United Interchange, Inc., of New York, a corporation, United Interchange, Inc., of Massachusetts, a corporation, Theodore M. and Pauline B. Bernardi, individually and as officers of said corporations; Union Interchange, Inc., of Washington, a corporation, Union Interchange, Inc., of Colorado, a corporation, Union Interchange, Inc., of California, a corporation, and Paul M. and Francelene A. Guyer, individually and as officers of said corporations (all of said corporations except Universal being hereinafter collectively called the selling corporations; and all of said corporations and individuals being hereinafter collectively called respondents). The complaint charges respondents with false, misleading and deceptive representations constituting unfair and deceptive acts and practices in commerce in violation of § 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents.

Respondents appeared by counsel and filed answers admitting the corporate and commerce allegations of the complaint, denying all of the representations alleged therein, and in some instances admitting, and in others denying, that such alleged representations were not true in fact. Pursuant to notice, hearings were thereafter held

at various times and places from March 3, 1958 to October 1, 1958, before Hearing Examiner Joseph Callaway, since deceased. On April 7, 1959, because of Mr. Callaway's physical incapacity and because additional extensive hearings had already been scheduled, the undersigned was designated by the Commission to succeed Mr. Callaway. Thereafter hearings were held at various times and places from April 21, 1959 to December 2, 1960, before the undersigned. In general, Mr. Callaway heard all of the witnesses called in support of the complaint against the Western respondents: Universal, the various Unions, and their respective officers and individuals, and the Eastern respondents: United of New York, United of Massachusetts and their respective officers and individuals. The undersigned heard all of the witnesses called in support of the complaint against the Midwestern respondents: United of Illinois, United of Texas and their respective officers and individuals, and all of the defense proffered by all of the respondents.¹ During the hearings before the undersigned, a minor amendment to the third sentence of paragraph 5 of the complaint was granted by the undersigned.

All parties were represented by counsel, participated in the hearings, and afforded full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders together with reasons in support thereof and replies thereto. All parties filed such proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof and replies thereto. All such findings of fact and conclusions of law proposed by the parties respectively not hereinafter specifically found or concluded are herewith specifically rejected.² All motions to dismiss, not ruled upon on the record, are disposed of herein by the following findings of fact and conclusions of law.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. Corporate Organization

Universal is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4477 Hollywood Boulevard, Los Angeles, California. Respondents Theodore M. Ber-

¹ The record herein consists of over 8,300 pages of testimony and 736 exhibits. Mr. Callaway heard the first 2,216 pages of testimony and the undersigned the remainder.

² 5 U.S.C. § 1007(b).

