

APPENDIX A

- (C-1217) Standard Toykraft, Inc., "Petal Craft."
- (C-1218) Pressman Toy Corp., "Loomatic."
- (C-1219) Remco Industries, Inc., "Chemistry Science Kit."
- (C-1220) Avalon Manufacturing Corp., "Paint on Color Velvet."
- (C-1221) H. Davis Toy Corp., "Barrettes."
- (C-1222) Lisbeth Whiting Co., Inc., "Bingle Bangle Hat."
- (C-1223) Hassenfeld Bros., Inc., "Mary Poppins."
- (C-1224) E. S. Lowe Co., Inc., "Hoodwink."
- (C-1225) Ideal Toy Corp., "Snoop."
- (C-1226) Kohner Bros., Inc., "Doll Craft."

IN THE MATTER OF

KING DISTRIBUTING COMPANY ET AL.

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

Docket C-1227. Complaint, June 26, 1967—Decision, June 26, 1967

Consent order requiring a Minneapolis, Minn., distributor of vending machines to cease misrepresenting that prospective purchasers will be specially selected, that their earnings will be any certain amount, that they will be given sales assistance, that the seller is a charitable institution, that purchasers will have exclusive territories and making other deceptive claims in selling its machines and supplies.

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 King Distributing Company, a corporation, and Richard J. Kennedy, individually and as an officer of said corporation, 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 King Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 2500 39th Avenue, NE., Minneapolis, Minnesota.

1300

Complaint

Respondent Richard J. Kennedy is an individual and is an officer of King Distributing Company, and its principal stockholder. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of vending machines to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said vending machines and the supplies and equipment for use in connection therewith, when sold, to be shipped from the respective places of business of either the respondents, the supplier or the manufacturer thereof in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their products, respondents advertise and offer the same for sale by means of advertisements in local newspapers.

Typical and illustrative, but not all inclusive of said advertisements, are the following:

BUSINESS OPPORTUNITY

For man or woman from this area to service and collect from coin-operated dispensers. We establish route. Car and references desirable. Party must have cash capital of \$985.00. Good potential earnings part-time; full-time more. For personal interview, give phone number, etc. Write to: KING DISTRIBUTING CO., 7190 RIVERVIEW TERRACE, MINNEAPOLIS 32, MINNESOTA.

BUSINESS OPPORTUNITY

Man or woman in this area to own and operate a route of machines distributing nationally advertised products. We establish route, car and references desirable, minimum investment \$985.00 required. Good opportunity for spare time income, or full time business. Write KING DISTRIBUTING CO., 3710 Central Avenue, Minneapolis, Minnesota 55421, include phone.

Business Opportunity—this area to own and operate a route of machines distributing nationally adv. products. We establish route, car and references desirable, minimum investment \$985.00. King Dist. Co., 3710 Central Ave., Minneapolis, Minn., 55421. Include phone number.

VERY PROFITABLE!

Earn up to \$10.00 per hour in your spare time: Service and collect from your own route of coin operated units. No selling; we establish all routes;

car and references desirable. Investment of \$985.00 to \$1,785.00 required. For personal interview in your area, write King Dist. Co., 2500 39th Ave. NE., Minneapolis, Minn. 55421. Include phone number.

Respondents employ sales agents or representatives in connection with their business who call on prospective purchasers responding to the foregoing and other advertisements. Respondents furnish advertising and promotional material and order blanks to said persons who exhibit them to prospective purchasers during the course of oral sales solicitations.

PAR. 5. By and through the use of the aforesaid advertising statements and representations and others of similar import and meaning, but not specifically set forth herein, and by means of said oral statements and representations made by respondents or their representatives, respondents represent, and have represented, directly or by implication that:

1. Respondents are making a bona fide offer to sell established businesses to persons who respond to their advertisements.
2. Purchasers of respondents' products must own an automobile, furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products.
3. Persons who purchase respondents' products will not be required to engage in any type of selling activity.
4. Respondents grant exclusive territories to purchasers for the location of their vending machines and sales of respondents' machines will not be made to other persons in such territories.
5. Respondents' vending machines have a market value ranging from \$50 to \$100 each, or that the price at which respondents offer their vending machines is less than their fair market value.
6. Vending machines purchased from respondents will produce a net income of \$9 per machine every 10 to 14 days; purchasers of said machines can reasonably expect a return of their investment of \$985 from profits earned from the operation of 10 machines within a period of six to seven months; and one can reasonably expect an income ranging from \$400 to \$600 a month from the operation of fifteen machines, all in the ordinary and usual course of business and under normal conditions and circumstances and on the routes established by respondents.
7. Sales routes have been previously established by respondents for said purchasers; that satisfactory and profitable locations have been, or will be, secured for the purchaser; and that respondents will relocate the machines if the original locations are unsatisfactory.
8. Purchasers will be provided with continuing advice and as-

sistance by respondents in connection with the operation of said machines.

9. Persons who have previously purchased respondents' machines were making substantial earnings from the operation.

10. Machines purchased from respondents were of a specific structural type and had a specific capacity.

11. Respondents will repurchase machines at any time if the purchasers are not satisfied with the vending machine business.

12. Respondents are a nut and candy company and are seeking to establish future markets for said products and in so doing sell machines to purchasers at or near cost.

13. Respondents' prices for nuts and candies were 7% below normal wholesale prices in order to reimburse purchasers for freight charges on the delivery of said merchandise.

14. United Crippled Children Fund is a charitable institution similar in structural organization to other established charities engaged in research activities; said Fund is engaged in research activities for the prevention of children's diseases; and that said Fund is independent of and unconnected with respondents.

PAR. 6. In truth and in fact:

1. Respondents are not making a bona fide offer to sell established businesses to persons responding to their advertisements. Their sole purpose is to sell their vending machines and vending machine supplies and equipment to such persons.

2. It is not necessary for purchasers of respondents' products to own an automobile, to furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products. The only requirement is that the purchase price be paid.

3. Persons who purchase said products are required to engage in extensive selling or soliciting in order to establish, operate and maintain locations for said products.

4. Purchasers of respondents' products are not granted exclusive territories within which machines purchased by them may be placed and operated, and sales of machines are made to other parties in said territories.

5. Respondents' vending machines do not have a market value ranging from \$50 to \$100 each but are regularly sold in the open market at prices that are substantially lower; and the price at which respondents offer their vending machines is not less than their fair market value.

6. \$9 per machine is greatly in excess of the net sum that can be expected by purchasers of said machines every 10 to 14 days; purchasers do not regain their investment of \$985 from net in-

come earned from the operation of 10 machines within a period of six to seven months; and amounts of \$400 to \$600 a month are greatly in excess of the net income purchasers make from the operation of fifteen machines. In most instances, persons who purchase respondents' products and engage in said vending machine business make little or no profit.

7. Neither respondents nor their agents have established sales routes for the purchasers prior to the purchase of respondents' machines, and in those instances where respondents' agents do locate or assist in locating the machines for the purchasers, the locations are generally found to be unsatisfactory and unprofitable. Respondents do not relocate machines for purchasers.

8. Respondents do not provide continuing advice and assistance to purchasers of their machines.

9. In most instances, persons who purchased respondents' products and engaged in said vending machine business did not make substantial earnings but made little or no profit.

10. Purchasers frequently find, upon delivery, that the machines sold to them by respondents are of a different structural design, or type, and of a smaller capacity than represented.

11. Respondents will not repurchase the machines sold by them in the event the purchasers are not satisfied or for any other reasons.

12. Respondents are not a nut and candy company seeking to establish future markets for said products but are primarily engaged in the sale of vending machines for profit.

13. Respondents' prices for nuts and candies are not seven percent below the normal wholesale prices and do not compensate purchasers for freight charges upon the delivery of said merchandise.

14. United Crippled Children Fund is not a charitable institution similar in structural organization to other established charities engaged in research activities; said Fund is not engaged in research activities for the prevention of children's diseases but is merely an organization of five persons established by respondents that makes charitable donations; and said Fund is not wholly independent of and unconnected with respondents who receive a percentage of all monies collected for said Fund as a fee for managing said Fund.

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

PAR. 7. In the course and conduct of their business, at all times

mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of the same or similar products.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged, were and are 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent King Distributing Company, is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Minnesota, with its office and principal place of business located at 2500 39th Avenue, NE., Minneapolis, Minnesota.

Respondent Richard J. Kennedy is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents King Distributing Company, a corporation, and its officers, and Richard J. Kennedy, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of vending machines, vending machine supplies, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that established businesses are being offered for sale by respondents to persons who respond to their advertisements; or misrepresenting, in any manner, the nature of any business opportunity offered by any respondent.

2. Representing, directly or by implication, that purchasers of respondents' products must own an automobile, furnish references, have special qualities or be specially selected to qualify for purchase of respondents' products; or misrepresenting, in any manner, the qualifications or requirements for purchase of respondents' products.

3. Representing, directly or by implication, that selling or soliciting is not required of those investing in any product or business; or misrepresenting, in any manner, the amount of selling or soliciting required in connection with any business.

4. Representing, directly or by implication, that purchasers of respondents' products are granted exclusive territories within which their machines may be placed for operation or that sales will not be made to other persons in such territories: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any exclusive territories granted by them are, in fact, in accordance with any represented offer.