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Complaint

commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce,

any fabric which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

It is further ordered, That respondents Nipkow & Kobelt, Inc., and its officers, and Werner A. Kobelt and Emil G. Gress, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty under the Flammable Fabrics Act, that any fabric is not, under the provisions of Section 4 of said Act, so highly flammable as to be dangerous when worn by individuals, when respondents have reason to believe such fabric may be introduced, sold, or transported in commerce.

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

 JOSEPH LOUIS ZELDON DOING BUSINESS AS
 GUILD INSTITUTE OF MUSIC

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

Docket C-1279. Complaint, Dec. 19, 1967—Decision, Dec. 19, 1967

Consent order requiring a Washington, D.C., seller of accordions and music lessons to cease misrepresenting that his music lessons are free or at reduced prices, that prospective customers are specially selected, that his telephone contacts are for survey purposes only, that his music tests determine musical aptitude, and neglecting to disclose all the terms and conditions of his offer to do business.

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 Joseph

Louis Zeldon, an individual, doing business as Guild Institute of Music, hereinafter referred to as respondent, has 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 Joseph Louis Zeldon is an individual doing business as Guild Institute of Music, with his principal office and place of business located at 1319 F Street, NW., Washington, D.C.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of music lessons and accordions to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said merchandise and services to be sold to purchasers located within the District of Columbia and to purchasers in the States of Maryland and Virginia, and respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his business, and for the purpose of initially inducing the purchase of music lessons and ultimately inducing the purchase of an accordion, respondent has developed and employs a deceptive sales technique whereby numerous oral statements and representations are made respecting the nature and purpose of respondent's solicitation.

The initial step in respondent's sales technique consists of the use of telephone canvassers who use the telephone and street address directory to obtain telephone numbers to call people at home. The canvasser states that she is making a survey or listing of school age children and she asks the person called whether he or she has children and, if so, their sex and age. On occasions the child's name is asked. When the person called asks the identity of the caller or the purpose of the requested information, the canvasser is instructed to give the purpose only as a "survey" or "listing." The canvasser is instructed to avoid all questions. The canvasser is paid at the rate of 10 cents per name submitted to respondent.

The next step in respondent's technique consists of a telephone contact by a salesman whose purpose is to obtain an appointment at the parent's residence. The salesman makes oral representations

of which the following are typical and illustrative, but not all inclusive:

Hello Mrs. Jones, this is (Bob Stone) calling. I'm going to be in the neighborhood this evening testing the school children for our special music program and am interested in your (8 year old boy). Is he taking music now? Well, this is a program for the elementary and junior high school children, sponsored by the Guild Institute of Music. It's designed to see if the children have any ability along musical lines *without* the parents having to buy or rent an instrument. What I do is test your child to see if he has the interest and talent.

Answers to some questions:

"Where are you located?" Try not to give our address. "We have locations in Maryland, Washington and Virginia, and home teaching. Did you ever study music Mrs. Jones?" (change the subject).

"How much does this cost?" Try not to give any prices. "It depends on the child's talent. Is 7:00 or 7:30 o.k.?"

"What instruments do you teach?" "We can arrange lessons on most instruments. I will discuss that with you this evening. Is 7:00 or 7:30 o.k.?"

During the visit to the home the salesman's "presentation" is made. This "presentation" includes inducing the parent to permit the child to be "tested" for musical aptitude. The parent is told that:

This is a program sponsored for the elementary & Jr. High school children by the Guild Institute of Music. We work only with the younger children at this time, and have a very successful program for children with talent. The hard part of the program is finding the children with the necessary requirements.

However, most of the children accepted for this program succeed. We find that children between 8 and 12 can be orientated to music very quickly; and because of our success in working with the younger children, we have devised an excellent beginner's course to analyze your child's abilities. If your child passes the test I'm going to give him this evening, he will be acceptable to participate in this trial program. The cost of this 8 week program is \$59, which is less than our cost.

* * * The first 8 lessons are given on the piano accordion. The reasons for this are that the piano accordion is the easiest instrument to learn; it is a basic instrument, which lays the foundation for all other instruments * * *.

* * * * *

[Closing arguments:] Please get a decision while you are still in the home. It is better to get a yes or no right away, because your chances after you leave are very slim. Many people go through life with a talent and never make use of it, whether it be in music, art, sports, etc. Now is the time to give your child the chance. Many parents decide to give their children music, and go out and buy or rent an expensive instrument. The child may take a few lessons and quit, and you are stuck with the instrument. But with us the instrument is furnished. There are many ways to spend \$59 on a child and not have him get anything out of it, but this is something that the child will appreciate for the rest of his life. Now is the time to give your child a chance.

After the child is allowed to operate an accordion during the "test," the parent is informed that the child shows promise and indicates above-average talent. The parent is told that the child can go a long way in music, and enrollment for music lessons is recommended. At this point the salesman is instructed to "immediately get out your contract pad and start writing. Always assume the sale. Never wait for an OK from the parents. As you finish writing the contract, ask the parents if this will be cash or check."

In those instances in which the parent is agreeable, the child is accepted for a "trial program" of eight weeks duration and, after agreeing to pay a nominal tuition fee, the child commences a schedule of accordion lessons. During the course of or at the end of these lessons, the parent is again contacted and is informed that the child is found to be eligible for a "scholarship" consisting of free music lessons of a designated duration.

PAR. 5. By and through the use of the aforesaid oral statements and representations, and others of similar import not specifically set out herein, and through the use of the aforesaid technique and activities, respondent represents, and has represented, directly or by implication, that:

1. The purpose of the canvasser's call is to obtain information for a bona fide survey or listing of school age children;
2. There is nothing to buy as a consequence of listening to the oral presentation of respondent's representative;
3. The representative who calls upon the parent at home is concerned only with the child's interests and musical talent;
4. Respondent gives music instruction on most instruments;
5. Respondent's program is only for specially selected children who can meet certain musical qualifications;
6. The parent should reach a decision right away because the chances of the child's acceptance in respondent's program at some later time are very slim;
7. The "musical talent test" administered by respondent's representative is a bona fide test employed to obtain a true determination of the child's musical aptitude;
8. Respondent is making a bona fide offer of a scholarship consisting of free music lessons.

PAR. 6. In truth and in fact:

1. The purpose of the canvasser's call is not to obtain information for a bona fide survey or listing of school age children;
2. As a consequence of listening to the oral presentation of respondent's representatives, respondent endeavors to enroll the child in a course of music instruction for which a charge is made;

3. The representative who calls upon the parent at home is not concerned only with the child's interests and musical talent. In fact, respondent's principal interest is in obtaining leads to parents of children who are of a certain age, for the initial purpose of selling music lessons and for the ultimate purpose of selling an accordion;

4. Respondent does not give music instruction on most instruments; his course of instruction is devoted only to the accordion;

5. Respondent's program is not only for specially selected children who can meet certain musical qualifications. In fact, the only qualifications are that the child be of proper age to take music lessons (usually 7½ to 12 years old) and that the child have parents who can ultimately afford to purchase an accordion;

6. The chances of the child's acceptance in respondent's program will not be significantly diminished if the parent decides upon enrollment at some later time;

7. The "musical talent test" administered by respondent's representatives is not a bona fide test employed to obtain a true determination of the child's musical aptitude;

8. Respondent is not making a bona fide offer of a scholarship consisting of free music lessons. In fact, receipt of the "scholarship" is predicated upon the parents' purchase of an accordion, at various prices ranging generally from \$400 to \$2,500, depending upon the quality of the accordion and upon the sales resistance of the parents.

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

PAR. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of music lessons and accordions of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent 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 and are true and into the purchase of substantial quantities of respondent's merchandise and services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's 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 Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, and the Commission having accepted same and placed it on the public record for a period of thirty days, and the Commission having thereafter reconsidered the matter and withdrawn its acceptance of such agreement and the respondent having been so notified; and

Counsel for respondent and counsel for the Commission having subsequently, on November 28, 1967, executed another agreement containing an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules, and also containing an order identical to that set forth in the agreement previously accepted by the Commission except that paragraph 13 thereof has been appropriately revised and paragraph 14 appropriately added; and which agreement also provides that if it is accepted by the Commission, the Commission, if it so elects, may forthwith issue its complaint corresponding in form and substance with the copy heretofore served on respondent and enter its decision containing the order contemplated by the agreement; and

The Commission having considered such agreement and having accepted same, and it appearing to the Commission that the said paragraphs 13 and 14 of the order are not substantive in nature but solely directed to effectuating compliance with the substantive provisions of the order, and the Commission having determined that the public interest will be better served by issuance of decision now rather than staying final disposition thereof, attendant to also placing the new agreement on the public record for a period of 30 days for the reception of comments;

