

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders

IN THE MATTER OF

NATIONAL TALENT ASSOCIATES, INC., ET. AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8960. Consent Order, Nov. 26, 1975—Modifying Order, Jan. 21, 1986

The Federal Trade Commission has modified a 1975 consent order with National Talent Associates, Inc., et al. (86 F.T.C. 1202), amending the provisions of the order that tell the company what disclosures it must make to consumers about its success in obtaining paid employment for clients. The consent order prohibited the respondents from misrepresenting their ability to obtain modeling positions for young children and required them to disclose specified information to prospective clients.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On September 20, 1985, National Talent Associates, Inc., a New Jersey corporation; National Talent Associates, Inc., an Illinois corporation; National Talent Associates, Inc., a California corporation; and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations (Petitioners) filed a request to reopen and modify the consent order entered against them by the Commission on November 26, 1975, in Docket No. 8960 (86 F.T.C. 1202).*

The request to reopen and modify the consent order was placed on the public record on September 20, 1985, and a press release regarding the request was issued on October 2, 1985. The public comment period ended on November 1, 1985, and no comments were filed. The deadline to rule on Petitioners' request was January 20, 1986.

Petitioners sell five year contracts to parents of young children under which they arrange to have the children photographed annually for five years. They then submit the photographs to talent agencies for consideration for employment as models. The order prohibits various misrepresentations including those relating to the employment opportunities and potential earnings available to children placed under their contracts. It further imposes affirmative obligations on

* Other respondents under the order are not bound by Part I of the order, with which the petition is concerned, and are not Petitioners.

Petitioners, including a requirement that they give to each prospective purchaser an "*Important Information*" document disclosing the number of children signed to their contracts during the immediately preceding two calendar year period, and information reflecting the success rates of these children in the modeling business.

Petitioners requested that several paragraphs of Part I of the order be modified or replaced with new paragraphs and that three new paragraphs be added to the order. They assert that changed conditions of fact since the order was issued require that Paragraph 13 be modified. They state further that the public interest requires that the first and second "*It is further ordered*" paragraphs of the order be replaced with new paragraphs and that new third, fourth and fifth "*It is further ordered*" paragraphs be placed in the order.

Paragraph 13 of the Order

Under Paragraph 13 of the order, Petitioners are prohibited from representing that:

National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio.

Petitioners state that at the time that the order was issued, the individual respondents owned an interest in a photographic studio. This is no longer true, and Petitioners now arrange for NTA clients to have photographs taken by independent photographic studios. Based on this changed condition of fact, Petitioners ask that the words, "unless such is in fact true", be added to the end of the paragraph.

The Commission agrees with the Petitioners that Paragraph 13 should be modified to reflect the stated changed factual condition. Petitioners should not be prohibited from making a truthful representation. If they acquire an interest in a photographic studio to which they refer clients in the future, the modified paragraph would prohibit them from representing that the photographic studio is an independent photographic studio.

First "It is further ordered" Paragraph of the Order

Petitioners ask that the first "*It is further ordered*" paragraph of the order, with the exception of the last subparagraph therein, be replaced with a new first "*It is further ordered*" paragraph. The first "*It is further ordered*" paragraph reads as follows:

It is further ordered, That respondents shall disclose the following information, in writing, in a clear and conspicuous manner to each person who is a prospective purchas-

er of any of their products or services, prior to entering into any agreement for the furnishing of such products or services, including the photographing of, or assistance to, any such persons in seeking or obtaining employment opportunities as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

a. The number of persons who contracted with respondents for the purchase of photographs or services to be used in connection with the selection, placement or employment of persons in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, within the two calendar years immediately preceding the year in which the prospective purchaser was contacted, the number and percentage of such persons who obtained paid employment through the auspices of respondents, as well as the number of paid jobs and agency contracts obtained by such persons.

b. The total number of persons placed under contract by respondents in each of the following categories of gross annual earnings, derived from paid employment in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, during the two calendar years immediately preceding the year in which the prospective purchaser was contacted by respondents: Under \$100, \$100-\$250, \$250-\$500, \$500-\$1,000, \$1,000-\$2,000, \$2,000-\$4,000, \$4,000-\$6,000, \$6,000-\$8,000, \$8,000-\$10,000, \$10,000 and above.

c. Whether any financial agreement, arrangement or connection, exists between respondents and any photographic studio to which they may refer prospective purchasers of their photographs or services.

d. Whether any financial agreement, arrangement or connection, exists between respondents and any person, firm or agency to whom photographs, or any other information, concerning the prospective purchaser, of their products or services may be sent by respondents.

e. The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents.

Petitioners' proposed first "*It is further ordered*" paragraph of the order would effect several significant changes in the "*Important Information*" document. The document now relates to the success rates of children signed by NTA during the immediately preceding two calendar years. The modified paragraph would change the time period covered to the immediately preceding five calendar years. Petitioners argue that the information required to be disclosed does not accurately reflect NTA client opportunities during the term of their contracts with NTA. "Of significant importance", Petitioners state, "NTA's agreements with clients are for five years; whereas, the order provisions require disclosure for two years. Depending on the date on which a client is signed during the two-year period, it is often impossible for a client to be processed by NTA, signed by a talent agency, obtain a job assignment and receive payment for the assignment in sufficient time to be included in all subparagraph a. data disclosure categories." Thus, to make the data more relevant to prospective

purchasers, Petitioners propose to enlarge the two year period to five years.

The items of information to be disclosed on the "*Important Information*" document would be reduced from five to three. The order requires the disclosure of the number of children signed to NTA contracts, the number of these children who were accepted by talent agencies, the number and percentage who obtained paid employment, the number of paid job assignments that they obtained and their earnings. Data concerning the number who were accepted by talent agencies and the number of paid job assignments that they obtained would no longer be disclosed. According to the Petitioner, these items of information are confusing and not easily relatable to the total number of persons contracting with NTA. Furthermore, the Petitioners assert that this data is extremely burdensome to compile.

The disclosure of earnings prescribed by subparagraph b. of the first "*It is further ordered*" paragraph would be substantially altered by Petitioners' proposed modification. The proposed categories of gross annual earnings are as follows: under \$500, \$500-\$5,000, \$5,000-\$10,000 and above \$10,000. Additionally, cumulative earnings would be permitted rather than annual earnings during the five calendar year period. In support of this modification, Petitioners assert that the public interest requires the elimination of unnecessary detail, and the four categories of earnings are more concise and easier to understand. Additionally, Petitioners argue that the physical counting and compilation of this data has been extremely burdensome and costly to NTA. To continue the ten categories of earnings with five year computations would be even more burdensome.

Petitioners' proposed modifications would permit two footnotes to be placed on the "*Important Information*" document. A footnote to items one and two, the number of persons signed to NTA's contracts and the number and percentage of those persons who received payment for employment, would read:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

A footnote to item three, the number of persons who earned income and their gross earnings, would read:

These figures do not include those children signed by NTA prior to (*Year*) who received earnings during the past five years.

Petitioners state that the footnotes are needed to "further clarify and explain the coverage of items, 1, 2 and 3 on the disclosure document."

Subparagraph c. of the first "*It is further ordered*" paragraph requires Petitioners to disclose whether "any financial agreement, arrangement or connection exists between Petitioners and any photographic studio to which they may refer prospective purchasers of their photographs or services." Subparagraph d. requires the disclosure of any such arrangement with firms or agencies to whom photographs, or any other information concerning prospective purchasers of their photographs or services are sent. Petitioners ask that subparagraphs c. and d. be combined into subparagraph (4) in the paragraph that they propose. These disclosures would be necessary only if such financial arrangements exist. Petitioners assert that the public interest requires this modification for clarification purposes.

The Commission has concluded that, taken together, the modifications proposed by Petitioners to the first "*It is further ordered*" paragraph of the order serve the public interest. The "*Important Information*" document does not accurately reflect the success rates of Petitioners' clients if it is limited to only two of the five years that they are under contract. Moreover, some less significant information would be eliminated. The essential information is the number of children signed to Petitioners' contracts, the number and percentage who obtained employment and their earnings. This information would be retained. Similarly, the reduction of categories of income from ten to four serves to make the document more concise and understandable. Unless a financial agreement, arrangement or connection exists between Petitioners and the photographic studios to whom they refer clients or the talent agencies to whom the photographs are submitted, there is no need to clutter the document with the disclosures required by subparagraphs c. and d. of the order. The footnotes, which would be permitted to appear on the document, would assist prospective purchasers in understanding the statistical data. Finally, the modified order paragraph is clearly drafted, and ambiguities have been eliminated.

Last Subparagraph of the First "It is further ordered" Paragraph and the Second "It is further ordered" Paragraph of the Order

Petitioners request further that the order be modified by deleting therefrom the last subparagraph of the first "*It is further ordered*" paragraph and the second "*It is further ordered*" paragraph and replacing them with the second "*It is further ordered*" paragraph set forth in their petition. The subparagraph and paragraph proposed to be deleted from the order are:

At the time when the foregoing disclosures are made, respondents shall furnish the prospective purchaser of any of their products or services with a retainable duplicate

copy of the disclosure document, and secure from such prospective purchaser a signed acknowledgment of the receipt thereof on the properly dated original copy. The document containing the disclosures shall be headed "*Important Information*", and shall not contain information or representations other than those set forth above.

It is further ordered, That respondents maintain, for a five year period following the execution thereof, the originals of the signed acknowledgments of receipt of the disclosures described in the preceding paragraphs and make them available for examination and copying, if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

The modification requested by respondents would replace the words, "prospective purchaser", with the word, "purchaser". Additionally, respondents' representative would be required to sign the copy of the "*Important Information*" document that is retained for Commission staff inspection.

The Commission considers the proposed modifications, taken together, to be in the public interest. The first subparagraph of the proposed first "*It is further ordered*" paragraph retains the obligation to give the "*Important Information*" document to each prospective purchaser of Petitioners' services. However, enforcement problems are brought about by a requirement that a signed acknowledgment of receipt be retained from each prospective purchaser. Additionally, the requirement that respondents' representative must also sign the copy of the document that is retained for staff inspection should serve to make those representatives aware of the importance of the document and the need to obtain a signed acknowledgment of receipt from each purchaser and to retain it.

Proposed Third "It is further ordered" Paragraph of the Order

Petitioners ask that a new third "*It is further ordered*" paragraph be placed in the order. It would prohibit them from making any claim or other representation, in advertising or promotional material, or in any oral sales presentation, that contradicts any of the information required to be disclosed in the "*Important Information*" document. In the view of the Commission, the public interest requires this prohibition to prevent overstatements of the employment opportunities and financial gains that may be anticipated by purchasing Petitioners' services.

Proposed Fourth "It is further ordered" Paragraph of the Order

A new fourth "*It is further ordered*" paragraph, which Petitioners request be placed in the order, would permit Petitioners to have up to sixty days after the close of each calendar year to update the "*Important Information*" document for the immediately preceding five calendar year period. In compiling the information required in

the first item of information on the disclosure document, a tolerance of one quarter of one percent would be permitted and a tolerance of one percent would be permitted in compiling the information for the third item of information, if such variances resulted from a good faith effort to accurately compile the required information.

In support of their request that the order be modified by adding the above-described paragraph, Petitioners contend that the public interest requires the "collection, assimilation and dissemination of accurate data; however, contrary to the public interest, the order does not allow sufficient time to collect the required data nor provide for good faith human error in assembling the data for display on the "Important Information" document. The proposed order paragraph, Petitioners continue, "takes into account the necessary time needed to accurately complete the 'Important Information' document and allows for good faith error, should the physical counting and compilation of statistical data (including determining five year cumulative earnings figures for each eligible client) result in insignificant errors."

We agree with Petitioners that adequate time should be provided in the order to update the information on the "Important Information" document from one calendar year to the next. The sixty days requested by Petitioners is reasonable. We agree also that small tolerances should be permitted for errors made in good faith in compiling the statistical data showing the number of children signed to their contracts and their earnings. No tolerance would be permitted for the information showing the number and percentage who were successful in being employed through Petitioners' auspices since this information involves fewer numbers and less difficult calculations.

Proposed Fifth "It is further ordered" Paragraph of the Order

Petitioners further request that a fifth "It is further ordered" paragraph be placed in the order. It would require Petitioners to "maintain, and, upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each 'Important Information' document then in use." As the "Important Information" document relates to a period of five calendar years, the records substantiating the information would be maintained for five years. Petitioners assert that the proposed fifth "It is further ordered" paragraph is in the public interest as it provides "additional compliance safeguards by establishing data substantiation and record keeping requirements which will allow the Commission's staff to effectively monitor Respondents' compliance with the first "It is further ordered" provision.

The Commission has concluded that the public interest clearly requires that records substantiating the information on the "Important

Information" document be maintained for compliance monitoring purposes.

Conclusions

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact require that the order be altered, modified or set aside. The Commission's rules implementing this statute amplify on this by providing that an order should be altered, modified or set aside if "the public interest so requires." The Commission has concluded that Petitioners have adequately shown that changed conditions of law and public interest considerations require that the order be modified in the manner requested by Petitioners.

The "*Important Information*" document, if prepared in accordance with the terms of the modified order, will more accurately reflect the success rates of Petitioners' clients. By the elimination of unnecessary information, the document will be more understandable and meaningful to prospective purchasers of Petitioners' services. The burden and expense of compiling the statistical data for the document will also be substantially reduced. Moreover, the modifications strengthen the order by requiring substantiation for the information on the "*Important Information*" document and prohibiting representations that may contradict this information.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued on November 26, 1975, is hereby modified to read as follows:

ORDER

I

It is ordered, That National Talent Associates, Inc., New Jersey, Illinois and California corporations, their successors and assigns, and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, and said respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith

cease and desist from representing, directly or indirectly, orally or in writing, that:

1. Respondents have received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

2. Referrals from past purchasers of their products or services are a significant source from which the names of potential purchasers have been obtained.

3. Respondents have obtained the names of potential purchasers from a source which cannot be divulged.

4. Respondents, when requested, will provide persons with the source from which the information referred to in their solicitation letters, solicitation phone calls, or in any other means of solicitation was obtained and the nature of such information, unless respondents provide such information when requested.

5. National Talent Associates, Inc. has the expertise essential for the judging and selection of the most qualified persons to be used as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

6. National Talent Associates' salesmen, agents or representatives have the expertise essential to select and judge the suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

7. Persons who prior to an in-person interview have been solicited by National Talent Associates, Inc., have been selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

8. The majority of National Talent Associates' income is derived from its personal management contracts and its ability to place persons under contract with the leading advertising, modeling, talent or entertainment agencies.

9. Persons are selected and offered contracts by National Talent Associates, Inc., only on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

10. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc., or by any person or agency, will be aided, increased or enhanced, by entering into a contract with National Talent Associates, Inc.

11. Access to Monica Stuart or to the William Schuller Agency, Inc.,

is available only to persons who contract with National Talent Associates, Inc.

12. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

13. National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio, unless such is in fact true.

14. Persons who contract with National Talent Associates, Inc. will receive annually one black and white, 8 × 10 inch, photograph of children in the family not under contract, for a five year period, or for any period in excess of the period in which said photograph is received without any obligation to purchase additional photographs at an added cost.

15. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and review, without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

16. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

17. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

18. Persons placed under contract by National Talent Associates, Inc. can reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses, or entertainers.

19. Persons who contract with National Talent Associates, Inc. may reasonably anticipate earning sums of money sufficient to provide for a college education or for any other such formal education.

20. A person's chances for selection as a model, actor, actress or

entertainer by the commercial advertising, modeling, talent or entertainment industries is, in any way, enhanced solely because he or she is Black, Oriental, has red hair, freckles or because of his or her size, age or any other specific racial or personal characteristics.

It is further ordered, That respondents shall disclose clearly and conspicuously to each prospective purchaser of their services, prior to entering into any agreement for the furnishing of such services, the following information in a written document entitled "*Important Information*":

(1) The total number of persons signed to contracts and accepted by respondents during the five (5) calendar years immediately preceding the year in which the prospective purchaser is contacted; provided, however, such total number may also be broken down by individual calendar year so long as the total number for the five (5) calendar years appears with such calendar year breakdown;

(2) The number and percentage of those persons in (1) above, who received payment for employment;

(3) The number of persons in (1) above who earned income and their cumulative gross earnings during the five (5) calendar years immediately preceding the year in which the purchaser is contacted, in each of the following categories: under \$500, \$500-\$5,000, \$5,000-\$10,000, and above \$10,000;

(4) Any financial agreement or affiliation between respondents and (a) any photographic studio to which they may refer purchasers of their services, and/or (b) any person, firm or agency to whom photographs, or any other information, concerning purchasers of their services may be sent by respondents;

(5) The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents;

and shall disclose in such "*Important Information*" document no other statistical data or information except (a) the name and addresses of National Talent Associates; (b) the following footnote relating to (1) and (2) above:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

and (c) the following footnote relating to (3) above:

These figures do not include those children signed by NTA prior to (Year) who received earnings during the past five years.

It is further ordered, That respondents shall provide to each pur-

chaser of their services a retainable copy of the "Important Information" document, and secure from each such purchaser a signed and dated copy of such document containing an acknowledgment by the purchaser of having received such document, which shall also be signed by respondents' representative, and that respondents shall maintain each such signed and dated document for five years and, upon request, make them available to the Federal Trade Commission for inspection and copying.

It is further ordered, That respondents shall not, in advertising or promotional material, or in any oral sales presentation, make any claim or other representation that contradicts any of the information required to be disclosed in the "Important Information" document.

It is further ordered, That respondents shall have up to sixty (60) days after the close of each calendar year to compile and update the "Important Information" document for the immediately preceding five-calendar-year period; *provided, however,* no "Important Information" document shall be given to any prospective purchaser after sixty (60) days from the beginning of each calendar year that does not disclose the information required to be disclosed by (1) through (5) above for the immediately preceding five-calendar-year period. In compiling the information required in (1) and (3) above, it shall not be a violation of this order if the figures in (1) vary by one-quarter ($\frac{1}{4}$) of one percent (1%) and the figures for (3) vary by one percent (1%), if such variances resulted from a good faith effort to accurately compile the required information.

It is further ordered, That respondents maintain, and upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each "Important Information" document then in use.

It is further ordered, That, if any representations are made by the respondents, their salesmen, representatives or agents, either expressly or impliedly, orally or in writing, pertaining to any standards, qualifications or characteristics which a person must meet or possess before respondents will agree to place such a person under contract, photograph them or otherwise assist or render services to said person, respondents shall maintain complete and detailed records as to such persons who have failed to meet or possess such standards, qualifications or characteristics, including their names, addresses, date of rejection, and the reason or reasons for their rejection by respondents. Such records shall be made available for examination and copying if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered, That the respondents named in Part I of this order shall submit to respondents Monica Stuart and the William

