

Complaint

117 F.T.C.

IN THE MATTER OF

PERSONAL PROTECTIVE ARMOR ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3481. Complaint, Mar. 17, 1994--Decision, Mar. 17, 1994*

This consent order prohibits, among other things, a Maryland-based association for manufacturers of soft body armor (bullet-proof vests) from entering into any agreement with its members that would restrict them from engaging in comparative advertising or offering product-liability insurance, guarantees or warranties on soft body armor, and from placing any restraints on soft body armor advertising, that is not deceptive or false, including restricting information about prices, product availability, and body armor performance characteristics.

*Appearances*For the Commission: *Paul J. Nolan and Deborah E. Klein.*For the respondent: *Richard Feinstein, McKenna & Cuneo,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission 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 Personal Protective Armor Association ("PPAA") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its mailing address at 3623 Falls Road, Baltimore, Maryland.

PAR. 2. Respondent is a trade association of fiber and soft body armor manufacturers founded in 1975. A significant portion of respondent's activities furthers its members' pecuniary interests. By

virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 3. Most of respondent's members are engaged in the business of producing and selling soft body armor. Some are also engaged in the sale of ballistic resistant fibers. Except to the extent that competition has been restrained as herein alleged, most of respondent's members have been and now are in competition among themselves.

PAR. 4. The acts and practices of the respondent, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5. Consumers of soft body armor, usually federal, state, and local law enforcement agencies, seek various price and non-price terms as part of a competitive bidding process. In selecting a body armor manufacturer, consumers consider factors such as quality of the product, price, and other terms of sale such as products liability insurance and certification that the soft body armor passes applicable performance standards. Advertising, including comparative advertising and advertising of warranties and products liability insurance, enables firms to inform consumers about these factors. Such advertising benefits consumers by increasing the information available to them and promoting competition among soft body armor manufacturers.

PAR. 6. During some periods, from 1986 to the present, PPAA has maintained a policy against comparative advertising, including a policy declaring it unethical for any member to make any representation that another member's vests have failed certification testing. This policy applies even to truthful representations and operates to discourage or prevent a manufacturer from engaging in comparative advertising or otherwise representing that its soft body armor possesses qualities superior to that of other members.

PAR. 7. During some periods, from 1986 to the present, PPAA adopted a policy that its members were to respond uniformly to bids by not offering products liability insurance in competing for contracts from law enforcement agencies. The aim of the respondent was to improve its members' profits by no longer using products liability insurance, or the amount of such insurance, as a tool to win contracts to supply soft body armor.

PAR. 8. In engaging in the acts and practices described above, PPAA has acted as a combination of its members or in conspiracy with some of them.

PAR. 9. The purposes or effects, and the tendency and capacity, of the combination or conspiracy and acts and practices of respondent as described in paragraphs six through eight have been and are to unreasonably restrain competition in one or more of the following ways, among others:

A. Competition in the marketing and sale of soft body armor on the basis of price, service, and quality has been frustrated and restrained;

B. Consumers have been deprived of the benefits of truthful information about the performance of soft body armor; and

C. Consumers have been deprived of the potential value of warranties, including but not limited to products liability insurance, in the purchase of soft body armor.

PAR. 10. The combination or conspiracy and the acts and practices, described herein, constitute unfair methods of competition, or unfair or deceptive acts practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The combination or conspiracy, as herein alleged, is continuing and will continue in the absence of the relief herein requested, unless the Commission enters appropriate relief against the respondent.

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Personal Protective Armor Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 3623 Falls Road, in the City of Baltimore, State of Maryland.

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

ORDER

I.

For the purposes of this order, the following definition shall apply:

A. "*Respondent*" means the Personal Protective Armor Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns.

B. "*Soft body armor*" means concealable bullet-resistant vests generally worn by civilians and law enforcement personnel.

II.

It is ordered, That respondent, directly, indirectly, or through any device, in connection with activities in or affecting commerce, as

“commerce” is defined by the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, or carrying out any agreement between or among respondent’s members, either express or implied, that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against:

1. Engaging in comparative advertising, including, but not limited to prohibiting any member from advertising that any type of soft body armor meets or fails to meet any ballistic resistance standard; or
2. Offering or providing products liability insurance, guarantees, or warranties on soft body armor.

B. Restricting, regulating, impeding, declaring unethical, interfering with, restraining, or advising against the advertising, publishing, or dissemination by any person of the prices, terms, availability, characteristics, or conditions of sale of soft body armor through any means, including, but not limited to, adopting or maintaining any rule or policy that restricts or prohibits a member from:

1. Engaging in comparative advertising, including, but not limited to prohibiting any member from advertising that any type of soft body armor meets or fails to meet any ballistic resistance standard; or
2. Offering or providing products liability insurance, guarantees, or warranties on soft body armor.

Provided, that nothing contained in this paragraph II shall prohibit respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That respondent:

A. Distribute by first-class mail a copy of this order and the complaint to each of its members within thirty (30) days after the date this order becomes final.

B. For a period of five (5) years after the date this order becomes final, provide each new member who joins PPAA with a copy of the order and complaint within thirty (30) days of membership into PPAA.

C. File a verified, written report with the Commission within sixty (60) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to PPAA, require, setting forth in detail the manner and form in which it has complied and is complying with the order.

D. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order.

IV.

It is further ordered, That PPAA shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance with this order.

CONCURRING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

I concur in the Commission's decision to approve the consent order in this matter. The evidence demonstrates that ten companies, representing more than 90% of U.S. sales of protective body armor, engaged in unreasonable restraints of trade in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The agreements here restrain significant dimensions of competitive rivalry among body armor manufacturers. Therefore, they appear likely, absent an efficiency justification, to restrict output. The respondent has not

proffered any efficiency justification for the restraints. Under the standards set forth in Massachusetts Board of Registration in Optometry¹ and its progeny, this “inherently suspect” conduct is appropriately condemned without a full rule of reason analysis.

In my view, however, it may have been appropriate to name as respondents the members of the Personal Protective Armor Association (“PPAA”). This case is not typical of the Commission’s cases challenging anticompetitive conduct of state licensing boards and trade associations. In most such cases, the board or association represents hundreds or thousands of competing entities.² Naming individual members as respondents in such cases is generally impracticable: it may unnecessarily complicate litigation or create intractable problems for settlement negotiations.³ More important, naming members is often unnecessary: the respondent board or association is typically the only (or only effective) means by which the multitude of competitors can reach and enforce an agreement restraining competition.

By contrast, competitors in the relatively concentrated protective body armor industry may be able to collude effectively outside the auspices of the PPAA or any other formal trade association.⁴ If so, the consent order, which names only the PPAA as a respondent, may provide an insufficient remedy. So long as the PPAA is not involved,⁵ the same body armor manufacturers could engage in collusive conduct falling squarely within the core cease and desist provisions of the order without exposure to civil penalties under Section 5(l) of the FTC Act, 15 U.S.C. 45(l).⁶

¹ 110 FTC 549, 604 (1988).

² See, e.g., *American Medical Association*, 94 FTC 701, 702 (1979) (membership consisting of approximately 170,000 medical doctors); *Mass. Board*, 110 FTC at 560 (more than 1350 optometrists subject to the Board’s restraints); *Detroit Auto Dealers Association, Inc.*, 111 FTC 417, 419 (1989) (membership consisting of 231 automobile dealerships).

³ But see *Detroit Auto Dealers*, 111 FTC at 518-21 (addenda to final decision and order) (naming as respondents the association, 17 constituent associations, 96 member dealerships, and 81 individuals); *id.*, Docket No. 9189 (Jan. 26, 1994) (agreement containing consent order with 146 respondents accepted for public comment).

⁴ Thus, unlike in many cases involving association restraints in which the respondent association itself is a critical first mover, the conduct at issue here constitutes archetypal cartel behavior as to which this particular association’s involvement may be merely detail.

⁵ Under the order, respondent PPAA is defined to include any association that can be held to be a legal successor. The evidence does not clearly indicate whether PPAA has any structural, legal, or historical advantage that would impede the creation of a new, non-successor body armor trade association.

⁶ Of course, this conduct would expose these firms to private and state actions for damages under Section 4 of the Clayton Act, 15 U.S.C. 15. Such exposure, however, apparently did not deter the conduct that led to the Commission’s action in this matter.

In determining the optimal scope of any future enforcement actions against anticompetitive restraints facilitated by a trade association, the Commission should consider carefully the extent to which the participation of the particular association is necessary to effect collusion among its members.

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IN THE MATTER OF

THE HAIRBOW COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3482. Complaint, Mar. 17, 1994--Decision, Mar. 17, 1994*

This consent order prohibits, among other things, the California-based corporations and officers, who purported to sell hairbow kits, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for which the respondents are offering a work opportunity. In addition, the order sets a redress payment, however, based upon financial statements submitted by the respondents, the redress payments have been suspended.

*Appearances*For the Commission: *Gerald E. Wright and Jeffrey Klurfeld.*For the respondents: *William Bernheim, Whitaker & Bernheim,*
Dixon, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Russell J. Osborn, a/k/a Russell J. Osborne and Russell J. Osbourne (hereafter "Russell J. Osborn"), individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation ("respondents"), have violated Section 15 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest alleges:

PARAGRAPH 1. Respondent The Hairbow Company is an unincorporated association, with its principal office and place of business located at 19 Front Street, Danville, California.

Respondent Rainbow Productions, Inc. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 19 Front Street, Danville, California.

Respondent Russell J. Osborn is an individual, is the owner of The Hairbow Company, and is the owner and president of Rainbow Productions, Inc. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of The Hairbow Company and Rainbow Productions, Inc. His address is 19 Front Street, Danville, California.

PAR. 2. Respondent Russell Osborn, individually and trading and doing business as The Hairbow Company, has disseminated advertising seeking individuals to assemble craft items and other products at home, and has offered for sale and sold starter kits to individuals who accept his offers to engage in such work. The cost of such starter kits covers registration and other fees to engage in such work.

Respondent Rainbow Productions, Inc. has disseminated advertising soliciting individuals to incur the cost of a 900-number telephone call to obtain information about companies offering work-at-home opportunities.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated, and have caused to be disseminated advertisements, promotional literature, and agreements relating to their income opportunities, including but not necessarily limited to the attached Exhibit A. These materials contain the following statements:

Muchas personas ganan hasta \$400 o mas cada semana trabajando en casa. Usted puede tambien. Es facil! [Many people earn up to \$400 or more each week working at home. You can too. It's easy!]

* * *

Gane hasta \$423 dolares a la semana, haciendo prendedores de cabellos. [Make up to \$423 dollars per week making hairbows.]

* * *

WE NOW PAY UP TO \$427.68 WEEKLY!!

* * *

LA COMPANIA DE HAIRBOW
AHORA LE PAGAMOS HASTA \$427.68 A LA SEMANA!

[THE HAIRBOW COMPANY
WE NOW PAY UP TO \$427.68 WEEKLY!]

PAR. 5. Through the use of the statements contained in the materials referred to in paragraph four, including but not necessarily limited to the materials attached as Exhibit A, respondents have represented, directly or by implication, that:

A. The stated dollar amounts constitute the weekly earnings regularly realized over a substantial period of time by an appreciable number of independent assemblers of respondents' products.

B. Respondents are fulfilling a significant marketplace demand for their products.

PAR. 6. In truth and in fact:

A. Independent assemblers of respondents' products have not regularly realized over a substantial period of time the weekly earnings represented. Only a small percentage of persons who assembled products for respondents have regularly derived earnings from their work, and none has achieved over a substantial period of time the weekly earnings represented.

B. Respondents are not fulfilling a significant marketplace demand for their products.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. The acts and practices of respondents as alleged in this complaint, constitute unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

EXHIBIT A

The Hairbow Company

WE NOW PAY UP TO \$427.68 WEEKLY!

WELCOME:

Thank you for responding to this great opportunity. THE HAIRBOW COMPANY is a family owned business and takes pride in quality crafted crafts. THE HAIRBOW COMPANY is in current need of hardworking people willing to do the work from their own home. If you have a strong desire to work at home then THE HAIRBOW COMPANY is interested in you if you have the following desire.

- 1) To use your basic skills in producing a beautiful HAIRBOW, with no experience necessary and no special equipment necessary.
- 2) We are in the business of selling hairbow kits which show you how to make your own hairbows that you may either sell on your own or sell to us, or both.
- 3) Make good money in your own home. We pay you up to \$427.68 weekly!

This is all we are looking for is just a desire in you to produce our product. The breakdown of our cost and your profit is as follows. We pay you \$427.68 per week for the assembly of 3 units of our product. Each unit consist of 4 dozen HAIRBOWS. For each unit we will pay you direct \$100.32 for production plus \$42.24 for supply cost reimbursement for a total of \$142.56 per unit. If you do the maximum we allow per week that totals \$427.68 for 3 units plus shipping...Also in addition we PAY SHIPPING up to \$2.00 per unit. on units made according to quality standards. We do reserve the right to return products that are sent to us improperly constructed, or just plain sloppy. So please, always try to do a good job to save both of us time and money.

HOW TO BEGIN:

First THE HAIRBOW COMPANY will send you a starter kit consisting of complete tips on how to make the HAIRBOW along with picture, quality check list, diagrams, materials to make your first sample HAIRBOW and complete information on obtaining supplies. This starter kit is designed to show you how to make one HAIRBOW correctly.

Hard work is the key to any success and all we ask is you produce. In order to help us pay the high cost of advertising, administration cost, printing, management of your file and inspection of your work we must ask that you purchase your own starter kit. This one time purchase will more than earn the price of your package, with the first unit of HAIRBOWS you produce.

To get started as part of the HAIRBOW team simply fill out your name and address and return this form today!

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EXHIBIT A

RECEIVED MAY 1 1991
 Return this form: SHIPPED MAY
to Shipping Department
HAIR BOWS PO BOX 2678, DANVILLE CA 94526

Make your money order or check payable to Hairbows, Inc. Funds

NAME _____

ADDRESS _____

CITY S. I. IP _____

SIGNATURE _____
E 4/29/91 Phone _____

HAIR BOWS will send you a check for the total amount of \$142.56 plus shipping up to \$2.00 for each unit of 4 dozen hairbows that you complete according to our written specifications. We currently limit our producers to shipments of 3 units per week, for a total of \$427.68 per week.

You are your own employer, so you work for yourself and you are responsible for your own tax records. We do not withhold income taxes, nor do we pay unemployment benefits or employee benefits of any kind. You are an independent contractor and it's your own responsibility. Because you are an independent contractor you have the option of selling the product elsewhere if you wish.

Control of our inventory is of the most importance to us now, and HAIRBOWS requires our producers to have their first unit in our office no later than 55 total days from the date of the starter kit being mailed to you. All future units will have the same requirement, 55 total days from payment of the last unit. We will not extend for any reason, otherwise HAIRBOWS will have too much idle inventory and no control of incoming inventory. It is not possible for us to pay on partially completed work, or uncompleted units. Since we at HAIRBOWS have a high level of quality to uphold, we reserve the right to refuse improperly constructed, or sloppy work.

To receive your starter kit, simply fill out the above application-agreement, sign it, and send either a money order or personal check in the amount of \$29.95 plus \$4.95 shipping and handling to HAIRBOWS at the address above. Your starter kit includes, picture, fabrics, and complete instructions for obtaining supplies and hair bow assembly. This starter kit is designed to show you how to make one hair bow correctly. The starter kit funds are used immediately towards up keep of your file, administration costs, printing, inspection of your work ect. We will ship the starter kit within 15 days from date received on all money orders received, and 4 weeks on all personal checks, to allow time for checks to clear. For a limited time Order within 10 days and receive a free bonus report on how to make even more money with your hairbows!

Enclose \$29.95, plus \$4.95 shipping and handling and indicate payment below.

Money Order (15 day shipping)

Personal Check (4 week shipping)

Rush Handling \$2.00

Return this application to:
Hairbows Shipping Dept.
PO Box 2678
Danville, CA 94526

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 San Francisco Regional Office 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, their attorney, 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and no comments having been filed thereafter by interested parties pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Hairbow Company is an unincorporated association, with its principal office and place of business located at 19 Front Street, Danville, California.

Respondent Rainbow Productions, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 19 Front Street, Danville, California.

Respondent Russell Osborn is an individual, is the owner of The Hairbow Company and is the owner and president of Rainbow Productions, Inc. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of The

Hairbow Company and Rainbow Productions, Inc. His address is 19 Front Street, Danville, California.

2. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. 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

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I.

It is ordered, That respondents Russell J. Osborn, individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation, its successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or
2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profit from respondents during the previous three years, and for each such participant: all written agreements between respondents and each participant during the previous three years; and the dates and amounts

of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III.

It is further ordered:

A. That respondent Russell J. Osborn shall pay to the FTC as consumer redress the sum of one million nine hundred thousand dollars (\$1,900,000); provided, however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in a "Financial Statement of Debtor" executed by Russell J. Osborn on September 22, 1992, and appended "Statement of Assets and Liabilities" executed by Russell J. Osbourne on September 14, 1992; a "Financial Statement of Corporate Defendant" relating to Rainbow Productions, Inc. executed by Russell J. Osborn on September 22, 1992; and on the federal and California tax returns of Russell J. Osborne for 1990. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million nine hundred thousand dollars (\$1,900,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this order.

IV.

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the order.

V.

It is further ordered, That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, and shall promptly notify the Commission of each affiliation with a new business or employment.

VI.

It is further ordered, That respondents shall, within sixty (60) days after service of this order on them, and on the first through the fifth anniversaries of the effective date 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.

