

748

Initial Decision

Mr. Winge was terminated by Holiday Magic President Fred Pape on 7/9/68 (CX 645A).

180. Holiday Magic, Inc. constantly publishes information in its Wands and Family News telling its distributors the retail prices to charge for its products. Neither the words "suggested" nor "recommended" appear in conjunction therewith.

(a) CX 155G - Family News - 1/30/70:

February 1-28, 1970, your Holiday Girls will be authorized to sell Strawberry Frappe Cleanser for just \$1.99 a jar * * * a savings of 96 cents to their customers!!! More sales in February - more profits for everybody!

(b) CX 158A - Family News - 3/27/70:

BY POPULAR DEMAND: HM XXI Deodorant will remain on the price list - Code #580, retail price \$1.50 each.

(c) At CX 122D - Family News - 10/16/67:

REPLY #2--In answer to the many requests (6), the prices for Christmas gift goodies are:

Neferletti Gift Set #1	21.50
Neferletti Gift Set #2	13.00
Neferletti Gift Set #3	10.00
H-M XXI Gift Set	11.25
H-M XXV Gift Set	11.25

(d) See also CX 164C; CX 165D; CX 166F; CX 167C; CX 168B; CX 170B; CX 158A; CX 158E.

181. Product brochures put out by Holiday Magic, Inc. contained pictures of the products and the retail prices affixed thereto. No mention of "suggested" price or "recommended" price appears in conjunction therewith (CX 631A-P; CX 633P-W (July 1968); CX 634A-D).

182. Holiday Magic, Inc. also distributes *retail* customer order forms to its distributors containing the resale prices appearing directly on the retail customer's order (CX 635 (May 1967)).

183. Distributor price lists containing the retail price of the Holiday Magic products are also distributed by Holiday Magic, Inc. to its distributors (CX 636A; CX 636B (Nov. - Dec. 1968); CX 637; CX 410; CX 413).

184. Discounting Holiday Magic products by distributor is a violation of the Holiday Magic marketing plan, and Holiday Magic, Inc. required its distributors to adhere to the retail prices.

(a) (Ruggles-Tr. 554).

(b) Respondent Gillespie-Tr. 9311 (referring to Holiday Magic, Inc.), who was with the company until June 1968 (Tr. 9293) testified:

Initial Decision

84 F.T.C.

JUDGE BUTTLE: They [Holiday Magic] simply told them [distributors] what to charge, is that it?

THE WITNESS: They had a price list.

JUDGE BUTTLE: That they had to charge?

THE WITNESS: Basically, but it was never policed.

JUDGE BUTTLE: Unless they did not follow the price list?

THE WITNESS: Right.

185. Holiday Magic, Inc. entered into agreements with distributors and prohibited its distributors from placing their Holiday Magic merchandise in "discount" stores (Gillespie-Tr. 9454; CX 104"-0").

186. Witness testimony relative to price adherence:

(a) *Charles Madden*, appointed Senior General of the Kansas City council by Holiday Magic, Inc. (Tr. 5320) and Senior General of the month for Holiday Magic, Inc. (Tr. 5332), testified that he never deviated from Holiday Magic policy with respect to retail prices as expressed in the sales manuals and sales brochures (Tr. 5321-22). He abided by CX 79A-Z103 "100%" (Tr. 5323). He used CX 631 (brochure) in his business (Tr. 5323). The price of the Holiday Magic products was part of the training he gave to his new Holiday Girls (Tr. 5330).

(b) *Warren Haskins*. Mr. Haskins, the Senior General for Kansas City council from the last part of 1967 to early 1968 (Tr. 5338), and who engaged in business activities in Kansas and Missouri (Tr. 5335), testified that Ben Gay told him at the time that Haskins was Senior General and Gay was vice president of Holiday Magic, Inc. (Tr. 5336, 5338), that he could not cut prices in a fund raising program to Boy Scouts since the Boy Scouts couldn't sell at less than list price and that he would lose his distributorship if he did (Tr. 5337), and on a second occasion in Sept. 1967, Mr. Gay told him that he couldn't run specials and sales on products placed in a retail store in Kansas City, Mo. (Tr. 5338).

On another occasion, Mr. Haskins, as Senior General, reported to Mr. Gay of a distributor discounting; Gay wrote back asking for information and stated that it was against Holiday Magic rules to discount. Mr. Haskins supplied the information (Tr. 5338-39).

Mr. Haskins has maintained his inventory of Holiday Magic products, and didn't discount same for fear of losing his distributorship.

He used CX 631 in his business, and instructed his Holiday Girls to sell out of it; the selling prices were in there.

(c) *Bruce J. Longballa*. Mr. Longballa, a Master Distributor (Tr. 1064) doing business in Nevada (Tr. 1064), put product in a store because he wanted to discount it, but removed it because he was told by his Sponsoring General that a Senior General in town would see it and as a consequence he would lose his distributorship (Tr. 1068-1069).

(d) *John Wells*. Mr. Wells, a General Distributor (Tr. 988) doing business in Nevada (Tr. 995, 993) who is still active (Tr. 988, 1057) testified that he told his Holiday Girls that they "had to sell at the prices in the books" (Tr. 1011) because of the Holiday Magic rules (Tr. 1011). Until approximately Sept. 1, 1971, Mr. Wells had had only the rules as appearing in CX 1469, and this was the manual he followed (Tr. 1013-1017). Mr. Wells added that Mr. Percy taught him as part of his training to sell at the Holiday Magic prices (Tr. 1009), and he was not permitted to advertise products as loss leaders (Tr. 1023). The rule in CX 1469 is the same as appears in Part XXI (a) hereof.

Mr. Percy was a Holiday Magic vice president in early 1969 (Tr. 7155), and in the first group of Instructor Generals in Feb. 1967 (CX 19C).

(e) *Thriftone Jones*. Mr. Jones was a Master Distributor (Tr. 5388) doing business in Wash. D.C. (Tr. 5389) who testified he sold at the prices of Holiday Magic as required by his Sponsor and Holiday Magic (Tr. 5389). His Sponsor told him he would lose his distributorship if he didn't (Tr. 5390). Mr. Jones became a Master in Nov. 1968 (Tr. 5388).

(f) *Gelanine Hutchinson*. Mr. Hutchinson, a General Distributor and Senior General from Fort Pierce, Fla. who did business in Kansas (Tr. 2161-62), distributed price lists to his Holiday Girls in Kansas as set forth by Holiday Magic, Inc. and contacted his girls to sell at the specified prices because of Holiday Magic rules (Tr. 2164-65).

(g) *Charles C. Spellers*. Witness Spellers, who was a Master Distributor (Tr. 5403) until the latter part of 1968 (Tr. 5403), and who engaged in his business activities in Wash. D.C. (Tr. 5403), testified that it was Holiday Magic's requirement to sell at the list prices as indicated in CX 636A-B (Tr. 5403-5404, 5412).

Mr. Spellers also testified that Holiday Magic Instructor General McKelvey taught him that if he didn't follow the prices established by the company (Tr. 5405) the company would take action against him (Tr. 5407). McKelvey told him that at IG school in Arlington, Va. and again in Wash. D.C. (Tr. 5406).

Price lists appeared in cartons of Holiday Magic products (Tr. 5411, 5412).

(h) *Lester Small*. Mr. Small, who was a Master Distributor (Tr. 5377) operating in Wash. D.C. (Tr. 5382, 5384) until the last half of 1968 (Tr. 5382), testified that he retailed at the retail prices indicated in the Holiday Magic catalogs at CX 633 P-W (Tr. 5379-5380).

Holiday Magic IG McKelvey (Tr. 5381) told him to stick to the list prices or else he probably would lose his distributorship (Tr. 5381).

(i) *Judy Hurd*. Mrs. Hurd, who was a Master Distributor (Tr. 5358) operating from her home in Kansas City, Kan. (Tr. 5357, 5358, 5361),

testified that she retailed at the Holiday Magic prices from the retail prices given in the price lists (Tr. 5358). She also testified that Gerry Arrowood, a Holiday Magic Trainer General, gave a course in Kansas City in which she had to *memorize* the prices of all the products (Tr. 5359).

(NOTE: Gerry Arrowood thereafter testified for respondents and never denied this.) She also heard Ben Gay speak at a hotel in Kansas City in Apr. or May 1967 (Tr. 5363, 5365) and say Holiday Magic products would never go on sale, and that they should "follow the program or else" (Tr. 5364). At the time Mr. Gay was assistant to Holiday Magic president Fred Pape (Tr. 9823).

She also testified that Senior General Temps of the Kansas City area, who was Senior General after Madden (Tr. 5365), instructed her not to discount the product and to sell at the retail prices (Tr. 5367).

(j) *Edith Janz*. Mrs. Janz, a General Distributor in Holiday Magic, Inc. (Tr. 5343), who was active through mid-1967 (Tr. 5343) and who engaged in her business activities in Wichita, Kan. (Tr. 5343), testified that she sold at retail at the list prices as appearing in the manuals, master order forms and price list as CX 635 (Tr. 5344). She was instructed to do so by her Master's and General's manual (Tr. 5343-5346, 5347).

At training classes in Kansas City and Dallas she was told to sell at the Holiday Magic prices (Tr. 5346).

XXI. Purchase Restrictions

187. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires all Organizer and Holiday Girl distributors in its rules and regulations to purchase Holiday Magic merchandise only from their sponsors.

(a) CX 79Z93, Rule 3 -

Distributor agrees to purchase merchandise only from the Company or his Sponsor in accordance with the Holiday Magic marketing plan and to sell merchandise only at those prices established by the Company. See also CX 104H, Rule 3; CX 77L, Rule 4.

(b) A "sponsor" is a Distributor who recruits or enlists a new Distributor (CX 79Z100).

(c) CX 7H - Wand - Solution Box - Feb. 1966:

Question: I am an Organizer in the Mid-West. My Master is in California. Can I fill my orders from a Master who is close to my area?

Answer: Unfortunately, you cannot. Masters can only fill orders to their own organization. If you find that you cannot obtain merchandise from your own Master you may apply for a transfer to a Master that is close to you. This is but one of the many reasons that we constantly suggest to Distributors that they recruit within an area they can realistically service, not only for cosmetic purchases but also for business guidance, training, etc.

748

Initial Decision

(NOTE: Refers to Masters recruiting Organizers, not Generals recruiting Masters!)

(d) CX 79Z29 (from opportunity meeting script):

Now as you will recall in the film, this is you, and your first 30 days you sponsored five people into the business. Now, because you sponsored them, they must buy their product from you. They cannot buy it anywhere else.

As you saw in the film, these particular people that you sponsored could have been * * * health food stores, barber shops, beauty salons, Holiday Girls or other organizers * * *

See also CX 76Z20

(e) Manuals CX 78Z49 and CX 79Z46 state:

Once a distributor reaches a total volume of \$5000 in any one calendar month, he has earned the right to buy permanently at 55% off retail. He is then classified as a Master Distributor, and will buy directly from the Company. Master Distributors supply only their directs and conversely, their directs or recruitees must order through their sponsoring distributors.

Manual CX 106C states:

Only Master and General Distributor's orders should be submitted to Holiday Magic. All other distributors purchase through their sponsor.

188. Packaging Changes

(a) Holiday Magic, Inc. has over the years engaged in numerous packaging changes of its products, such as changes in bottle shapes, labels, and colors of caps of the bottles or jars of its cosmetic products.

CX 121D (9/67) (black caps to colored caps)

CX 23B (6/67) (golden caps for all)

CX 26A (9/67) (new shape for bottles and jars)

Tr. 6023-24 (Kajioka)

(b) The constant packaging changes made it impossible for the distributors to purchase (or sell) their products to other distributors as well as at retail.

Tr. 3723 (Pence);

Tr. 5368 (Hurd);

Tr. 3234-3235, 3248 (Sharpe);

Tr. 1022 (Wells).

(c) Holiday Magic, Inc. would refuse to take the old packaging back when a change occurred (Wells-Tr. 1023; CX 79Z93, Rule 5).

189. Holiday Magic, Inc. enters into contracts and agreements with its distributors and requires all distributors in its rules and regulations to agree not to buy back merchandise from his direct distributors.

CX 79Z93, Rule 4:

Distributor agrees not to buy back any merchandise from his direct distributors.

See also CX 78Z96, Rule 4; CX 82Z48, Rule 4; CX 83Z48, Rule 4; CX 104H, Rule 4; CX 105H, Rule 4; CX 77L, Rule 4.

Incident to agreement arrangements, Holiday Magic, Inc. requires its sponsoring distributors to file copies of the applications and agreements of distributors they recruit into the business with Holiday Magic, Inc. in order to protect their sponsorship rights.

See CX 472 - HM bulletin - 9/23/66.

190. Holiday Magic, Inc. in entering into agreements and contracts with its distributors also requires all distributors in its rules and regulations to agree not to transfer to another organization without a prior release from all distributors above them in the marketing chain. Such transfers are discouraged by Holiday Magic, Inc.

(a) CX 78Z89-90 and CX 79Z85-86 read:

TRANSFERS OF DISTRIBUTORS

Occasionally you will be approached by a Distributor who wishes to effect a transfer from one sponsor to another. You know that Holiday Magic has promised, by policy, to protect each organization. In 90% of the cases such transfers should be discouraged and/or refused. It is usually due to a supposed personality conflict and social differences which have little place in business.

However, in a small percentage of these cases, it might be agreeable and for the good of all parties if such a transfer is accomplished. In such a case, the following must occur before a voluntary transfer can be accomplished:

All the parties listed below must clearly indicate their consent to the transfer in writing to the Company:

1. The Sponsor - stating whether or not he agrees to release the organization of the transferee or keep them himself, according to the Rules and Regulations.
2. All members of the organization between the Sponsor and the first Master, since they too have a financial interest.
3. The Master Distributor above the Distributor requesting transfer.
4. The Organization's General as well as the General who is receiving the 1% override.

Should any one of the above persons fail to give their release, the Company will not approve the transfer. The Distributor who desires the transfer has only one other alternative. He may resign as a distributor upon giving notice to the company, and, after a period of six months inactivity, may then rejoin the company under any other Sponsor he desires. Any subterfuge—working as a “silent partner,” working “on salary,” etc.—will not be tolerated by the Corporation during this inactive six month period.

(b) CX 78Z99, Rule 24 states:

Distributor agrees not to transfer to another organization without a prior release or written consent from all Distributors above him in the marketing chain, including the Company as well as any other person with a financial interest in his organization.

See also CX 79Z96, Rule 24 (word “organization” substituted for “chain”); CX 105H, Rule 23.

See CX 1382A-E regarding the transfer request from witness Vermilye to Holiday Magic, to seek to get out of the organization of Rick Spranzo. Holiday Magic notes that:

When transferring from one organization to another, you do not automatically take your organization with you * * *

See CX 1382C-E for transfer forms.

XXII. Customer Restrictions

191. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires in its rules and regulations that distributors may resell their Holiday Magic products at wholesale only to Organizers and Holiday Girl distributors whom they have sponsored into the Holiday Magic program.

(a) The distributor agrees to purchase Holiday Magic merchandise from respondent company, or from his sponsor only (Answer, p. 10).

(b) See Part XXI.

(c) Letter from Holiday Magic General Counsel to Mr. Glascock, dated 10/17/67 (CX 686A):

We have just been advised by a distributor in Bartlesville, Oklahoma, that you had made a telephone call to Doris Sanford and Francis Stephenson of the Bartlesville distributors' organization advising them that you had spent a week in Chicago with Fred Pape and that Mr. Pape had told you that you could supply product to anyone you pleased and that he, Mr. Pape, would stand behind you.

As you know, this is contrary to the marketing plan and totally unacceptable to this corporation. Mr. Pape denies having any such conversation with you and we take this opportunity to advise you of the allegations that have thus been made against you. Please respond to these charges within ten days, supporting any denial you may care to make with corroborating evidence and advancing any explanation that you may have of the aforesaid report. Failing to hear from you within ten days in this matter, we will have no alternative but to turn the matter over to the Board of Directors for further action.

Due to the fact that Doris Sanford and Francis Stephenson have received a false impression as a result of your phone call, we request that you immediately contact Miss Sanford and Mr. Stephenson to advise them that they are under a misapprehension and that you do not have corporate authorization to furnish product to just anyone, and assuring them that you intend to operate within the framework of the marketing plan and in no other fashion.

Mr. Glascock was subsequently terminated (CX 686A, F).

(d) Letter from former Miami Senior General Vincent Fechtel (Tr. 2422) to complaint counsel (CX 1470A, B):

Through our telephone conversations, I understand you are filing suit against Holiday Magic because they restrict those distributors who buy their goods to certain limited methods and certain types of retail establishments.

When distributors buy merchandise from Holiday Magic they do so with the agreement to restrict their selling methods and customers.

192. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires that distributors may not recruit or sponsor other Holiday Magic distributors who have already been sponsored into the business.

(a) See CX 79Z94, Rule 16:

Distributor agrees not to recruit or sponsor other Holiday Magic Distributors. Further, a Distributor is considered sponsored by that individual who first signs him as a Distributor and executes an Application and Agreement Form. The Individual has the freedom of choice as to which Distributor shall sponsor him.

(b) See also CX 77L, Rule 6; CX 78Z97, Rule 16; CX 105H, Rule 14.

193. Holiday Magic, Inc. instituted a policy requiring all distributors to refrain from selling at the retail level to consumers or retail customers who are being serviced by other Holiday Magic distributors.

(a) Policy of Holiday Magic, Inc. under threat of termination (Tr. 8083, 8612, 8644, 4666).

(b) Taught at Instructor General school (Tr. 8338-39, 8691).

(c) Taught at Trainer General school (Tr. 8571, 8577-78, 8722).

(d) Taught in Cosmetic Training Classes at Councils (Tr. 8691, 8037, 8518, 8570, 8577, 8671).

(e) Respondent Holiday Magic, Inc. sent a bulletin out to all Masters and General Distributors 3/27/70 requesting that no distributors contact any DECA Chapter in regard to a fund raising project for sales to that organization, since another distributor had the "exclusive" (CX 665; CX 1680; CX 170F).

XXIII. Retail Outlet Restriction

194. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires all distributors in its rules and regulations to refrain from selling or placing Holiday Magic merchandise in retail outlets such as drug stores, department or variety chain stores, grocery stores or discount stores.

(a) Distributors are specifically threatened with termination for placing Holiday Magic merchandise in these restricted retail outlets.

CX 1802E-F Holiday Magic Bulletin #4 (Tr. 1233, 1262).

TO ALL MASTERS AND GENERAL DISTRIBUTORS CLARIFICATION OF INFORMATION AND COMPANY POLICY
POLICY GUARANTEE:

This product will not be displayed or sold in drug stores, discount stores, grocery stores, chain stores, or department stores.

Anyone placing Holiday Magic Cosmetics in any of the aforementioned, will be subject to termination.

THIS POLICY WILL NOT CHANGE!

[Signed]

William P. Patrick
Chairman of the Board

(b) CX 6F -Wand - Solution Box - Jan. 1966.

Question: I own a retail store and have never displayed or sold cosmetics. I am now in the Holiday Magic program. Am I permitted to display and sell Holiday Magic cosmetics in my own store?

Answer: No. The Rules and Regulations specifically state where Holiday Magic Cosmetics may be displayed and sold and no deviation from these locations can be authorized.

(c) Rules and Regulations - CX 79Z94, Rule 13, reads:

Distributor agrees to restrict the retail sales and display of cosmetics to those authorized retail markets: Home Service Routes (Door to Door), Beauty Salons, Wig Shops, Beauty Schools, Barber Shops, Health Food Stores, Holiday Magic Retail Salons, and TEMPORARY Booths (such as: bazaars, fairs or conventions). No other commercial retail market will be authorized in the interest of protecting the Home Service Route.

See also CX 82Z49, Rule 13; CX 79Z97, Rule 13; CX 81Z49, Rule 13; CX 105H, Rule 11; CX 107I, Rule 11; CX 108K, Rule 13; CX 105H, Rule 11.

(d) Statements in sales manuals.

CX 1055 (Jan. 1969) reads:

UNAUTHORIZED OUTLETS. Drug stores, grocery stores, chain stores (Department or variety), discount stores, or any store not related to cosmetic or Home Magic product sales such as real estate, camera, stationery, etc. are unauthorized outlets.

See also CX 104"0".

(e) As of Jan. 1969, Holiday Magic had in its records "574 authorized retail outlets in the United States now stocking Holiday Magic Products." (CX 517).

(f) Witness testimony confirms enforcement policy:

1. Vincent Fecht, former Miami Senior General (Tr. 2422), testified that according to Holiday Magic's rules he could not have Holiday Magic products in a retail store (Tr. 2384), and when he placed said products in a store in Leesburg, Fla., in Nov. or Dec. 1967 (Tr. 2382), he removed these products after receiving a letter from Holiday Magic asking him if he had products there (Tr. 2383) See also CX 1470A, B.

2. Witness Sowinski, former Holiday Magic Instructor General, taught his students in IG class that drug stores were not in the scope of retailing as specified in the manuals (Tr. 2022).

3. Witness Norma Wegner, a Master Distributor in 1969 (Tr. 4074) testified that she was told by the manuals, by her General, and by her Holiday Magic Trainer General that she could not place product on sale in chain stores or places like that (Tr. 4055-4087).

4. Witness Sharpe testified that Bill Dempsey told him not to sell product in drug stores, grocery stores and other outlets (Tr. 3242), when he first joined as well as on subsequent occasions. Dempsey said it was against company rules (Tr. 3242).

Dempsey, who testified for respondents, was Holiday Magic Eastern Regional Vice President in 1966 (Tr. 6043), and failed to deny the said charge, although he testified after Mr. Sharpe did.

5. Witness John Wells was told he couldn't have product placed in chain stores by Holiday Magic (Tr. 1047).

6. Witness Longballa testified that he put product in his store but was told by his General that he would be in jeopardy of losing his distributorship if he didn't remove it (Tr. 1066) and was similarly warned by his General distributor that he might lose his distributorship by the mere display of products in his store because a Senior General was in town (Tr. 1068).

XXIV. Advertising Restriction

195. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires in its rules and regulations that prior company approval must be obtained for advertising or promotion of Holiday Magic products.

(a) Manuals: CX 1800Z1 (Nov. or Dec. 1965, Tr. 835):

3. All consumer advertising copy must be approved by the corporation.

4. All advertising for recruitment must be submitted and approved in each area to the Senior General in that area. All Senior Generals are appointed by the corporation. Poor advertising can be destructive.

(b) CX 2G- Wand - 9/65.

(c) Rules and regulations -CX 78Z99, Rule 22:

Distributor agrees to obtain prior Company approval for any advertising or promotion of the product or his Distributorship.

See also CX 79Z95, Rule 22; CX 83Z50, Rule 22; CX 104J, Rule 22; CX 195H, Rule 21; Answer pp. 14-15.

196. The device of requiring Holiday Magic distributors to supply in advance prospective advertising to Holiday Magic, Inc. is a device which enables Holiday Magic, Inc. to control and supervise by prior restraint the price fixing and retail outlet restriction requirements of Holiday

Magic, Inc. although, of course, it may also serve as a medium to protect against deceptive advertising if so utilized.

See Part XVII 6.

XXV. Private Arrangements

197. Holiday Magic, Inc. enters into agreements and contracts with its distributors, and requires all distributors in its rules and regulations that in the event a partnership-distributorship dissolves, the departing partner is required to revert back to his original sponsor. (CX 78Z99-100, Rule 27; CX 79Z96, Rule 27; CX104K-L, Rule 27; CX 105H, Rule 26; Answer, p. 15.)

198. Holiday Magic, Inc. enters into agreements and contracts with its General Distributors and requires all General Distributors in its rules and regulations that in the event a General Distributorship dissolves, the principal or partner who is departing, should he continue with Holiday Magic, must requalify as a new Master Distributor under his original sponsor, create a Replacement Master, and pay the release fee to qualify for the General position again (CX 78Z99-100, Rule 27; CX 79Z96, Rule 27; CX 104K-L, Rule 27; CX 105H, Rule 26; Answer, p. 15).

199. Holiday Magic, Inc. enters into agreements and contracts with its Master Distributors and General Distributors and requires all Master Distributors and General Distributors in its rules and regulations that the addition of partners to an existing General or Master distributorship or the sale of a General or Master Distributorship must meet the same retail list price value purchase requirement as do work-in Masters (Gay-Tr. 10025-26; Answer p. 15; CX 2078; Porst-Tr. 3116).

200. Holiday Magic, Inc. enters into agreements and contracts with its distributors and requires all distributors in its rules and regulations that they may only have a financial interest in one Holiday Magic distributorship at a time, and may not simultaneously be a part of two separate distributorships (CX 78Z100, Rule 29; CX 79Z97, Rule 29; CX 104L, Rule 29; CX 105H, Rule 28; Answer, pp. 15-16; CX 677 (enforcement of Rule as of 6/22/70)).

201. Holiday Magic, Inc. enters into agreements and contracts with its Distributors and requires all Distributors in its rules and regulations that they must not enter into any agreement with a distributor in another Holiday Magic organization to make a division of profits, assets or new recruits in violation of the marketing plan.

(a) CX 78Z100, Rule 32; CX 79Z97, Rule 32; CX 104L, Rule 32; CX 105H, Rule 31; Answer, p. 16.

(b) Tr. 5901 - Holiday Magic Vice President Semling - Violation of Holiday Magic marketing plan for distributors to pool inventories (except through CRS).

(c) CX 672 (Bulletin from Holiday Magic to Master and General Distributor, dated 6/9/67):

We have not, are not, and will not approve of individual marketing plans within "The Marketing Plan."

202. Holiday Magic, Inc. enters into agreements and contracts with its Distributors and requires all Distributors in its rules and regulations that they must not make any consignment of the merchandise to any person (CX 79Z93, Rule 6; CX 78Z96, Rule 6; CX 104H, Rule 6; CX 81Z48, Rule 6; CX 82Z48, Rule 6; CX 83Z48, Rule 6; CX 104H, Rule 6 (Oct. 1967)).

XXVI. Contacts And Controls By Holiday Magic, Inc. Over Organizers And Holiday Girls

203. See Chapters V, VII, XI, XII, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV to this effect.

204. CX 40 - Wand - 11/65 - Solution box where an additional rule prohibits organizers from combining and also reflects required adherence to controls:

Question: Can a Master combine the monthly volume of two or three of his Organizers and give this total to one of them to help him qualify for the Master Distributor position?

Answer: Absolutely, positively, definitely, emphatically--NO!

205. CX 76Z26, CX 79Z26 reflects dues assessment regulation:

The Corporation feels that no Distributor below the rank of Master should ever be assessed dues for his attendance or the attendance of his prospects at any Opportunity Meeting.

206. All Holiday Girls are in business for themselves, and are never allowed to go on salary or be hired (Gillespie-Tr. 9307).

But a Holiday Girl may be given a guaranteed weekly draw, in which case certain requirements must be met such as attending all sales meetings, and having a minimum number of sales.

At CX 91V (Instructor Manual):

You may give your Holiday Girls a guaranteed weekly draw if you wish. As a matter of fact, it is recommended. However, if a girl is to qualify for a draw of \$90.00 per week (gear your guarantee towards the wage scale in your area. It varies around the country) she must fulfill certain requirements.

1. She must attend every sales meeting. This means *all* your daily meetings as well as the Monday morning *enthusiasm meeting*.

2. She must put on 4 demonstrations per day, five days per week and establish proof to you that she has done this. (If you have a part-time girl on guarantee, she must give two demonstrations per day.)

3. She must give one Block Seminar per week, whether she is full or part-time. Five ladies must be in attendance at this Seminar.

4. She must have at least 60% of her route covered within 60 days.

5. She must have automatic sales on at least 75% of her customers.

6. After her route is established, she must service her customers each month.

If you are to use this guarantee system, which is very effective, two things should be kept in mind. No. 1, the draw does not start until the second week. (The Holiday Girl is basically in training the first week although she will be selling, but you should know after a week's probation if she will work out.)

(NOTE: Earnings of \$90 per week presupposes that the Holiday Girls monthly volume will total approximately \$900 per month. (\$900 volume at 30 percent discount plus 10 percent refund equals \$360 per month.)

207. Holiday Magic, Inc. has a consumer customer refund policy whereby merchandise can be returned to the Holiday Girl or other retailing distributor for refund for any reason (Gillespie-Tr. 9324; Pangerl-Tr. 9523; RX 134D).

208. Failure to forward an application and agreement of a Holiday Girl or Organizer is a violation of the Holiday Magic marketing plan (CX 688B; CX 79Z94, Rule 17).

XXVII. Instructor General Program

209. Effective Feb. 1, 1967, Holiday Magic, Inc. initiated its Instructor General program, the purpose of which was to train General Distributors so that they will have "proper knowledge" and tools no one else will have who hasn't taken the course (CX 18A - Wand - Jan. 1967; Sowinski-Tr. 2017).

210. Effective midnight Apr. 30, 1970, Holiday Magic, Inc. imposed a requirement that to become a Master Distributor, a person must have a paid reservation in Instructor General school (and Trainer General school) (CX 159F - Family News - Apr. 10, 1970.)

211. Although a specific requirement for Generals as of Feb. 1, 1967 and for Masters (and therefore Generals also) as of Apr. 10, 1970, Holiday Magic, Inc. recommends the course "to ALL distributors regardless of position" and states that "it is extremely vital to those just coming into the business." (Quoted from IG manual, CX 90N.)

(a) IG Sowinski testified that IG school is for Organizers also (Sowinski-Tr. 2017).

(b) And Holiday Girls (Sowinski-Tr. 2021).

212. Before Feb. 1, 1967, Holiday Magic, Inc. conceded in its Wand that "Heretofore, qualification for a Generalship has been primarily on a financial basis." (CX 18A - Wand - Jan. 1967).

213. Prior to Feb. 1, 1967, the Holiday Magic corporate team covered the "councils" of every state making special training classes available (CX 18A - Wand - Jan. 1967).

214. The Holiday Magic Instructor Generals became available to provide the necessary and valuable training formerly conducted by the corporate team (CX 18A - Wand - Jan. 1967).

215. The "Instructor Generals are outstanding distributors who have been singled out because of their individual successful field achievements, and further trained by Holiday Magic, Inc. to insure that they are fully qualified to instruct other distributors in the total Holiday Magic marketing concept, principles and philosophy." (Quoted from CX 90N - IG manual.)

216. "Every detail necessary for the proper and effective conduct of Holiday Magic business is included in the [Instructor General course]." (Quoted from CX 19C - Wand - Aug. 1967; CX 20M - Wand - Mar. 1967.)

217. Instructor General school teaches procedures of an opportunity meeting, business training, the general operation of a distributorship (Sowinski-Tr. 2017) and the background and history of the company (Belton-Tr. 4964-65) and supervisory information and sales and motivational techniques (CX 508).

218. The Instructor General training would in turn enable distributors taking the course to be better able to train their own people (Sowinski-Tr. 2017).

219. The Instructor Generals are all appointed to their positions by Holiday Magic, Inc. (Alexander-Tr. 5523, 5524; Napoletano-Tr. 3493).

220. Among the group of Instructor Generals appointed in Feb. 1967, were Bill Dempsey, Mark Evans, Ben Gay, Jim Hearn, Ed Persey and Jim Sowinski (CX 19C - Wand - Aug. 1967).

221. CX 1840A-Z114 is the Instructor General manual which Mr. Sowinski received from Holiday Magic, Inc. (Sowinski-Tr. 2040). It states "You, as an Instructor [General] are the representative of a multimillion dollar corporation, therefore, you physically reflect the corporation's image as well as does your own business conduct." (CX 1840P). "[I]nstructor Generals reflect the total knowledge and philosophy of the founder of Holiday Magic." (CX 1840H.)

222. Holiday Magic, Inc. imposes rules and regulations upon the Instructor Generals. They are:

1. Instructor General agrees to abide by all rules and regulations established by the Company and to all subsequent changes.
2. Instructor General is responsible for all specific rules and procedures not enumerated here, but which are contained in other Company publications, *i.e.* bulletins and sales manuals.

3. This manual may not be reproduced for any reason, and is the sole property of Holiday Magic, Inc.
4. Upon receipt of additional pages from the Corporation, Instructor General agrees to insert them into the appropriate section of this manual.
5. Upon receipt of superseding pages from the Corporation, Instructor General agrees to return immediately the obsolete pages to the Corporation.
6. Each Instructor General will conduct one regular six-day class per month during their designated week.
7. Instructor General will teach the class in accordance with the lesson plan in this manual without exception.
8. Each class will be limited to 15 students.
9. The fee for each student is \$200, paid to Instructor General by student by cash, money order, certified check or cashier's check.
10. Reservations for class are valid only upon receipt of \$200 fee.
11. All regular classes in Instructor General's designated week must be held in Instructor General's home town.
12. Additional classes may be held only upon the personal approval of Fred Pape. There must be 15 students booked in before this will be allowed.
13. Instructor General's total expenses (travel, meals, lodging, training facility) are to be paid by students for out-of-town classes.
14. Instructor General will not use their position as a recruiting tool.
15. Instructor General will be paid \$300 per week plus expenses on a per diem basis when working with or for the Corporation.
16. Effective February 1, 1967, one of the qualifications for the appointment to the position of General Distributor will be the completion of the Instructor General course or a paid reservation for a class to be attended by student within 60 days of reservation booking.
17. Instructor General will issue two (2) receipts to each student for the \$200 fee, so that the student can forward one copy of the receipt to the Corporation in order to qualify for the position of General.
18. Only those who successfully complete an Instructor General course will be permitted to conduct an Opportunity Meeting, and this Opportunity Meeting must follow verbatim the script provided in the Instructor General course. (CX 1840Z111-Z113.)

223. In addition, no tape recordings are permitted by Holiday Magic, Inc. in the courses taught by its Instructor Generals.

CX 1840Q - Under no circumstances will tape recorders be allowed during these [Instructor General] training sessions. Repeat - NO TAPE RECORDERS.

224. Another Instructor General duty is to see to it that all distributors followed the rules of Holiday Magic, Inc. (Napoletano-Tr. 3497). This Mr. Gay, when he was president or senior vice president informed Mr. Napoletano when he was Instructor General (Napoletano-Tr. 3497).

225. Instructor Generals would receive reports of distributor complaints because of their position as Instructor Generals (Napoletano-Tr. 3513, 3517).

226. Instructor Generals are also utilized by Holiday Magic to distribute corporate literature (CX 30C).

227. Holiday Magic, Inc. lists the following items which an Instructor General must make certain are available in his training classes: WPP records; phonograph; Instructor General manual; 15 general workbooks; Distributor's manual; Masters' and Generals' manual; blackboard; chalk; eraser; yellow note pads; extra pencils; ashtrays; water; coffee arrangements if desired (CX 1840P-Q).

228. Instructor General manuals appear in the record at CX 1840A-Z114; CX 90A-Z8 (Tr. 1710, 2040).

229. Instructor Generals were given uniforms consisting of an "HM" crest, which were owned by Holiday Magic. It was a Holiday Magic rule that the uniform be worn by Instructor Generals when attending council functions (Napoletano-Tr. 3507-3511).

230. To the distributors, Instructor Generals were representatives of Holiday Magic, Inc. (Tr. 8378, 8532).

231. The fee for the Instructor General program was paid for by the person taking the course (Tr. 6340; 4965; CX 1856-C; Tr. 8160, 8211, 7375-76, 7681, 5134, 3052).

232. Holiday Magic, Inc. has the following policy issued to distributors with respect to the Instructor General school fees:

POLICY CLARIFICATION

The only way you can make a reservation in an Instructor General or Trainer General class is to give the IG or TG a certified check to reserve your seat. This check is NOT REFUNDABLE. You have purchased a piece of real estate—you may sell it to someone else, use it yourself, or leave it vacant. But the seat is your property (CX 151K - Family News - Sept. 5, 1969).

Cost for the newly revised course will be \$260, after February 15, 1970. However, all Instructor Generals are authorized to accept students who present a receipt for \$225, paid before February 15 (CX 508 - Bulletin - Dec. 24, 1969).

233. According to Holiday Magic, Inc. "Once individuals are graduated from Instructor General and Trainer General Schools they are then truly qualified and able to function as independent business people." (CX 90N - Instructor General Manual).

XXVIII. Trainer General Program

234. The Trainer General school is made available by Holiday Magic, Inc. to "distributors who desire a greater depth of understanding of the customer benefits and practical retail sales techniques." (CX 90N.)

235. The Holiday Magic Trainer Generals are trained by Holiday Magic, Inc. at its main offices (Alexander-Tr. 5526).

236. The Trainer General class is available to all distributors at all levels, *i.e.*, Generals, Masters, Organizers or Holiday Girls, for a fee of \$25 (Baehlein-Tr. 5085-5086).

