

but must await completion of steps by Kennecott to develop an appropriate divestiture plan for submission to the Commission.

ORDER DENYING PETITION TO REOPEN PROCEEDINGS

On May 23, 1974, Kennecott Copper Corporation (hereinafter Kennecott) filed a "Petition to Reopen the Proceedings on the Question of Relief," pursuant to Section 3.72 of the Commission's Rules of Practice, including therein a request for oral argument on the petition, and submitted at the same time a request for oral discussion. Kennecott has subsequently filed various supplemental submissions relevant to its petition. The Bureau of Competition has replied, by answer of June 20, 1974, opposing the petition. Oral argument upon the petition was held on July 10, 1974. The Commission has considered the arguments of petitioner, and does not believe that adequate grounds have been shown to warrant reopening these proceedings for the purpose of considering the issue of relief. The issue of appropriate relief was considered by the Commission at the time it issued its original decision, and its order has been affirmed by the United States Court of Appeals [467 F. 2d 67], and certiorari denied by the Supreme Court [416 U.S. 963 (1974)]. Alleged changed conditions of fact and law described by petitioner are not such as to warrant reopening of these proceedings.

Accordingly, *It is ordered*, That the "Petition to Reopen the Proceedings on the Question of Relief" be, and it hereby is, denied.

Commissioners Thompson and Nye dissenting.

IN THE MATTER OF

GER-RO-MAR, INC., TRADING AS SYMBRA'ETTE, ET AL.

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

*Docket 8872. Complaint, Nov. 24, 1971—Decision, July 23, 1974**

Order requiring a San Jose, Calif., manufacturer of brassieres, girdles, swimwear, wigs and lingerie, among other things to cease using an open-ended, multi-level (pyramid) marketing plan to recruit distributors for its products; misrepresenting the earnings and profits a distributor may expect to make; maintaining resale prices; and restricting distributors as to whom they may sell their merchandise.

Appearances

For the Commission: *Jerome Steiner and Ralph Stone.*

For the respondents: *Rosenberg & Wiseman, San Jose, Calif.*

* Petition for review filed Oct. 11, 1974, C.A. 2nd.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C. Section 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ger-Ro-Mar, Inc., a corporation, d/b/a Symbra'ette, and Carl G. Simonsen, individually and as President of Ger-Ro-Mar, Inc., more particularly described and referred to hereinafter as Respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Ger-Ro-Mar, Inc. (hereinafter sometimes referred to as Ger-Ro-Mar or Symbra'ette) is a corporation organized in 1963, and is existing and doing business under and by virtue of the laws of the State of California. Respondent Ger-Ro-Mar maintains its home office and principal place of business at 460 Meridian Avenue, San Jose, Calif.

Respondent Carl G. Simonsen is an individual and is President and a director of Ger-Ro-Mar. Respondent Simonsen founded Ger-Ro-Mar, instituted the Ger-Ro-Mar marketing program and distribution policies, and has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of Ger-Ro-Mar. His office address is the same as that of Ger-Ro-Mar.

Symbra'ette is a name registered and copyrighted to Ger-Ro-Mar, under which said respondent sometimes does business, under which many of its products are sold, under which the activities hereinafter more fully described are sometimes known, and under which hereinafter the acts and practices of Ger-Ro-Mar may be set forth.

PAR. 2. Ger-Ro-Mar is now, and for some time last past has been, engaged in the advertising, offering for sale, sale, and distribution of brassieres, girdles, swim-wear, wigs and lingerie to the public under the "Symbra'ette" marketing system, and is inducing, and has induced, persons to invest substantial sums of money in its multilevel marketing program as hereinafter more fully described. Ger-Ro-Mar's sales to distributors have grown from \$36,832.91 in 1965 to \$2,054,250.62 in 1969.

PAR. 3. In the course and conduct of its business, Ger-Ro-Mar now causes, and for some time last past has caused, its products, when sold, to be shipped from its principal place of business in Calif. to purchasers thereof located in various States of the United States, and, in the course of establishing and maintaining its multilevel marketing program, has transmitted and caused to be transmitted contracts, promotional mate-

rial, and various business papers to persons located in various States in the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that actual and potential competition has been lessened, hampered, restricted, and restrained by reason of practices hereinafter alleged, Ger-Ro-Mar's distributors and dealers, in the course and conduct of their business in distributing, offering for sale, and selling of Symbra'ette products, are in substantial competition in commerce with one another, and Ger-Ro-Mar and its distributors are in substantial competition in commerce with other firms or persons engaged in the manufacture or distribution of similar products.

PAR. 5. Ger-Ro-Mar has formulated a distribution system involving distributors at wholesale and retail levels, and has published its marketing plan or distribution policies which are set forth in Symbra'ette's price lists, discount schedules, marketing manuals, sales bulletins, order forms, pamphlets, and other materials and literature. To effectuate and carry out the aforesaid distribution system, policies, or plan, Ger-Ro-Mar and its distributors have entered into certain contracts, agreements, combinations, or common understandings hereafter more fully described.

PAR. 6. The Symbra'ette marketing plan is a distribution network which allows a potential distributor to enter at any one of three levels, *i.e.*, "Key Distributor," "Senior Key," or "Supervisor," and eventually qualify at a fourth and fifth level, that of district manager and regional manager. One enters into the Symbra'ette distribution system by investing a sum of money for the purchase of merchandise from Symbra'ette or its distributors. All distributors, except for the Key Distributors (hereinafter sometimes referred to as Keys), buy directly from Symbra'ette. A distributor's gross profit is the difference between the price or prices he pays for Symbra'ette products and the price at which he sells them, plus overrides on sales made by those people he has recruited to sell, and overrides on sales made by recruits' recruits *ad infinitum*.

a. Key Distributor-Key Distributors purchase their products for resale at 35 percent off the retail list price, known by Symbra'ette as the retail purchase volume (or R.P.V.). A Key must purchase his goods from his sponsor. Monthly minimum purchases of \$100 in terms of retail list price are required, as well as an initial investment of \$300 (retail list price) worth of merchandise.

b. Senior Key—Senior Keys purchase their needs directly from Symbra'ette at 40 percent off the retail list price for sale to Keys or the

general public. There is no limit to the number of distributors who may be recruited, nor is there a limit as to the size of any distributor's organization. A Senior Key's organization includes all persons whom he supplies with products. A Senior Key receives no override, but earns a 5 percent profit on sales to his Key Distributors.

Individuals who desire to start as Senior Keys must purchase an initial inventory of \$1,000 in terms of retail list prices, and must maintain a monthly purchase volume of \$500 (retail list price) worth of merchandise.

c. Supervisor—Supervisors purchase their products for resale at 45 percent off the retail list price, and purchase from Symbra'ette. A Supervisor's organization includes all persons whom he supplies with products, whom he recruits, or upon whose purchases he receives an override.

An individual who desires to start as a Supervisor is required to purchase an initial inventory valued at \$3,000, and his organization must maintain a monthly inventory purchase volume of \$1,500. A Supervisor earns a 5 percent override on purchases made by his Senior Keys and a 10 percent profit on purchases made by his Key Distributors. He also receives a 2 percent override on purchases made by his directly recruited Supervisor's group.

d. District Manager—A District Manager purchases products from Symbra'ette at a 50 percent discount from suggested resale price.

A District Manager's personal group includes his directly sponsored Supervisors' entire groups, and his directly sponsored Senior Keys' entire groups, and his directly sponsored Keys.

A District Manager and his organization must initially purchase a dollar volume of \$7,500 inventory for one month and must maintain a monthly purchase volume of \$3,000. One cannot "begin" as a District Manager, but, rather, must "work" his way to this position, by having recruited at least 5 people who reach Senior Key or Supervisor positions in his organization.

A District Manager earns a 15 percent profit on purchases of his Keys, 10 percent override on purchases of his Senior Keys, 5 percent override on his Supervisors' purchases, 3 percent override on the purchases of his directly sponsored District Manager's sales group, and 1 percent on the purchases of indirectly sponsored District Manager's personal group. He also earns a cash car allowance of \$150 on R.P.V. of \$7,500 per month of his personal group.

e. Regional Manager:

The highest level one can reach in Symbra'ette is that of a Regional

Manager. A Regional Manager buys his products at a 55 percent discount from Symbra'ette.

The personal group of a Regional Manager includes his directly sponsored District Managers' entire groups, his directly sponsored Supervisors' entire groups, his directly sponsored Senior Keys' entire groups, and his directly sponsored Keys.

A District Manager's personal group R.P.V. must reach \$25,000 in one month in order to entitle that District Manager to ascend to the position of Regional Manager. Thereafter, a monthly minimum R.P.V. of \$12,500 is required.

A Regional Manager earns a 20 percent profit on purchases of his Keys, a 15 percent override of his Senior Keys' purchases, a 10 percent override on his Supervisors' purchases, a 5 percent override on his directly sponsored District Managers' purchases, 1 percent on his indirectly sponsored District Managers' purchases, 3 percent on his directly sponsored Regional Manager's personal group purchases and 1 percent on his indirect Regional Manager's personal group purchases. He also earns a \$200 cash car allowance on \$17,500 monthly personal group R.P.V.

PAR. 7. Pursuant to and in furtherance and effectuation of the aforesaid agreements and planned common courses of action, Ger-Ro-Mar has:

(A) required all distributors to adhere to the Symbra'ette marketing plan, and all distributors have actually or impliedly agreed to abide by all rules and regulations established by Symbra'ette in furtherance of the marketing plan, and to abide by all amendments or changes.

(B) entered into contracts, agreements, combinations, or understandings with each of its distributors whereby said distributors agree to maintain the resale prices established and set forth by the company, notwithstanding that some of such distributors are located in states which do not have fair trade laws.

(C) entered into contracts, agreements, combinations, or understandings with each of its distributors whereby said distributors are restricted as to their suppliers and customers. More specifically:

1) Distributors agree to purchase merchandise only from respondent or, in the case of a Key Distributor, only from his sponsor, *i.e.*, the distributor who introduced him to Symbra'ette;

2) Distributors agree to restrict the retail sales and display of Symbra'ette products through authorized retail channels, *i.e.*, direct home sales, home service routes, exclusive boutiques or similar establishments where custom fitting is done, and establishments where no competitive line is sold. Commercial retail markets are not authorized.

3) Distributors agree that each customer belongs to the distributor who originally acquired that customer.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 8. The allegations of Paragraphs One through Seven are incorporated by reference as if fully set forth verbatim.

PAR. 9. Ger-Ro-Mar's merchandising program is in the nature of a lottery. A lottery involves three elements. These are: 1) a prize, 2) according to chance, and 3) for a consideration.

Open-ended multilevel marketing plans offer as a prize the profits, commissions and/or overrides accruing to the recruiter on sales made to the distributors whom he recruits, sales made to their recruits, etc.

Mathematical laws of geometric progression require that saturation must ultimately occur. The chance aspect of openended, multilevel marketing programs is that the "prizes" are dependent upon factors outside of the control of individual participants, such as the number of prior participants in the program, the time at which an individual enters the program, the degree of market saturation which has already occurred when an individual enters the program and the prospects of that individual's recruits of continuing the recruiting chain.

The consideration is the money paid to Ger-Ro-Mar by distributors for the purchase of products for resale.

Sales methods involving the use of lottery devices in the sale and distribution of merchandise to the public are in contravention of the established public policy of the United States, are to the prejudice of the public, and constitute unfair acts and practices within the intent and meaning of the Federal Trade Commission Act. Respondents' open-ended multilevel marketing plan is in the nature of a lottery, and therefore constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

COUNT II

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by Respondents.

PAR. 10. The allegations of Paragraphs One through Seven are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 11. Ger-Ro-Mar's open-ended multilevel marketing program holds out to prospective distributors the lure of making large sums of money, through a virtually endless chain of recruiting additional participants and from various commissions, overrides or other compensation

on the sales and/or further recruiting activities of their own recruited distributors or distributors in their organizations.

The operation of the program contemplates geometrical increases in the number of distributors to insure participants the earnings represented and impliedly realizable from the program. However, because the over-all number of potential participants remains relatively constant, the participants may be, and in a substantial number of instances will be, unable to find additional investors in a given community or geographical area by the time they enter respondents' merchandising program. This comes about because the recruiting of participants who came into the program at an earlier stage may have already exhausted the number of prospective participants.

Respondents represent in their promotional material that each distributor can recruit five persons per month. Based upon a geometrical progression of five additional recruits per month per distributor, the number of additional participants in each distributor's organization at each monthly stage of growth would increase at such a rate that at the end of twelve months (giving effect to the continuing process of recruitment as contemplated under respondents' marketing plan) there would be an aggregate in excess of 244,000,000 participants in the marketing organization.

Ger-Ro-Mar's recruitment program must ultimately collapse when the number of potentially available distributors which can be recruited to serve a particular area is exhausted, and/or the distributors theretofore recruited have so saturated the area with distributors as to render it virtually impossible to recruit any more. Consequently, while participants entering the program early may realize profits through recruiting, those coming in at later stages will find recruiting more difficult and ultimately impossible, resulting in the diminishment or lack of profits, based on recruiting, of the later entrants.

For the foregoing reasons, Ger-Ro-Mar's open-ended multilevel merchandising program is operated in such a manner that the realization of financial gains is often predicated upon the exploitation of others who have been induced to participate therein, and who have virtually no chance of receiving the kind of return on their investment implicit in said merchandising program. Therefore, the use by respondents of the above-described multilevel merchandising program in connection with the sale of their merchandise was and is an unfair method of competition in commerce, and was and is an unfair and deceptive act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

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COUNT III

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 12. The allegations of Paragraphs One through Seven are incorporated by reference in Count III as if fully set forth verbatim.

PAR. 13. In the course and conduct of its business, and for the purposes of inducing the participation by others in its marketing program and the sale of its merchandise, by and through statements and oral representations, and by means of brochures and other written material, Ger-Ro-Mar and its representatives represent, and have represented, directly or by implication, that:

1. It is not difficult for participants to ascend to a higher level of distribution within the marketing chain so as to increase their chances of recouping their investments and of earning the represented profits.

2. All participants in the marketing program have the potentiality and reasonable expectancy of receiving large profits or earnings.

3. The marketing program is commercially feasible for all participants, and the supply of available entrants and investors is virtually inexhaustible.

PAR. 14. In truth and in fact,

1. It is difficult for participants to ascend to a higher level of distribution within the marketing chain so as to increase their chances of recouping their investments and of earning the profits represented by respondents in their promotional and other materials.

2. All participants in respondents' marketing program do not have the potentiality and reasonable expectancy of receiving large profits or earnings.

3. Respondents' marketing program is not commercially feasible for all participants, and, by the very nature of the said marketing plan as herein described, the supply of available entrants and investors must ultimately be exhausted.

Therefore, the statements and representations as set forth in Paragraphs Twelve and Thirteen have been, and are, false, misleading and deceptive, and constitute unfair and deceptive acts and practices in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT IV

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 15. The allegations of Paragraphs One through Seven are incorporated by reference in Count IV as if fully set forth verbatim.

PAR. 16. The acts, practices, and methods of competition engaged in, followed, pursued, or adopted by respondents, and the combinations, conspiracies, agreements, or common understandings entered into or reached between and among the respondents and others not parties hereto are unfair methods of competition and are to the prejudice of the public because of their dangerous tendency toward, and the actual practice of, fixing, maintaining, or otherwise controlling the prices at which the Symbra'ette products are resold, in both the wholesale and retail markets, and fixing, maintaining, or otherwise controlling the various fees, bonuses, rebates, or overrides required to be paid by one distributor or class of distributors to another distributor or class of distributors.

Said acts, practices, and methods of competition constitute an unreasonable restraint of trade and an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT V

Alleging further violation of Section 5 of the Federal Trade Commission Act, as amended, by respondents.

PAR. 17. The allegations of Paragraphs One through Seven are incorporated by reference in Count V as if fully set forth verbatim.

PAR. 18. The acts, practices, and methods of competition engaged in, followed, pursued, or adopted by respondents, and the combinations, conspiracies, agreements, or common understandings entered into or reached between and among the respondents and their distributors hereto constitute unfair methods of competition in that they result in, or have a dangerous tendency toward restricting the customers to whom the Symbra'ette distributors may resell their products; restricting the source of supply from which distributors may purchase their products; and restricting their distributors to reselling their products through specified retail channels.

Said acts, practices, and methods of competition constitute an unreasonable restraint of trade and an unfair method of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE LAW
JUDGE

OCTOBER 11, 1973

PRELIMINARY STATEMENT

The complaint in this matter charged respondents with unfair and deceptive acts and practices, and unfair methods of competition, in the

promotion of their Symbra'ette marketing program. In essence, the complaint alleged that the Symbra'ette marketing program constituted an open-ended, multi-level (pyramidal) scheme which unfairly and deceptively induced members of the public to invest substantial amounts of money for distributorships. According to the complaint, the Symbra'ette marketing program consisted of a distribution network allowing a prospect to enter at any one of three levels, Key Distributor, Senior Key, or Supervisor, and eventually, as represented by respondents, to qualify at a fourth and fifth level, District Manager and Regional Manager. A prospective distributor entered the Symbra'ette system by purchasing an inventory of Symbra'ette products consisting of bras, girdles, lingerie, swimwear or wigs. The level at which a prospect entered was determined by the size of the initial inventory purchased. Upon entrance into the program, according to the complaint, a distributor could recruit any number of additional distributors, and the large earnings in the form of commissions, overrides, and other compensation, held out by respondents as available to each participant, depended on recruiting by the participant of additional distributors, recruiting by such additional distributors, and by their recruits *ad infinitum*. It was alleged that the size of the commissions, overrides, and other compensation, represented as flowing to a Symbra'ette distributor as a result of sales to and by such distributor's recruits, his recruits' recruits, and so on, was based on the level at which he entered the Symbra'ette distributional system, or had reached once enrolled.

Respondents' Symbra'ette marketing program was challenged in several counts. Count I of the complaint charged that the program involved the elements of prize, consideration and chance, and that it was in the nature of a lottery and was unfair within the intent and meaning of the Federal Trade Commission Act. Count II alleged that the Symbra'ette program held out to members of the public the lure of making large sums of money through commissions, overrides, and other compensation, based on endless recruitment of additional participants which was essentially impossible, and that the program was therefore unfair and deceptive. Count III alleged that respondents in promoting the Symbra'ette program utilized false, misleading, and deceptive representations that it was not difficult for participants to ascend to higher levels of distribution within the system, that all participants had the reasonable expectancy of receiving large profits and earnings, and that the program was commercially feasible for all entrants because the supply of available prospects and investors was relatively inexhaustible.

Count IV and Count V related to different aspects of the program. Count IV charged that respondents unlawfully combined, conspired,

and agreed with their distributors to fix, maintain and control the prices at which Symbra'ette products were resold, and to fix, maintain and control the various fees, bonuses, rebates and overrides required to be paid by one distributor to another distributor or class of distributors. Count V alleged that respondents unlawfully combined, conspired, and agreed with their distributors to restrict the customers to whom Symbra'ette distributors could resell their products, and the sources of supply from which distributors could purchase Symbra'ette products.

Respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen filed an answer on Feb. 16, 1972, denying the foregoing allegations and asking that the complaint be dismissed. Both sides conducted discovery, and ultimately stipulated most of the facts. On Feb. 1, 1973, the case was reassigned to the undersigned due to the illness of the original administrative law judge. An order to report progress was issued to both sides on Feb. 2, 1973, and a pretrial conference was convened on Mar. 1, 1973. Hearings on the merits were completed on June 19, 1973. The record was closed for the reception of evidence on June 27, 1973, and briefing was concluded on Aug. 20, 1973.

This matter is now before the undersigned for final consideration of the complaint, answer, evidence, and the proposed findings of fact, conclusions, and memoranda filed by counsel for the respondents and complaint counsel. Consideration has been given to all the foregoing material filed by both sides. All proposed findings of fact and conclusions not specifically found or concluded are rejected, and the undersigned, having considered the entire record herein, makes the following findings of fact and conclusions, and issues the following order:

FINDINGS OF FACT

Respondents

Respondent Ger-Ro-Mar, Inc., organized in 1963, is a California corporation doing business as Symbra'ette, whose corporate name is now Symbra'ette, Inc.

Respondent Ger-Ro-Mar, Inc., formerly maintained its home office and principal place of business at 460 Meridian Avenue, San Jose, Calif., and presently maintains its home office and principal place of business at 23 Janis Way, Scotts Valley, Calif.

2. Respondent Carl G. Simonsen, an individual is president and a director of Symbra'ette, Inc. Respondent Simonsen founded Symbra'ette, instituted the Symbra'ette marketing program and distribution policies, and has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of Sym-

bra'ette. His business address is the same as that of Symbra'ette.

3. Symbra'ette is a name registered to Symbra'ette, Inc., under which the activities of respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen are conducted. (Hereinafter, unless otherwise indicated, the activities, acts, and practices of respondents Ger-Ro-Mar, Inc., Carl G. Simonsen and Symbra'ette, Inc., will be referred to collectively as "Symbra'ette").

4. Symbra'ette is now, and for some time has been, engaged in the advertising, offering for sale, sale, and distribution of brassieres, girdles, lingerie, swimwear and wigs to the public, through the Symbra'ette marketing program. Symbra'ette sales to distributors grew rapidly from \$36,832 in 1965 to \$2,054,250 in 1969, but in 1972 fell to \$1,195,465.

5. In the course and conduct of its business, Symbra'ette now causes, and for some time has caused, its products, when sold, to be shipped from its principal place of business in Calif. to purchasers thereof located in various States of the United States and, in the course of establishing and maintaining its marketing program, has transmitted and caused to be transmitted, contracts, promotional material, and business papers to persons located in various States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Symbra'ette and its distributors are in substantial competition in commerce with other firms and persons engaged in the manufacture or distribution of similar products.

(For all of the foregoing see Stipulation, CX 92).

The Symbra'ette Marketing Program

7. The Symbra'ette marketing program utilized five distributional levels, Key Distributors, Senior Keys, Supervisors, District Managers and Regional Managers. These distributors were sometimes referred to collectively in the Symbra'ette program as "Consultants." A prospect was allowed to "buy-in" at any one of three levels, Key Distributor, Senior Key, or Supervisor.

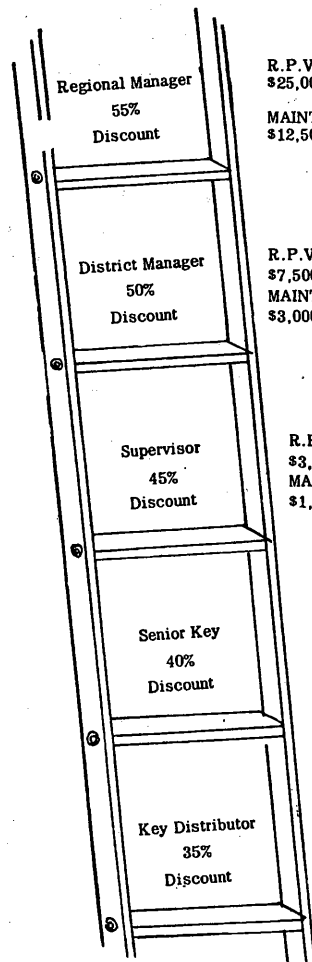
The program represented that District Manager and Regional Manager could be reached by promotion from within if sufficient success were achieved by the entrant in building his "organization" or "personal group" of distributors, and in reaching and maintaining the required retail purchase volume levels (R.P.V.).

One entered the Symbra'ette system by purchasing merchandise from Symbra'ette or one of its distributors. All distributors except Key Distributors bought directly from Symbra'ette.

A Key Distributor's profit was the difference between the prices he paid his sponsor for Symbra'ette products and the prices at which he sold them. The profit of a distributor above the Key Distributor level was the difference between the prices he paid for Symbra'ette products and the prices at which he sold them to Key Distributors he recruited or to the public, and commissions, overrides, and other compensation on the purchase volume of those Consultants directly sponsored by the distributor (CX 1, 74-75, and 92).

The Symbra'ette marketing program is illustrated by the attached reproduced page from the Symbra'ette "Sales Manual" which was distributed and utilized in promoting the program by respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen (CX 74).

THE SYMBRA'ETTE MARKETING PROGRAM



R.P.V.
\$25,000
MAINTAIN
\$12,500 per month

Qualified Regional Managers earn 5% on District Managers; 10% on Supervisors; 15% on Senior Keys; 20% on Key Distributors; 3% on directly sponsored Regional Managers; 1% on indirectly sponsored Regional Managers; 1% on indirectly sponsored District Managers; \$200 cash car allowance.

R.P.V.
\$7,500
MAINTAIN
\$3,000 per month

Qualified District Managers earn 5% on Supervisors; 10% on Senior Keys; 15% on Key Distributors; 3% on directly sponsored District Managers; 1% on indirectly sponsored District Managers; \$150 cash car allowance.

R.P.V.
\$3,000
MAINTAIN
\$1,500 per month.

Qualified Supervisors earn 5% on Senior Keys; 10% on Key Distributors; 2% on directly sponsored Supervisors; \$100 cash car allowance.

R.P.V.
\$1000
MAINTAIN
\$500 per month

Qualified Senior Keys earn 5% on Key Distributors.

R.P.V.
\$300
MAINTAIN
\$100 per month.

Key Distributors purchase from their sponsor.

FEDERAL TRADE COMMISSION
Docket No. 88-72 COMMISSION Exhibit No. 74D
-respondent-

YOUR LADDER TO SUCCESS

The Symbra'ette Marketing Program is designed so that the ambitious person can start small or as large as he desires. Consultants can rapidly work into higher income brackets, or those who would like to enter business on a large scale may buy in as a Supervisor.

8. *Key Distributor*—A prospect could start association with Symbra'ette at this level by purchasing an inventory of \$300 at list price from a sponsor. This required an investment after discount of about \$215 (CX 75Z13). Key Distributors were not permitted to purchase directly from Symbra'ette but, as stated, were required to buy from their sponsors. A Key Distributor bought from his sponsor at 35 percent discount from the Symbra'ette retail list price, and resold at the Symbra'ette established list price. Maintenance of a monthly purchase volume of \$100 in terms of Symbra'ette retail list prices was required.

Purchases of all Symbra'ette distributors were accumulated on a monthly basis and were referred to in the Symbra'ette program as "Retail Purchase Volume" (R.P.V.) (CX 74F, 75S). The basic discount accorded to each classification of distributor was computed from the "Retail Purchase Volume."

A Key Distributor could engage in unlimited recruiting and could advance to the level of Senior Key if his retail purchase volume and that of his recruits amounted to \$1,000 in one calendar month (CX 1, 74G).

9. *Senior Key*—A person could start as a Senior Key by purchasing an inventory of \$1,000 of Symbra'ette products from a sponsor at a 40 percent discount from the Symbra'ette list price (CX 1, 74-75). With literature and sales aids an investment of about \$700 was required (CX 75Z13). A person could also become a Senior Key by advancing to that level from Key Distributor by sponsoring other Key Distributors and with such a "personal group" reaching a monthly retail purchase volume of \$1,000. Subsequent maintenance of a monthly purchase volume of \$500 in terms of Symbra'ette retail list prices was required of a Senior Key and his organization. Senior Keys could recruit additional distributors on an unlimited basis, and a Senior Key's "organization" or "personal group" included all persons whom he supplied with products. A Senior Key received a 40 percent profit on personal sales, a five percent profit on purchases made by directly recruited Key Distributors, and one percent profit on purchases made by directly recruited Senior Keys and their organizations (CX 92(5)).

10. *Supervisor*—A prospect desiring to start in the Symbra'ette system as a Supervisor was required to purchase an initial inventory of \$3,000 in terms of Symbra'ette retail list prices. Such inventory was purchased at 45 percent off the retail list price, and with literature, sales aids and supplies required an investment of about \$1,950 (CX 75Z12). Thereafter, Supervisors had to maintain a monthly retail purchase volume of \$1,500. Within the Symbra'ette organization a distributor who had at least one (1) directly recruited Senior Key, and two (2) directly

recruited Key Distributors could become a Supervisor if such distributors and their recruits as a group attained a monthly retail purchase volume of \$3,000. A Supervisor could recruit an unlimited number of distributors. A Supervisor's "organization" or "personal group" consisted of his directly sponsored Senior Keys and their entire groups, and his directly sponsored Key Distributors and their entire groups. A Supervisor earned 45 percent profit on personal sales, a five percent override on purchases made by his Senior Keys, and a 10 percent profit on purchases made by his Key Distributors. He also received a two percent override on purchases made by his directly recruited Supervisors and their personal groups, and was eligible to qualify for a car allowance if his organization's retail purchase volume was large enough (CX 1, 74-75, 92).

11. *District Manager*—A District Manager purchased products from Symbra'ette at a 50 percent discount from list price. A District Manager could recruit an unlimited number of distributors. A District Manager's "personal group" included his directly sponsored Supervisor's entire groups, his directly sponsored Senior Keys' entire groups, and directly sponsored Keys. To advance to the District Manager level a Supervisor had to have an organization reaching a retail purchase volume of \$7,500 for one month, and maintenance thereafter of a monthly purchase volume of \$3,000. One could not begin as a District Manager but had to work one's way to this position by recruiting at least five people at the Senior Key or Supervisor level or who had reached that level (CX 1G), and who together with their personal groups reached and maintained the foregoing monthly retail purchase volumes.

A District Manager earned 50 percent profit on personal sales, a 15 percent profit on sales to his Keys, 10 percent override on purchases of his Senior Keys, five percent override on his Supervisors' purchases, three percent override on the purchases of his directly sponsored District Managers' personal groups, and one percent override on the purchases of indirectly sponsored District Managers' personal groups. He also earned a cash car allowance of \$150 if his personal group maintained a retail purchase volume of \$7,500 per month (CX 74M).

12. *Regional Manager*—The highest level one could reach under the Symbra'ette program was that of Regional Manager. A Regional Manager bought his products at a 55 percent discount from Symbra'ette. A Regional Manager could recruit an unlimited number of distributors. The personal group of a Regional Manager included his directly sponsored District Managers' entire groups, his directly sponsored Supervisors' entire groups, his directly sponsored Senior Keys' entire groups, and his directly sponsored Key Distributors. A District Manager's

