

IN THE MATTER OF
HORIZON CORPORATION

Docket 9017. Interlocutory Order, Oct. 5, 1976

Commission affirms ALJ's order denying respondent's claim of "self-evaluative privilege" for certain internal corporate records.

Appearances

For the Commission: *Alan N. Schlaifer, Eugene Kaplan, Paul L. Chassy, Lemuel W. Dowdy, and John M. Tifford.*

For the respondent: *Basil Mezines, David U. Fierst, Joel P. Bennett, Stein, Mitchell & Mezines, Washington, D.C., and Samuel Pruitt, Jr., J. Michael Brennan, Gibson, Dunn & Crutcher, Los Angeles, Calif.*

ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE'S ORDER
RULING ON RESPONDENT'S CLAIM OF PRIVILEGE FOR
CERTAIN INTERNAL CORPORATE RECORDS

The administrative law judge on August 10, 1976, issued an order denying respondent's claim of a "self-evaluative privilege" for certain internal corporate documents responsive to a subpoena duces tecum issued on July 1, 1976. The documents concern internal corporate programs which investigated and evaluated the sales practices of respondent's sales offices and sales representatives. Respondent submitted the documents to the ALJ for *in camera* inspection and asked that the documents not be disclosed to complaint counsel. The ALJ subsequently authorized respondent to file an interlocutory appeal from his ruling pursuant to Section 3.23(b) of the Rules of Practice.

Respondent claims that disclosure would be contrary to the public interest because it would discourage efforts by firms to investigate and evaluate their compliance with the law. According to respondent,

A lack of confidentiality inevitably will result in serious cramping of the investigative process simply because the incentives for any institution or business entity to engage in self-evaluative investigations pale considerably with the knowledge that the results may be used against it. A company probably will initially decide not to investigate, or if an investigation is held, there will at least be an unconscious effort to tailor the findings with an eye toward eventual litigation.¹

While the public interest may justify a refusal to permit inquiry into particular matters of discovery, we believe that the public policy must be compelling before it can outweigh the interest in full disclosure. We agree with respondent that efforts by businessmen to monitor the

¹ Application for Review of Administrative Law Judge's Order Ruling on Respondent's Claim of Privilege for Certain Internal Corporate Records at 6.

legality of their practices are clearly in the public interest. However, we are not persuaded the possibility that internal corporate documents will be the subject of a discovery order would lead businessmen to cease taking steps necessary to assure themselves of the legality and propriety of their conduct and to avoid practices that would subject them to law enforcement action. Respondent's arguments are, therefore, too speculative to warrant the withholding of relevant documentary evidence.² Accordingly,

It is ordered, That the administrative law judge's Order Ruling on Respondent's Claim of Privilege for Certain Internal Corporate Records be, and it hereby is, affirmed.

Commissioner Dole did not participate by reason of absence.

² Even if a "chilling effect" could be demonstrated, we doubt that the public interest would require non-disclosure. In *Bredice v. Doctors Hospital, Inc.*, 50 F.R.D. 249 (D.D.C. 1970), *aff'd*, 479 F.2d 920 (D.C. Cir. 1973), relied on by respondent, the court upheld a claim of privilege with respect to reports prepared by a hospital staff committee. The court held that confidentiality was essential to the effective functioning of hospital staff meetings and that these meetings were in turn necessary to continued improvement in the care and treatment of patients. In *Jolly v. Superior Court of Pinal County*, 540 P.2d 658 (Ariz. 1975) also relied on by respondent, the court declined to "judicially create" a privilege "absent an overriding matter affecting public interest as found in several of the hospital cases." *Id.* at 662.

Complaint

IN THE MATTER OF

SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

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

Docket 8998. Complaint, Nov. 5, 1974—Decision, Oct. 7, 1976*

Consent order requiring the dissolution of a Dallas, Texas, talent promoting agency, and, among other things, requiring two of its officers to cease engaging in the talent promotion business in the future. Further, the order requires respondents to cease misrepresenting the nature and extent of services provided; misrepresenting the means by which clients are selected, the sums spent on client promotion, respondents' ability to obtain financial gains for their clients, and the size and power of any company with which they are associated. Respondents must provide a ten-day cooling-off period for any future service contract; notify all advertising media utilized by them that they are under a Commission order; and take steps to assure that employees and salesmen abide by the provision of the order.

Appearances

For the Commission: *Richard H. Gateley* and *John J. Hemrick*.

For the respondents: *Thompson, Knight, Simmons & Bullion*, Dallas, Texas.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Soundtrack Chevell Industries, Inc., a corporation, and William F. Temple, Gene Temple, and Helen Temple, individually and as officers, or former officers, of said corporation, and Lonnie Temple and Tommie Tubb, individually and as former salesmen of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

I. RESPONDENTS

PARAGRAPH 1. Respondent Soundtrack Chevell Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its registered office located at

* Complaint dismissed as to respondent Tommie Tubb by order dated April 22, 1975, 85 F.T.C. 405. Disposition as to respondents Gene Temple and Lonnie Temple is still pending before the Commission.

Room 343, Western Building, 2525 Ridgmar Boulevard, Fort Worth, Texas, and formerly with its principal office and place of business located at 1904 Montgomery St., Fort Worth, Texas.

Respondents William F. Temple, Gene Temple, and Helen Temple are individuals and are or were officers of the corporate respondent. They formulated, directed and controlled the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. The address of respondents William F. Temple and Helen Temple is 941 Miller Road, Clarksdale, Mississippi. The address of respondent Gene Temple is 16400 East Truman, Independence, Missouri.

Respondent Lonnie Temple is an individual and former salesman for Soundtrack Chevell Industries, Inc. With the consent of the officers and stockholders of the corporate respondent, respondent Lonnie Temple represented himself to be a vice president of corporate respondent. He formulated policies and directed and controlled acts and practices of the corporate respondent, and he participated and cooperated in the acts and practices of the other respondents, including the acts and practices hereinafter set forth. His present address is 160 West Lake Lodge, Bessemer, Alabama.

Respondent Tommie Tubb is an individual and former salesman for Soundtrack Chevell Industries, Inc. With the consent of the officers and stockholders of the corporate respondent, respondent Tommie Tubb represented himself to be a vice president of corporate respondent. He formulated policies and directed and controlled acts and practices of the corporate respondent, and he participated and cooperated in the acts and practices of the other respondents, including the acts and practices hereinafter set forth. His present address is Route 1, Box 220, Aledo, Texas.

II. NATURE OF TRADE AND COMMERCE

PAR. 2. Respondents are now and for some time last past have been engaged in the inducing, offering for sale and sale of contracts for the management and promotion of persons desiring careers as professional singers or entertainers.

Respondents have caused advertisements to be broadcast by radio stations or placed in newspapers and have caused the dissemination of brochures, pamphlets and other written solicitations to the public.

By and through the use of such advertisements, respondents are now inducing and have induced persons to arrange for free auditions conducted by respondents. By and through both oral and written representations made during or subsequent to said auditions, persons are induced and have been induced to execute contracts with respondents in consideration of such sums as \$1,000, resulting in a substantial

volume of business for respondents. In the period from January 1973 through September 1973, this volume exceeded \$250,000.

III. JURISDICTION

PAR. 3. In the furtherance of their aforesaid business respondents have caused persons to travel from various States of the United States to respondents' place of business in the State of Texas for the purpose of doing business with respondents. Respondents solicit and receive consideration for contracts executed in the course and conduct of their business as aforesaid through the United States mail and otherwise from persons residing in various States of the United States. Respondents maintain and have maintained at all times mentioned herein a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business respondents now cause and for some time last past have caused the dissemination of advertisements over radio and in newspapers of general circulation in commerce as "commerce" is defined in the Federal Trade Commission Act.

IV. ACTS AND PRACTICES

PAR. 4. In the course and conduct of their business and for the purpose of inducing, offering for sale and the sale of contracts for future services, respondents are now making and have made numerous statements and representations to the public and prospective clients.

Typical and illustrative of written statements made in respondents' advertising, but not all inclusive thereof, are:

1. Among all the independent producers of master recordings in America, Mr. Temple knows the right people and has their confidence. His successful record of producing what the major companies will buy is a distinct asset to a new artist.
2. Bill Temple has the knowledge, the experience and the enthusiasm to work successfully with new talent and get enormous results.
3. Proven ability to lease to major labels.
4. We have strict guidelines and they help our odds by giving us the artist with a high potential to win.
5. Turn yourself over to us and let us cut your master and start your recording career.
6. Singing Talent Search—for amateur singers who want to be considered by major recording company. Country, Pop, Rock, Folk, Gospel, & Rhythm and Blues. Audition is free and recorded. Call at once — 817-261-6112.

PAR. 5. By and through the use of the above quoted advertisements and written representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented and are now representing directly or by implication that:

1. Respondents' clients are assured of successful recording careers

because William F. Temple has a close working relationship with key personnel in the recording industry and has a successful record of producing talent for major recording companies.

2. There is a high probability that respondents' clients will become professional singers or entertainers because of William F. Temple's knowledge and experience in the industry.

3. Respondents have leased numerous tapes to major recording companies.

4. Respondents have strict guidelines and procedures for selecting those persons to be placed under contract.

5. Respondents initiate recording careers for their clients.

6. Soundtrack Chevell Industries, Inc. is a major recording company.

PAR. 6. By and through use of the following oral representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented and are now representing directly or by implication that:

1. Songs will be selected especially to fit clients' voices.

2. The \$1,000 consideration for the contract is an investment, an expression of self-confidence and an assurance that clients will do their best, and that such consideration will be returned when the clients' tapes are leased to major recording companies.

3. Respondents will invest large sums of money in certain clients, such as \$6,000 and \$20,000 per client.

4. Only the most promising clients will be placed under contract and respondents have to audition up to 275 persons in order to find a promising client.

5. Eighty percent of respondents' clients become professional singers or entertainers.

PAR. 7. In truth and in fact:

1. Neither William F. Temple nor any other respondent has a close working relationship with key personnel in the recording industry or has a successful record of producing talent for major recording companies.

2. There is not a high probability that respondents' clients will become professional singers or entertainers since neither William F. Temple nor any other respondent has sufficient knowledge and experience in the industry to perform as they promise.

3. Respondents have leased few, if any, tapes to major recording companies.

4. Respondents do not have strict guidelines or procedures for selection of potential clients.

5. Respondents do not initiate recording careers for their clients.

6. Soundtrack Chevell Industries, Inc. is not a major recording company.

7. Respondents do not select songs especially to fit the clients' voices.

8. The \$1,000 paid by clients is not an investment but is consideration for the contract which is not returned to the clients.

9. Respondents do not invest \$6,000 to \$20,000 in any client.

10. Respondents do not generally offer a contract to only 1 out of 275 persons auditioned but offer a contract to virtually all persons who can pay the \$1,000 consideration, or a portion thereof, with a sufficient credit record to finance the balance.

11. Few, if any, of respondents' clients become professional singers or entertainers as a result of contracting with respondents.

Therefore, the respondents' statements, representations or implications, as set forth in Paragraphs Four, Five and Six hereof, are and were false, misleading and deceptive.

PAR. 8. By and through the representations alleged in Paragraphs Four, Five and Six and in the further course and conduct of their business as aforesaid, respondents represent that prospective clients or clients will become professional singers or entertainers achieving stardom and extraordinary financial gains. During such representations, respondents use intense, emotional sales techniques to persuade a prospective client or client to execute a contract. Respondents solicit and obtain signatures to the contract from persons who have not had a reasonable opportunity to seek assistance or counsel in understanding the contract provisions or determining whether they are equitable. The soliciting or obtaining of an agreement by respondents involving a substantial financial commitment by the prospective client or client where such person has been subjected to respondents' sales methods or denied the opportunity to seek assistance or counsel is an unfair act or practice.

PAR. 9. By and through the acts and practices described herein, respondents have engaged in a course of conduct when each of them knew or should have known that they possessed neither the expertise nor the capability to promote any client successfully. Therefore, respondents' continued participation in the business described in Paragraphs Two and Three in an unfair act or practice and a continuing violation of Section 5 of the Federal Trade Commission Act. (15 U.S.C. §45).

PAR. 10. In the further course and conduct of their aforesaid business, respondents now induce and have induced clients to pay substantial sums of money to the respondents without disclosing to such clients facts concerning the probability that clients will receive a financial gain

as a result of contracting with respondents. Since few, if any, of respondents' clients ever receive financial gains, respondents fail to disclose material facts which, if known to certain prospective clients, would likely affect their decision as to whether to execute a contract with respondents. Respondents' failure to make such disclosures is an unfair or deceptive act or practice.

PAR. 12. Respondents as aforesaid, have been, and are now failing to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for promotional activities by respondents was and is virtually nil. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such persons.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice and a continuing violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45).

PAR. 12. The use by respondents of the aforesaid unfair, false, misleading and deceptive acts and practices has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the execution of contracts with respondents by reason of said erroneous and mistaken beliefs.

PAR. 13. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the management and promotion of members of the public desiring careers as professional singers or entertainers.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, have caused and are now causing substantial pecuniary losses to persons contracting for their services and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45).

DECISION AND ORDER AS TO RESPONDENTS SOUNDTRACK
CHEVELL INDUSTRIES, INC., WILLIAM F. TEMPLE AND HELEN
TEMPLE

The Commission having issued its complaint on November 5, 1974, charging the respondents named in the caption hereof with violations of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motions certified to the Commission under Section 3.25 of the Commission's Rules of Practice that, in the circumstances presented, there was a likelihood of settlement and that the public interest would be served by withdrawing the matter as to respondents Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple, from adjudication; and respondents Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple and Counsel for the Commission having executed an agreement containing a consent order, an admission by respondents Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple of all jurisdictional facts set forth in the Complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by said respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's Rules; and

The Commission having thereafter considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition in part of this proceeding, and having accepted said agreement, and the agreement containing consent order having been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order in disposition of the proceeding as to respondents Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple:

1. Respondent Soundtrack Chevell Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its principal office and place of business formerly located at 1904 Montgomery St., Fort Worth, Texas. The address of the corporate respondent is the same as the individual respondents.

Respondents William F. Temple and Helen Temple are individuals and are or were officers of the corporate respondent. They formulated, directed and controlled the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. The address of respondents is 4405 Orchard Hill Dr., West Carrollton, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple and the proceeding is in the public interest.

ORDER

I. *Definitions*

For purposes of this order the following definitions shall apply:

A. "Future Services" shall include any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive, as a result of such arrangement, the delivery or performance, at least partly in the future, of any service, benefit, promotion, course of instruction, sum of money, or similar thing of value; the term shall include, but shall not be limited to, any arrangement whereby one party pays or contracts to pay a sum of money in the belief that he may receive a financial gain as a result of such arrangement.

B. "Client" shall mean any person who has entered into an agreement with respondents requiring the payment of money to respondents.

II.

A. *It is ordered*, That the officers, and William F. Temple and Helen Temple, individually and as officers, or former officers, of said corporation, directly or through any corporation, subsidiary, division or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from offering to engage in or engaging in the management or promotion of persons desiring careers as professional singers or entertainers.

III.

A. *It is further ordered*, That respondents, William F. Temple and Helen Temple, individually and as officers, or former officers, of Soundtrack Chevell Industries, Inc., in connection with the advertising or offering of future services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing directly or indirectly, by any means, except as required by this order, that individual clients or prospective clients may obtain financial gains as a result of contracting with respondents.
2. Misrepresenting, directly or indirectly, by any means:
 - (A) Respondents' ability to obtain financial gains for their clients.
 - (B) The character, nature and extent of services actually provided by respondents.

- (C) The procedures used by respondents in selecting those persons who are offered contracts.
 - (D) The size, market position and capabilities of any company with which respondents are associated.
 - (E) Respondents' intent to invest in any client a sum of money greater than the sum of money paid or agreed to be paid by such client.
3. Failing to provide each client or customer with a written contract and two copies thereof at the time such contract is signed by the client or customer.
 4. Entering any transaction which shall become binding on the client or consumer prior to midnight of the tenth day, excluding Sundays and legal holidays, after the date of signing the contract.
 5. Failing to print clearly and conspicuously on the contract or other instrument in 12-point boldface type on the top of the first page of all contracts or other instruments required to be given the client or customer by paragraph 3 preceding the following language.

NOTICE REQUIRED BY THE FEDERAL TRADE COMMISSION.

YOU ARE ENTITLED TO RECEIVE TWO COPIES OF THIS CONTRACT. YOU HAVE TEN (10) DAYS, EXCLUDING SUNDAYS AND LEGAL HOLIDAYS, AFTER SIGNING THIS CONTRACT IN WHICH TO DETERMINE WHETHER TO CONTINUE THIS CONTRACT OR CANCEL IT WITH FULL REFUND. YOU MAY CANCEL THIS CONTRACT FOR ANY REASON DURING THAT TIME. IF YOU DO DECIDE TO CANCEL, YOU ARE ENTITLED TO RECEIVE A FULL REFUND WITHIN TEN (10) DAYS AFTER THE NOTICE OF CANCELLATION IS RECEIVED. YOU MAY USE ANY REASONABLE METHOD TO NOTIFY (*name of respondent*), BUT FOR YOUR OWN CONVENIENCE, YOU MAY WISH TO USE CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED, OR A TELEGRAM. HOWEVER, YOU MAY ALSO CANCEL THE CONTRACT AND OBTAIN YOUR REFUND BY SIGNING AND DATING THIS NOTICE AND RETURNING IT TO (*name of respondent*) AT (*address*).

I HEREBY CANCEL THIS CONTRACT.

(DATE)

(YOUR SIGNATURE)

6. Failing to cancel any contract for which a notice of cancellation was sent by any reasonable means within the ten (10) day grace period above mentioned, or failing to refund any money paid by clients or customers within ten (10) days after the date of receipt of such notice of cancellation.
7. Negotiating any promissory note, installment payment agreement or other instrument of indebtedness to a finance company or other third party prior to midnight of the tenth day, excluding Sundays and legal holidays, after the date of execution of the contract by the client or customer.
8. Failing, in all pamphlets, brochures and other promotional materials used in connection with a respondent's business to make the following disclosures in the manner and form provided for herein.

At the time respondents submit advertising to any radio or television station, they shall provide a copy of the following notice to each such station:

"NOTICE

(Name of Respondent) IS UNDER A FEDERAL TRADE COMMISSION ORDER TO CEASE AND DESIST FROM UNFAIR AND DECEPTIVE ACTS AND PRACTICES. YOUR ATTENTION IS DIRECTED TO AN AGREEMENT BETWEEN THE FEDERAL TRADE COMMISSION AND THE FEDERAL COMMUNICATIONS COMMISSION DATED APRIL 27, 1972."

9. Failing to maintain for a period of three (3) years after any advertisements are disseminated, records disclosing:
 - (A) the date or dates each advertisement was published; and
 - (B) the name and address of the newspapers, other publications or broadcast media disseminating said advertisement.
- B. *It is further ordered*, That respondents and each of them:
 1. Disclose in writing to every client or prospective client in connection with any future service contract:
 - (A) The percentage of respondents' clients, who as a result of contracting with respondents, have received earnings greater than the consideration paid by such clients to respondents.
 - (B) The number of respondents' clients who, as a result of contracting with respondents, have received earnings

greater than the consideration paid by such clients to respondents.

Each disclosure hereinabove required shall be made clearly and conspicuously on a separate document. The disclosures shall be delivered to the relevant party or parties prior to the signing of any contract. Each disclosure shall include an appropriate place for the signature of all parties to the contract, including respondents. Prior to entering into a contract respondents shall submit each disclosure to any and all prospective parties to the contract and obtain the signature of any and all parties to the contract including respondents on each disclosure statement. Respondents shall retain a signed and dated copy of each such disclosure acknowledging receipt of said disclosures by any and all parties to the contract, other than respondents, and retain said disclosure statements for a period of three (3) years.

C. *It is further ordered*, That respondents cease and desist from:

1. Including in any contract or other document any waiver, limitation or condition on the right of a client to cancel an agreement or receive a refund under any provision of this order.
2. Misrepresenting the right of a client to cancel an agreement or receive a refund under any provision of this order or any applicable statute or regulation.
3. Making any representations or taking any action which is inconsistent with or detracts from the effectiveness of this order.

D. *It is further ordered*, That the individual respondents not engage in any course of conduct which contravenes the refund rights of clients or prospective clients provided by this order. The establishment and maintenance of escrow accounts with financial institutions insured by the Federal Deposit Insurance Corporation or a similar institution will be deemed to satisfy this paragraph of the order.

E. *It is further ordered*, That respondents, upon receipt of a complaint from a client alleging facts that indicate this order may have been violated and requesting a refund or cancellation of the contract, refund all monies paid by such clients where respondents determine, after a good faith investigation, that one or more of the paragraphs of this order may have been violated in connection with such client's transaction with respondents; *provided, however*, that in the event respondents refund any money pursuant to this paragraph of the order, the sole fact of such refund shall not be admissible against respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order; and *further provided*, that this paragraph shall not be applicable to transactions in which the contract was entered into prior to the date this order became final.

F. *It is further ordered:*

1. That respondents deliver, by hand or by certified mail, a copy of this order to each of their present or future salesmen, independent brokers, employees or any other person who sells or promotes the respondents' future service arrangements;

2. That respondents provide each person so described in subparagraph 1 above with a form returnable to respondents, clearly stating an intention to be bound by and conform sales practices to the requirements of this order and retain such form for a period of three (3) years after employment of such person is terminated;

3. That respondents inform each person described in subparagraph 1 above that respondents shall not use any such person, or the services of any such person, until such person agrees to and files notice with respondents to be bound by the provisions contained in this order;

4. That in the event such person will not agree to file such notice with respondents and be bound by the provisions of this order, respondents shall not use such person, or the services of such person;

5. That respondents institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in subparagraph 1 conform to the requirements of this order; and

6. That respondents discontinue dealing with any person described in subparagraph 1 of this order who engages in the acts or practices prohibited by this order; *provided, however*, that violation of any provision of this order by persons described in subparagraph 1 shall not be deemed a violation of this order by respondents unless respondents, upon knowledge of such violation, fail to take within a reasonable time, a corrective action to insure that such acts or practices are terminated; and *provided further*, that in the event remedial action is taken, the sole fact of such action shall not be admissible against respondents in any proceeding brought to recover penalties for alleged violation of any other paragraph of this order.

IV.

A. *It is further ordered*, That each individual respondent named herein promptly notify the Commission of discontinuance of any business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

B. *It is further ordered*, That respondents Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple shall within sixty

(60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Dole did not participate by reason of absence.

Complaint

88 F.T.C.

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

Docket 9071. Complaint, Jan. 20, 1976—Decision, Oct. 12, 1976

Consent order requiring a Houston, Texas, funeral home chain, among other things to cease misrepresenting the prices of services obtained from third parties; failing to disclose the availability and price of immediate cremation services; misrepresenting the qualities or properties of caskets; and misrepresenting the legal requirements and characteristics of caskets. Further, respondent is required to locate and make proper refunds to customers overcharged during a prescribed time period; and to maintain appropriate records.

Appearances

For the Commission: *Arthur R. Angel.*

For the respondent: *Jay F. Lapin, Wilmer, Cutler & Pickering,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*, as amended), and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Service Corporation International, a corporation, hereinafter sometimes referred to as "respondent" or "SCI," acting at various times directly or through certain of its funeral home subsidiaries, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Service Corporation International is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and principal place of business located at 1929 Allen Parkway, Houston, Texas.

PAR. 2. Respondent SCI is now, and for some time last past has been, engaged in the sale and provision of funeral services and merchandise to the public, incident to the care and final disposition of deceased human beings, through various funeral home subsidiaries.

PAR. 3. SCI's funeral service operations in the United States consist, at the time of this complaint, of in excess of 135 funeral homes located in 16 States (California, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Louisiana, Maryland, Minnesota, North Carolina, New Jersey,

New York, Tennessee, Texas and Washington) and the District of Columbia. Said funeral homes are operated through more than 80 funeral home subsidiaries, almost all of which are wholly owned by respondent SCI. SCI also owns a casket supply company (Hy-Grade) which furnishes some of the caskets used in various of respondent's funeral homes.

PAR. 4. Respondent SCI has now and for some time past has had knowledge and supervision of and control over the business operations, policies and practices of its wholly-owned funeral home subsidiaries.

PAR. 5. In the course and conduct of its business as aforesaid, respondent SCI, and various of its funeral home subsidiaries and their duly authorized employees and agents, have:

- purchased caskets, burial vaults, and other merchandise and supplies from suppliers located in different States;
- used media of interstate communication including the United States mail and the telephone in connection with the provision and sale of, and the collection of payment for, funeral services and merchandise;
- sold funeral services, and merchandise to customers from different States;
- caused advertisements to be run in newspapers and magazines with interstate circulation and to be featured in radio broadcasts transmitted across State lines to potential customers in different States;
- shipped deceased human bodies by common carrier to funeral directors located in other States for burial and received bodies for burial which were shipped to respondent's funeral homes from funeral directors located in other States;
- transmitted information on policies and practices back and forth between SCI's headquarters in Houston and individual funeral home subsidiaries located in various States.

By and through such activities, the conduct of respondent Service Corporation International's business and its acts and practices have been and continue to be in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Customers of various of respondent's funeral homes are often grief-stricken members of the deceased person's family who, because of their bereavement, lack of information respecting funeral arrangements, time pressures and related factors, are highly susceptible to unfair and deceptive practices.

