

Complaint

117 F.T.C.

IN THE MATTER OF

PERSONAL PROTECTIVE ARMOR ASSOCIATION, INC.

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

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

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Personal Protective Armor Association ("PPAA") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its mailing address at 3623 Falls Road, Baltimore, Maryland.

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

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

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

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

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

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

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

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

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

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

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

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

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

DECISION AND ORDER

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

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not

constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

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

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

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

ORDER

I.

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

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

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

II.

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

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

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

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

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

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

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

III.

It is further ordered, That respondent:

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

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

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

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

IV.

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

CONCURRING STATEMENT OF COMMISSIONER ROSCOE B. STAREK, III

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

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

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

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

¹ 110 FTC 549, 604 (1988).

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

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

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

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

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

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

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IN THE MATTER OF

THE HAIRBOW COMPANY, ET AL.

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

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

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

COMPLAINT

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

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

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

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

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

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

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

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

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

* * *

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

* * *

WE NOW PAY UP TO \$427.68 WEEKLY!!

* * *

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

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

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

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

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

PAR. 6. In truth and in fact:

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

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

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

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

EXHIBIT A

The Hairbow Company

WE NOW PAY UP TO \$427.68 WEEKLY!

WELCOME:

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

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

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

HOW TO BEGIN:

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

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

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

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EXHIBIT A

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

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

NAME _____

ADDRESS _____

CITY S. I. IP _____

SIGNATURE _____
E 4/29/91 Phone (_____

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

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

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

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

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

Money Order (15 day shipping)

Personal Check (4 week shipping)

Rush Handling \$2.00

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

DECISION AND ORDER

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

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

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

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

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

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

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

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

ORDER

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

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

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

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

I.

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

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

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

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

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

II.

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

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

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

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

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

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

III.

It is further ordered:

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

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

IV.

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

V.

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

VI.

It is further ordered, That respondents shall, within sixty (60) days after service of this order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

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IN THE MATTER OF

HOMESPUN PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3483. Complaint, Mar. 17, 1994--Decision, Mar. 17, 1994*

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

Appearances

For the Commission: *Gerald E. Wright* and *Jeffrey Klurfeld*.

For the respondents: *William Wineberg, Broad, Schuld, Larson & Wineberg*, San Francisco, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Home Spun Products, Inc., a corporation, G & S Marketing, Inc., a corporation, and Gregory A. Straw, individually and as an officer of said corporations ("respondents"), have violated 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, alleges:

PARAGRAPH 1. Respondent Home Spun Products, Inc. is a California corporation, with its principal office or place of business at 201 Benton Court, Suisun, California.

Respondent G & S Marketing, Inc. is a California corporation, with its principal office or place of business at 201 Benton Court, Suisun, California.

Respondent Gregory A. Straw is an officer of the corporate respondents. Individually or in concert with others, he formulates, directs and controls the acts and practices of the corporate

respondents, including the acts and practices alleged in this complaint. His principal office and place of business is the same as that of the corporate respondents.

PAR. 2. Respondent Homespun Products, Inc. has disseminated advertising seeking individuals to assemble craft items and other products at home, and has offered for sale and sold start-up kits and craft materials to individuals who accept its offers to engage in such work.

Respondent G & S Marketing, Inc. has disseminated advertising soliciting individuals to incur the cost of a 900-number telephone call to obtain information identifying companies offering work-at-home opportunities, and has advertised and sold directories of firms offering work-at-home opportunities.

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

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

\$627 WEEKLY AT HOME. Easy work, assemble products, start now! Call (900) 420-3017. 18 years/older. Three dollars a minute.

Turn your sewing machine into a money machine! That's right we pay up to \$627.00 per week...

TURN YOUR SEWING SKILLS INTO SIGNIFICANT INCOME! WE PAY UP TO \$627.00 A WEEK SEWING PILLOWS AT HOME!

Once you have the starter package, you'll be ready to earn money! --- WE PAY YOU UP TO \$627.00 A WEEK--month after month.

\$270.00 per week making simple Christmas ornaments year round!

WE PAY YOU UP TO \$450 WEEKLY [Christmas ornament]

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

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

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

PAR. 6. In truth and in fact:

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

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

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

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

EXHIBIT A

Country Living CLASSIFIED

Rates effective with the May 1991 issue: \$295 for 15 words or less. \$10 for each word over 15. Payment with order required. All classified advertisements are positioned under appropriate heading. All classified are accepted at discretion of Country Living Magazine. Mail ad copy & payment to: COUNTRY LIVING CLASSIFIED, 50 Washington Street, So. Norwalk, CT 06854 • (203) 866-4845 or FAX (203) 838-1425

ANTIQUES

ANTIQUÉ-HOMES-STUDY-COURSE for free brochures, write A.L.A., 1537 Havel Ave., Dept. 8912CL, Buffalo, NY 14216.

REPRODUCTION HARDWARE FOR ANTIQUE FURNITURE, Hooks, Trunk, Carving, etc. Mastercard, VISA, Discover. For \$2.50 Catalog refunded on \$25.00 purchase. 1-800-545-7947.

ARTS & ANTIQUES

ANTIQUE CABINET HORSES. Send LSASE for brochures. A SWEST REMEMBRANCE, 172 August Road, New Bedford, CT 06776-5411. (203) 353-3709.

ARTS & CRAFTS

GREETING CARDS WALL MOUNTING KIT. 3 popular sizes included. \$16.95 incl. Specialty Colors/ natural wood. SHALO ENTERPRISES, 7657 Wisconsin, Suite 137, Chicago Park, CA 91306. Catalogs \$2.00. Refundable with purchase. 818-700-8678.

HANDCRAFTED COUNTRY STENCILING on fabric. Free brochures. RAOGH HILL CREATIONS, Box 990, West Brookfield, MA 01583.

BEAUTIFULLY UNIQUELY HANDCRAFTED ROCKING HORSES and silhouettes. Brochure \$1.00. EQUESTRIAN COUNTRY CRAFTS, 275 South Four & Street, Lake Mary, FL 32746.

STENCILS. Send LSASE for brochures. STENCILS BY ZULA, 113 Ridge State Road, Ashburham, MA 01430.

VICTORIAN LACE POTHOLDER KITS! Scoured Colors vary. \$3.00. Vintage Recipes for additional \$2.50's. \$8.00/20. GREAT GRANDMA NELL'S, 16100 Promiser Road, Reno, Nevada 89506.

HANDCRAFTED AMISH DOLLS. Toys, furniture and much more. Send \$2.00 refundable to: CATALOG, Box 314, Prewsburg, NY 14738.

BASKETS

DISCOVER BASKET MAKING. Complete basket making supplies. Catalog \$1.00. G.H. PRODUCTIONS CL, 521 East Walnut Street, Scottsville, KY 42164.

BIRD LOVERS

WILSON WATCHERS: Through new device watching and feeding of the common wren. Eating anytime without causing disturbance to house. \$9.95 plus \$2.50 shipping and handling. P.O. Box 2994, Kokomo, IN 46901.

BOOKS & PERIODIC

SECONDARY MARKET PRICE

BUILDING MATERIALS

80 LARGE OLD HAND-HEWN LOGS from 22 x 70 term. Call W.V. 304-643-6991 after 5:00pm.

BUSINESS OPPORTUNITIES

WE PAY YOU \$246 weekly! Details, rush \$4.95. FOR P.O. Box 237, (203) 866-4845.

8537 WEEKLY AT HOME. Easy work, assemble products, start now! Call (800) 420-3017. 18 years/older. Three dollars a minute.

843336 WEEKLY POSSIBLE! Making hairbows at home. Details, rush \$4.95. FOR P.O. Box 237, (203) 866-4845.

EARN MONEY READING books! \$30,000/year income potential. Details. (805) 963-8000, Ext. Y-23422.

COLLECTIBLES

BLACK COLLECTIBLES, PHOTOS available. SECTION AND WATSON, P.O. Box 14298, Augusta, Georgia 30919. 804/796-1408.

DECORATIVE ACCESSORIES

BEAUTIFUL MEXICAN BLANKETS. Send \$2.00 for brochures (refundable) ARMADILLO IMPORTS, Box 850, Johnson City, Texas 78636.

HANDCRAFTED HANDPAINTED DECOR. Unparalleled in craftsmanship quality and collectability. Brochure \$2.50 (Refundable with purchase) DUCKS COVE INC., 180 Talbot Street, Suite 106, Rockville, Maryland 20853-1417, Dept. 391-87.

BEAUTIFY YOUR HOME! Helpful hints on decorating with color. Send \$2.00/LASE COLOR DESIGNS BY SARAH, Box 6132, Channahon, MO 63006.

DO-IT-YOURSELF

HULA RESTORE, REPAIR, Refinish! Carvings, Metalings, Brass, Handwoods, Vases, Upholstery, Canvas, Lamps. \$1 for unique wholesale catalog. VAN DYKE'S, Dept. 33, Woonsocket, RI 02895.

FINANCIAL

DEBT? BILLS PILING UP? Bad credit is no problem! We'll help. Licensed/Bonded. Applications accepted \$500-\$50,000. Not a loan company. UAC, Dept. CL, P.O. Box 26795, Birmingham, AL 35226 or call 24 hours (800) 238-8284.

FURNITURE

SOLID OAK SHELF, 18" x 6" with gallery rail. Medium finish. \$24.95 + \$3.00 s/h. Send \$2.00 for brochure. SHELF SHACK, Box 1256, Linden, CA 94552.

HAND HEWN

Catalog and loan. Fontaine, CA 923.

Country Living Magazine

August, 1991

WATCH REPL.

Warranty! Exact weight color. 1000 Uncompromised! Low (40%) retail. USA.

BEAUTIFUL GOURMET GIFT BASKETS.

Free Brochure. OLDS TYME SWEETS, 25 Broad St., 0278, Prewfield, NJ 07728.

HELP WANTED

Send
with
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und/
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M

NUSSING HOME Comprehensive guide loved cars. \$14.95. Greenwood, NH 0604

OF

CORRECTABLE! Discount: 20 more. or. add 6/75 tax. 174C, Newport Box

ANTIQUÉ QUILT

CATALOG \$3. TRADIT 5402.

IDAMO - WASHP

wholesale prices. COMPANY, (800) 1

GOVERNMENT

property. Responses \$2425 for census re

AUTHENTIC DU

SASE and \$3.00 to

AUTHENTIC GIN

alcoholic. (dist. que 25303, Rochester, N

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STORE. Box 465. C

COMPLETE F15

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ATLANTIC WI

CA 91518.

AUTHENTIC EA

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RECEIVED FOR

SASE. ELEGANT W154801.

200 RECIPES: F

FENCE DRK. 8842

DISNEY/EPCOT

meticulously made

DAYS/SPRING VIL

SEASIDE COTT.

Yds! Fully equip 3629.

EASY FLORAL

600-idea. \$14.95

SUCCESS. Box 3

INVENTORS: C

AMERICAN IN- market. Over 200

EXHIBIT A

Complaint

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EXHIBIT B



ORNAMENTS

PO Box 6010, Fairfield, CA 94533

HELLO -

Let us introduce this unique opportunity to enjoy the Christmas Spirit all year round, and make money doing it! Homespun will instruct you in the age old art form of Quilling Ornaments. Italian nuns in the 17th century brought this art form to life and it still is in demand today. You can learn this skill, and no experience is needed. You will enjoy creating beautiful snowflake ornaments, and have the satisfaction of earning money at the same time! So come, join in the fun and revival of this charming art. Start quilling an heirloom today for a treasure tomorrow!!
(Quilling is a simple paper art, shaping strips of special paper and gluing them together to make an attractive ornament. It's easy!)

WE PAY YOU UP TO \$450.00 WEEKLY

HOMESPUN will pay you \$90 for every set of thirty six ornaments you make! We will purchase up to 5 sets weekly which totals \$450 right in the comfort of your own home, being your own boss.

Our company is presently in need of some hard working independent contractors to produce these ornaments. you work at your own pace. The amount of money you make will depend on your skills, the time you wish to spend, whether you do all the work yourself or have help. You may even sell these ornaments to others at higher prices, to make even more money, it's up to you!

HOW TO START:

First, fill out the application on the back side of this page. Return the application to the Homespun shipping department for immediate shipping of your starter kit. The kit will contain enough materials to produce five ornaments, instructions, color picture, pattern layout, and specifications on supplies.

NO SEWING OR TOOLS REQUIRED. NO EXPERIENCE NEEDED!

QUESTIONS, CALL DURING OUR CUSTOMER SERVICE HOURS 9:30 TO 3 PM
TOLL FREE THROUGH COMDEX 707-428-1345

EXHIBIT B
PAGE 1 OF 2 PAGES

EXHIBIT B

RETURN THIS FORM TO HOMESPUN PRODUCTS INC. PO BOX 6010 FAIRFIELD CA 94533 For Office Use Only

ORNAMENT-APPLICATION (Please Print or Type)

NAME _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____ SOCIAL SECURITY NUMBER _____
 SIGNATURE _____ DATE _____

AD
BN
BY
PLR
RU

HOMESPUN will send you a check in the amount of \$90.00 for each unit of 36 ORNAMENTS that you complete according to our written specifications, and send postage paid to Homespun. (\$70.00 labor plus \$20.00 supply cost = \$90.00 total). We currently limit our producers to only five units per week, a total of \$450.00. We will also reimburse for shipping, up to \$4.00 per unit on all units made according to our standards. (If you ship UPS, cost should be under \$4.00 in U.S.).

Since you are self-employed, you are responsible for your own tax records. We do not withhold income taxes, nor do we pay for unemployment benefits, or employee benefits of any kind. You are an independent contractor, with all these responsibilities. You may hire help, use your own methods, and sell elsewhere if you wish.

It is necessary for us to project production and inventory, so Homespun requires our producers to have their first unit in our office no later than 60 total days from the date of the starter package being mailed to you. All future units will have the same requirement. 60 days from the payment of the last unit. There is no payment for partially completed work or incompleting units. We reserve the right to refuse unsatisfactory work. We recommend submitting your first sample for approval before beginning production.

Supplies. As an independent contractor you have the right to obtain your own supplies. Buying needed items from your own sources below our suggested supply cost increases our profit per unit of ornaments. By law this is your right, to have this freedom to control your profit margin. Instructions on how and where to obtain supplies are given inside starter kit.

START NOW! Order your starter kit today, this registers you with our inspection department and allows us to receive work from you right away! simply fill out the above application, sign it, and send either a money order or check in the amount of \$39.95. This starter package contains supplies to make five ornaments, color photograph, pattern, instructions, and quality checklist (sample not included). This starter kit is sent on a nonrefundable basis. This fee also pays for computer time inspection of work and other administrative costs.

SAMPLE ONLY. You may order a finished sample on a refundable basis of \$7.00, this allows you to check out the opportunity on a refundable basis. Sample must be returned within 15 days for refund!

- ___ Money order or check for \$39.95 for starter package *NOT AVAILABLE IN CA. Includes shipping & handling First class mail (nonrefundable)
- ___ Sample ornament \$9.95 (\$7 plus \$2.95 shipping charge)-\$7 is refundable
- ___ FAST SERVICE! SHIP MY KIT WITHIN 3 DAYS OF YOUR RECEIVING IT! \$3.95 EXTRA



EXHIBIT B
PAGE 2 OF 2 PAGES

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DECISION AND ORDER

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

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondent Homespun Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 201 Benton Court, Suisun, California.

Respondent G & S Marketing, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office or place of business located at 201 Benton Court, Suisun, California.

Respondent Gregory A. Straw is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporation.

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

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

ORDER

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

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

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

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

I.

It is ordered, That respondents Homespun Products, Inc., a corporation, G & S Marketing, Inc., a corporation, their successors and assigns, and their officers, and Gregory A. Straw, individually and as an officer of Homespun Products, Inc. and G & S Marketing, Inc., and respondents, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

II.

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

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

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

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

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

III.

It is further ordered:

A. That respondents Homespun Products, Inc., G & S Marketing, Inc. and Gregory A. Straw shall pay to the FTC as consumer redress the sum of one million and forty thousand dollars (\$1,040,000); provided however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in a "Financial Statement of Corporate Defendant" relating to Homespun Products, Inc., dated February 12, 1993; a "Financial Statement of Corporate Defendant" relating to G & S Marketing, Inc., dated February 12, 1993; a "Financial Statement of Debtor" executed by Gregory A. Straw, dated February 8, 1993; the federal income tax returns of Homespun Products, Inc. for 1990, 1991 and 1992; the federal income tax returns for G & S Marketing, Inc. for 1991 and 1992; and the federal income tax returns for Gregory A. Straw and Susan M. Straw for 1991 and 1992. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million and forty thousand dollars (\$1,040,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this order.

IV.

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

V.

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

VI.

It is further ordered, That respondents shall, within sixty (60) days after service of this order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

SANDCASTLE CREATIONS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3484. Complaint, Mar. 17, 1994--Decision, Mar. 17, 1994

This consent order prohibits, among other things, the Oregon-based respondents, who marketed potholders and mohair for use as doll's hair, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service for, which the respondents are offering a work opportunity. In addition, the order sets a \$536,000 redress payment, however, based upon financial statements submitted by the respondents, the order suspends all redress payments, except for a \$25,000 payment by the individual respondents in this matter.

Appearances

For the Commission: *Gerald E. Wright* and *Jeffrey Klurfeld*.

For the respondents: *James Brown, Enfield, Guimont & Brown*,
Salem, OR.

COMPLAINT

The Federal Trade Commission, having reason to believe that William E. Taylor and Susan L. Taylor, individually, and trading and doing business as Sandcastle Creations ("respondents"), have violated 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, alleges:

PARAGRAPH 1. Respondents William E. Taylor and Susan L. Taylor are individuals, trading and doing business as Sandcastle Creations, an unincorporated association, with its principal office and place of business located at 126 S.E. 1st Street, Newport, Oregon.

Respondent William E. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of Sandcastle Creations and his address is the same as that of Sandcastle Creations.

Respondent Susan L. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, she formulates, directs and controls the policies, acts and practices of Sandcastle Creations and her address is the same as that of Sandcastle Creations.

PAR. 2. Respondents have disseminated advertising seeking individuals to assemble craft items and clean goat hair at home, and have offered for sale and sold introductory kits to individuals who accept their offers to engage in such work.

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

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

\$345.50 WEEKLY POSSIBLE! Make kitchen potholders at home! Turn your skills into dollars! Start immediately. Send \$1.00 + SASE ...

MAKE POTHOLDERS AT HOME

WE PAY UP TO \$277.50 WEEKLY!!

Work at Home! Make Money! Have Fun!
Start Immediately!

CLEAN MOHAIR FOR DOLL HAIR!

WE PAY UP TO \$360.00 WEEKLY!

This is our Best Money Making Home Business!

If you are serious about working at home for yourself and you want to make extra money, this can be an excellent home business!

PAR. 5. Through the use of the statements contained in the materials referred to in paragraph four, including but not necessarily limited to the materials attached as Exhibits A to C, respondents have represented, directly or by implication, that the stated dollar amounts constitute the weekly earnings regularly realized over a substantial period of time by an appreciable number of independent assemblers of respondents' products.

PAR. 6. In truth and in fact, independent assemblers of respondents' products have not regularly realized over a substantial period of time the weekly earnings represented. Only a small percentage of persons who assembled products for respondents have regularly derived earnings from their work, and none has achieved over a substantial period of time the weekly earnings represented. Therefore, the representations set forth in paragraph five were, and are, false and misleading.

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

Complaint

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EXHIBIT A

**MAKE POTHOLDERS
AT HOME**

WE PAY UP TO \$277.50 WEEKLY!!

*Work at Home! Make Money! Have Fun!
Start Immediately!*

Sandcastle Creations purchases from independent people like you all over America who make crafts for fun and money. This is not a 'get rich quick' scheme. While we are happy to purchase the maximum amount from you, we find that the majority of producers do not work at this full time. Rather, this project typically appeals to people who are looking to produce a craft item that earns them extra money in their spare time. The craft items we currently buy are beautifully handcrafted kitchen potholders. The design is "Max, the Country Cat," a machine sewn padded mitten with simple embroidery for the outline facial features of a cat. The design is original, and many of our producers say they are fun and easy to sew!

Turn Your Skills into Dollars!

Sandcastle Creations will pay you \$92.50 for each unit of (29) potholders we buy. We will buy up to 3 units weekly, for which we will pay you \$277.50. You can send one or more units at a time. As an independent contractor you are your own boss. You work at your own pace. Honest effort is the key to business success. The amount of money you make will depend on your skills, organization and the amount of time you wish to spend, and whether you have help, or work by yourself.

There is no selling required. All you need to do is produce potholders. If you are serious about making money, and want to work at home, in your own business, Sandcastle Creations will buy from you starting immediately!

Sandcastle Creations Pays Shipping!

Shipping is a hidden cost that would cut into your profits. For each unit we buy, we pay you an extra \$5.00! to cover your shipping expenses. (UPS shipping in the U.S. should be less than \$5.00.) Therefore, you will receive a check from us for a total of \$97.50, (\$92.50 plus \$5.00 shipping) for each unit we buy.

How To Get Started:

Fill out the application on the back and send it in for your "start up package". The "start up package" includes: 1) a sample potholder for your inspection and guidance, 2) all supplies and materials needed to make one practice potholder, 3) a pattern with complete specifications, plus 4) our signed written guarantee to purchase your successfully completed units. *This package will get you started into business!*

The price of our "start up package" is only \$31.95, which is refundable (see other side). This helps defray the cost of advertising, printing, processing, accounting, supplies and management of your file. You will find that your investment more than pays for itself once we purchase your first unit of potholders.

Questions.....? Call (503) 265-2499, 10:00 a.m. to 1:00 p.m., Pacific time, weekdays.

EXHIBIT A

Agreement

(Please Type or Print Clearly)

OFFICE USE ONLY-

Name _____	Date Rec'd. _____
Address _____	Date Shipped _____
City _____ State _____ Zip _____	Insp. Date _____
Soc. Sec.# _____ Phone () _____	Units Rec'd. _____
Signature _____ Date _____	_____

Sandcastle Creations agrees to buy and pay you \$92.50 for each unit of (29) potholders, that are completed according to the written specifications. We are willing to buy from you a maximum of 3 units per week for a total of \$277.50 weekly, plus shipping. For every unit we buy we will promptly pay you \$92.50 (\$57.50 for production and \$35.00 for supplies) plus an additional \$5.00 to cover shipping expenses, for a total of \$97.50. You may produce and ship us one or more units at a time, up to 3 units per week.

Please send your first shipment of at least one unit within 75 days from the date that the "start up package" was mailed to you. From then on send us at least one unit every 60 days from the date of our last payment to you to keep this agreement valid. Sandcastle Creations reserves the right to refuse unsatisfactory work, which we will return to you. We do not accept partial units.

Since you are a self-employed independent contractor, you make your own business decisions and keep your own business records. You buy your supplies from, or sell your potholders to whoever you choose. While the choice is yours, we guarantee payment under the terms described above.

We will furnish payment records to you and the IRS, at the end of each year, when our payments to you exceed \$600.00 as required by law. Keep in mind we do not withhold income taxes, pay social security, unemployment insurance or provide employment benefits of any kind. These are your responsibilities as an independent contractor.

To receive your "start up package", simply fill out the agreement, sign it, and send either a money order or a personal check in the amount of \$31.95 plus \$4.95 shipping and handling to Sandcastle Creations at the address listed below. Your "start up package" will include all the necessary specifications, pattern, quality check list, and a completed potholder for you to use as a sample. In addition we will include all supplies necessary for you to make one practice potholder. Most importantly we will include our written guarantee to purchase potholders from you as outlined in this agreement. If not completely satisfied with our "start up package", simply return it unused, and in reusable form, within 15 days for a full refund (\$31.95). Acceptance of any refund will void this agreement.

TO ORDER "Start Up Package":

- Enclose \$31.95 plus \$4.95 shipping & handling (\$36.90 total)
 - ___ Money Order (allow 2 weeks)
 - ___ Personal Check (allow 4 weeks)
- (optional) Special Handling "\$2.95 Extra (\$39.85 total)
Next day shipment, MONEY ORDERS ONLY (non-refundable)
- (optional) Potholder ONLY (non-refundable)
Enclose \$7.75 plus \$1.25 shipping & handling (\$9.00 total)
(without "start up package")

RETURN THIS FORM TO:

Sandcastle Creations
 Potholder Shipping Dept.
 P.O. Box 563
 Newport, OR 97365
 (503) 265-2499

Make checks or money order payable to: Sandcastle Creations
 (U.S. Funds ONLY)

Complaint

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EXHIBIT B



CLEAN MOHAIR FOR DOLL HAIR



WE PAY UP TO \$360.00 WEEKLY!

*Work at Home, No Expensive Equipment! Start Immediately!
This is Our Best Money Making Home Business!*

Mohair is a soft, silky natural fiber that is sheared from Angora goats. We sell it to craft stores and doll makers. Before they buy the mohair it must be cleaned. The cleaning is done by soaking the mohair in hot soapy water. After drying any remaining particles of dirt are removed with a comb. That's all there is to it. We call it processing. If you are serious about working at home for yourself and you want to make extra money, this can be an excellent home business!

HOW YOU MAKE MONEY!

Sandcastle Creations will pay you (\$60.06 for processing plus \$29.95 for supply cost) plus \$5.00* for your shipping cost. A total of \$90.00 for each 29 oz. unit we buy from you. We will inspect your processed mohair when we receive it, and then promptly send you a check for \$95.00 for each unit you have completed. To control our inventory we must limit our purchases to a maximum of four units per week, which totals \$380.00 per week (plus shipping). The amount of money you make will depend on the time you spend, your processing speed, whether you have help or do all the work yourself.

* We pay the shipping. So you make a full profit! We pay \$5.00 extra for every unit we buy. This will cover your shipping cost in the U.S.A. (see above)

HOW TO GET STARTED

Sandcastle Creations will send you a beginner's practice package. Each package includes helpful suggestions from successful processors, complete information on obtaining supplies, raw mohair and supplies to practice with, plus clean mohair to use as a sample. The purpose of this package is for you to practice processing, so that you will learn to process quickly and easily.

The price of your practice package is \$31.95, which is fully refundable (see other side). You will find your investment more than paid for with the successful completion of your first units.

QUESTIONS? • WE INVITE YOUR CALL • (503) 285-2499

Sandcastle Creations

Complaint

EXHIBIT B

Agreement

(Please Type or Print Clearly)

-OFFICE USE ONLY-

Name _____ <small>First M.I. Last</small>	Date Rec'd. _____
Address _____	Date Shipped _____
City _____ State _____ Zip _____	Insp. Date _____
Soc. Sec./ _____ Phone (_____) _____	Units Rec'd. _____
Signature _____ Date _____	_____

Sandcastle Creations will buy, and send you a check for \$90.00 plus shipping of \$5.00 (\$95.00 total) for each 29 oz. unit of processed mohair that you complete according to the written specifications. We are willing to purchase a maximum of four units per week, for a total of \$380.00 per week, plus shipping (\$5.00 per unit).

Work at your own speed, just send your first shipment of at least one unit within 60 days from the date that the practice package was mailed to you. Then send us at least one unit every 60 days from the date of our last purchase to keep this agreement valid. We will not pay for partially completed units, and reserve the right to refuse unsatisfactory work, which we will return to you C.O.D.

Since you are self-employed you make your own decisions. You may buy raw mohair from our referral source of supply or from any other source, sell processed mohair to others if you choose, and must keep your own tax records. We will not withhold income taxes, nor do we pay unemployment benefits, or employee benefits of any kind, because you are an independent contractor with all of these responsibilities. As required by law, we will furnish payment records to you and the I.R.S. at the end of the year when our payments to you exceed \$600.00.

To receive your practice package, simply fill out the agreement, sign it, and send your payment of \$36.90 (\$31.95 plus \$4.95 for postage and handling) to Sandcastle Creations at the address listed below. If not completely satisfied with your practice package, simply return UNOPENED mohair packages unopened within 15 days for a full refund (\$31.95). Acceptance of any package will void this agreement.

QUESTIONS? • WE INVITE YOUR CALL • (503) 285-2488

<p>MONEY ORDER \$36.90 Allow 2 weeks for delivery</p> <p><input type="checkbox"/></p> <p><small>See also: Special Handling Box!</small></p>
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<p>PERSONAL CHECK \$36.90 Allow 4 weeks for delivery</p> <p><input type="checkbox"/></p>

<p>- OPTIONAL - SPECIAL HANDLING \$2.95 Immediate Shipment when Money Order enclosed (\$38.85 Total)</p> <p><input type="checkbox"/></p>
--

Make checks or money order payable to:
Then send with completed form to:

U.S. Funds Only

Sandcastle Creations
Mohair Shipping Dept.
P.O. Box 563
Newport, OR 97365

This offer is only
available in
The United States
of America

Complaint

117 F.T.C.

EXHIBIT C

HOMENORKEI
weekly part time
Cumberland, N
MAKING BABY
Sand SASE. Am

STAMPING TO BEA ZEBRA (37) 10mp. 12 boxes.
1345 50 WEEKLY POSSIBLE! Make kitchen potholders at
home! Turn your stuffs into dollars! Start immediately! Sand
\$1.00 + SASE: Sandcastle Creations-B. Box 563, Newport,
OR 97365.
1 WWWW ON E AEW WAVEY AT WAVE 1 WWA 1

CRAFTS magazine, March, 1991, p. 103

DECISION AND ORDER

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

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

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

1. Respondents William E. Taylor and Susan L. Taylor are individuals, trading and doing business as Sandcastle Creations, an unincorporated association, with its principal office and place of business located at 126 S.E. 1st Street, Newport, Oregon.

Respondent William E. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of Sandcastle Creations and his address is the same as that of Sandcastle Creations.

Respondent Susan L. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, she formulates, directs and controls the policies, acts and practices of Sandcastle Creations and her address is the same as that of Sandcastle Creations.

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

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

ORDER

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

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

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

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

I.

It is ordered, That respondents William E. Taylor and Susan L. Taylor, individually and trading and doing business as Sandcastle Creations, an unincorporated association, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

