

located at 2345 Vauxhall Road, in the city of Union, State of New Jersey.

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

It is ordered, That respondent Bishop Industries, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Sudden Change lotion or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Advertising any such product by presenting a test, experiment or demonstration or part thereof that is presented as actual proof of any fact or product feature that is material to inducing the sale of the product, but which does not actually prove such fact or product feature.

It is further ordered, That respondent shall file a report of Compliance with the Commission within sixty (60) days from the date the order becomes final.

It is further ordered, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as 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 which may affect compliance obligations arising out of the order.

IN THE MATTER OF

STAR OFFICE SUPPLY CO., ET AL.

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

Docket 8749. Complaint, Nov. 27, 1967—Decision, Apr. 16, 1970

Order requiring a New York City distributor of stationery and office supplies to cease allowing their salesmen to falsely imply they have been recommended by officials of prospective purchasers' firms, falsely claiming connection with Government agencies, padding quantities of ordered merchandise, failing to furnish firm unit prices, substituting merchandise, refusing to accept cancellation of orders, and falsely claiming that overdue accounts have been assigned to a third party collection agency.

Complaint

77 F.T.C.

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 Star Office Supply Co., a corporation, and Henry Pinkwater, individually and as an officer of said corporation and doing business as Pioneer Credit Co., and, with other individuals, doing business under various fictitious trade names as referred to more particularly below, 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:

PARAGRAPH 1. Respondent Star Office Supply Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 5106 Broadway, in the city of New York, State of New York.

Respondent Henry Pinkwater is an individual and an officer of the corporate respondent and formulates, directs and controls its acts and practices, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent. In conjunction with said acts and practices, the said individual respondent does business as Pioneer Credit Co. and, with other individuals who vary from time to time, also does business under various fictitious trade names including, but not limited to: Century Supply Co., Central Stationery Co., Dorex Office Supply Co., Kent Supply Company, Normandy Office Supply Co., Office Systems, Oxford Systems, Pioneer Supply Company, Wald Office Supply Co., and York Supply Company.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of stationery and office supplies to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents

utilize a varying number of itinerant salesmen in inducing the sale and distribution of their products. The said salesmen use respondents' premises as their mailing address and headquarters, and have various clerical, fiscal and other follow up services relating to their sales performed for them in their absence by respondents. Respondents also provide said itinerants with merchandise samples, and with order forms and other business stationery which set forth one or another of the aforesaid fictitious trade names. Said salesmen call upon prospective purchasers and identify themselves, among other things, as representatives of one or another of said fictitious trade names or as persons having an interest in the merchandise of such firms, and solicit orders for respondents' products by means of acts, practices, statements and representations more particularly set out in Paragraph Five below.

Respondents also furnish travel expense funds by way of advances to the said itinerant salesmen, which sums are based, in large part, upon the excess of the expected net billing over the price set by respondents for the merchandise sold by said salesmen. Respondents thereafter ship, bill and collect payment for the merchandise under the particular fictitious trade name utilized by the salesmen, and in the event a shipment or payment therefor is refused in whole or in part, dissuade or mollify the purchaser and attempt to collect the proceeds, through the methods and means set forth more particularly under Paragraph Six (b) and (c) below.

In many instances when shipments are accepted and payment made without protest, respondents contact the purchasers by telephone in the name of the particular salesman or fictitious trade name used in the transaction, and attempt to and do induce additional orders for their products.

Therefore, all acts, practices, statements and representations of said itinerant salesmen, including those referred to specifically in Paragraph Five below, in conjunction with the means, instrumentalities, services and facilities furnished by respondents in the sale and distribution of their products as aforesaid, are the acts, practices, statements and representations of respondents.

PAR. 5. In the course and conduct of their sale and distribution of respondents' stationery and office supplies, as referred to in Paragraph Four hereof, and with the actual or implied consent, approval or ratification of respondents, said itinerant salesmen falsely and deceptively:

(a) Represent to prospective purchasers, contrary to the fact, that they are recommended by officials of the prospect's firm or of one of

its branches, or of affiliated or associated firms, or that they have a personal or other relationship with some such official.

(b) Describe themselves, contrary to the fact, as having past or prospective associations with various patriotic or public service organizations or branches of Government, including, but not limited to, the United States Departments of State and Defense, the United Nations, and Radio Free Europe.

(c) Solicit orders by stating, contrary to the fact, that they are disposing of, or liquidating stationery and office supplies for their firm, or for others having an interest therein.

(d) Pad or "kite" orders by utilizing confusing or misleading nomenclature and descriptions to denote the quantity of merchandise being ordered, which facts are frequently not known to the purchaser until his inspection of the merchandise shipment, or upon his subsequent receipt of a bill setting forth the actual quantities and the unit and total prices therefor.

Therefore, the acts, practices, statements and representations utilized by said itinerant salesmen in inducing the sale and distribution of respondents' products, in conjunction with the means, instrumentalities, services and facilities furnished by respondents, as aforesaid, were and are false, misleading and deceptive.

PAR. 6. In the further course and conduct of their business, respondents utilize the following unfair, false, misleading and deceptive practices, methods and means in connection with the sale and distribution of their products:

(a) Respondents ship stationery and office supplies which frequently differ with respect to brand name, type, quantity, size or quality from that represented or described by the salesmen in inducing orders and ordered by the purchaser.

(b) Respondents thwart and prevent cancellation of all or a part of orders by customers who assert bona fide reasons therefor, including acts or practices of salesmen as alleged in Paragraph Five hereof. Respondents, in a substantial number of instances, have failed and refused to accept such cancellations and to put the purchaser in touch with the particular salesman who induced their order by resorting to statements such as that the salesman must have been misunderstood, is out of the country or is not available; that he has left his firm or that the firm is no longer in business; or that respondents have no knowledge of, or responsibility for, his acts or practices. Respondents also prevail upon such purchasers to retain and pay for the merchandise, or attempt to mollify them by way of extra induce-

ments, such as extending the terms for payment or reducing the purchase price.

(c) In a substantial number of instances when purchasers refuse to pay for merchandise, respondents send letters or other communications under such names as Pioneer Credit Co., and by that and other means, falsely purport to be factors, assignees of the account or other third parties, in order to induce and coerce payment for the merchandise.

Therefore, the acts, practices, statements and representations of respondents, as aforesaid, are unfair, false, misleading and deceptive.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of stationery and office supplies of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, 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 said statements, representations, acts and practices were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid statements, representations, acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now 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.

Mr. John J. McNally and *Mr. Thomas J. Oden*, for the Commission.

Mr. Jacob P. Lefkowitz, New York, N.Y., attorney for respondents. *Mr. Arthur W. Jaspán*, of counsel.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING
EXAMINER

APRIL 11, 1969

In the complaint issued on November 27, 1967, the respondents are charged with unfair, false, misleading and deceptive practices in connection with the sale of their products, in violation of Section 5 of the Federal Trade Commission Act. Respondents in their answer,

filed on December 26, 1967, in effect deny the material allegations of the complaint and allege that all persons engaged by the corporate respondent are independent contractors who are not under the control of the respondents.

On January 30, 1968, counsel for the parties met with the hearing examiner in a reported, but not public, prehearing conference and, as a result thereof, an agreed order was issued requiring, among other things, that pretrial briefs be filed on or before March 5, 1968, by complaint counsel, and by respondents on or before April 9, 1968. Trial briefs were filed accordingly. At a nonpublic conference held on April 16, 1968, the subject of time and place of hearings, among other matters, was discussed, and complaint counsel asked that hearings be scheduled in New York City, New York; Boston, Massachusetts; Baltimore, Maryland; and Los Angeles, California. In their trial brief, they listed the names of 30 witnesses to testify in New York City, 11 in Boston, 6 in Baltimore, and 11 in Los Angeles. Counsel for respondents agreed to put in their defense in New York City, except for such West Coast witnesses as they might call in Los Angeles immediately after complaint counsel rested their case in that city. On the basis of the showing made by complaint counsel on the record, the hearing examiner authorized hearings to be held in the above-named cities, with the exception of Baltimore, and issued an order fixing the time thereof, which was agreeable to the parties.

Hearings began in New York City on May 6, and concluded on May 16, 1968, at which time 27 witnesses, called by complaint counsel, testified. On May 21, 1968, hearings were held at Boston, at which time two commission witnesses appeared. At the conclusion of the direct examination of the first witness, Mr. Walter J. Kroll, respondents' counsel requested any pretrial statements made by the witness (Tr. 735). Complaint Counsel McNally made a statement covering six pages of the transcript (Tr. 736-742), in which he concluded (Tr. 742): "We do not believe it would be proper to turn these over to opposing counsel for cross-examination, and I was authorized by Washington to state that that was our official position on the question." The hearing examiner was handed a five-page field interview report, dated October 15, 1965, signed by Mr. David W. Dinardi, an attorney for the Commission in its Boston office, recording statements made by the witness. After carefully examining the report, the hearing examiner came to the conclusion that, with the exception of two paragraphs thereof, it represented a statement of the witness of the matters covered on direct examination which

