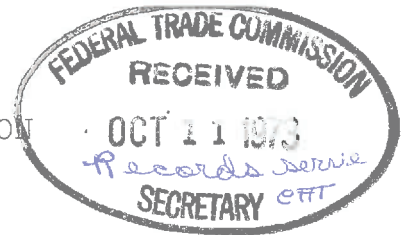


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of

Ger-Ro-Mar, Inc., a corporation,
d/b/a Symbra'ette, and
Carl G. Simonsen, individually and
as President of Ger-Ro-Mar, Inc.

DOCKET NO. 8872

INITIAL DECISION

Daniel H. Hanscom, Administrative Law Judge.

Jerome M. Steiner, Jr., and
Ralph E. Stone,
Counsel Supporting the Complaint.

Jack M. Wiseman,
Rosenberg and Wiseman,
2084 Alameda Way,
San Jose, California,
Counsel for Respondent.

PRELIMINARY STATEMENT

The complaint in this matter charged respondents with unfair and deceptive acts and practices, and unfair methods of competition, in the promotion of their Symbra'ette marketing program. In essence, the complaint alleged that the Symbra'ette marketing program constituted an open-ended, multi-level (pyramidal) scheme which unfairly and deceptively induced members of the public to invest substantial amounts of money for distributorships. According to the complaint, the Symbra'ette marketing program consisted of a distribution network allowing a prospect to enter at any one of three levels, Key Distributor, Senior Key, or Supervisor, and eventually, as represented by respondents, to qualify

at a fourth and fifth level, District Manager and Regional Manager. A prospective distributor entered the Symbra'ette system by purchasing an inventory of Symbra'ette products consisting of bras, girdles, lingerie, swimwear or wigs. The level at which a prospect entered was determined by the size of the initial inventory purchased. Upon entrance into the program, according to the complaint, a distributor could recruit any number of additional distributors, and the large earnings in the form of commissions, overrides, and other compensation, held out by respondents as available to each participant, depended on recruiting by the participant of additional distributors, recruiting by such additional distributors, and by their recruits ad infinitum. It was alleged that the size of the commissions, overrides, and other compensation, represented as flowing to a Symbra'ette distributor as a result of sales to and by such distributor's recruits, his recruits' recruits, and so on, was based on the level at which he entered the Symbra'ette distributional system, or had reached once enrolled.

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

Count IV and Count V related to different aspects of the program. Count IV charged that respondents unlawfully combined, conspired, and agreed with their distributors to fix, maintain and control the prices at

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

Respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen filed an answer on February 16, 1972, denying the foregoing allegations and asking that the complaint be dismissed. Both sides conducted discovery, and ultimately stipulated most of the facts. On February 1, 1973, the case was reassigned to the undersigned due to the illness of the original Administrative Law Judge. An Order To Report Progress was issued to both sides on February 2, 1973, and a pretrial conference was convened on March 1, 1973. Hearings on the merits were completed on June 19, 1973. The record was closed for the reception of evidence on June 27, 1973, and briefing was concluded on August 20, 1973.

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

FINDINGS OF FACT

Respondents

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

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

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

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

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

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

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

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

The Symbra'ette Marketing Program

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

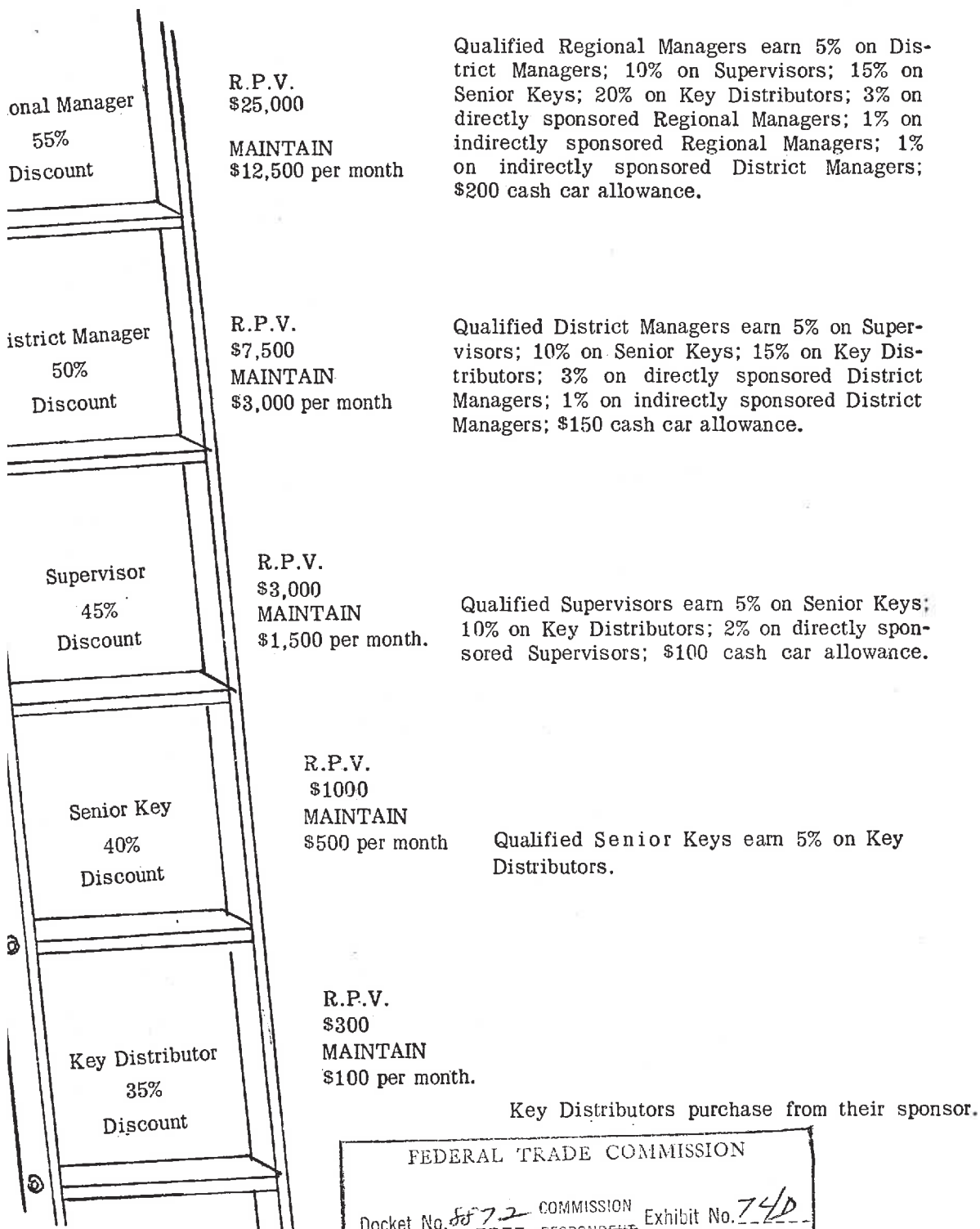
The program represented that District Manager and Regional Manager could be reached by promotion from within if sufficient success were achieved by the entrant in building his "organization" or "personal group" of distributors, and in reaching and maintaining the required retail purchase volume levels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

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

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

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

THE SYMBRA'ETTE MARKETING PROGRAM



YOUR LADDER TO SUCCESS

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

| | |
|--------------------------|---|
| FEDERAL TRADE COMMISSION | |
| Docket No. <u>5872</u> | COMMISSION RESPONDENT Exhibit No. <u>74D</u> |

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

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

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

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

10. Supervisor - A prospect desiring to start in the Symbra'ette system as a Supervisor was required to purchase an initial inventory of \$3,000 in terms of Symbra'ette retail list prices. Such inventory was purchased at 45 percent off the retail list price, and with literature, sales aids and supplies required an investment of about \$1,950 (CX 75Z12). Thereafter, Supervisors had to maintain a monthly retail purchase volume of \$1,500. Within the Symbra'ette organization a distributor who had at least one (1) directly recruited Senior Key, and two (2) directly recruited Key Distributors could become a Supervisor if such distributors and their recruits as a group attained a monthly retail purchase volume of \$3,000. A Supervisor could recruit an unlimited number of distributors. A Supervisor's "organization" or "personal group" consisted of his directly sponsored Senior Keys and their entire groups, and his directly sponsored Key Distributors and their entire groups. A Supervisor earned 45 percent profit on personal sales, a five percent override on purchases made by his Senior Keys, and a 10 percent profit on purchases made by his Key Distributors. He also received a two percent override on purchases made by his directly recruited Supervisors and their personal groups, and was eligible to qualify for a car allowance if his organization's retail purchase volume was large enough (CX 1, 74-75, 92).

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

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

12. Regional Manager - The highest level one could reach under the Symbra'ette program was that of Regional Manager. A Regional Manager bought his products at a 55 percent discount from Symbra'ette. A Regional Manager could recruit an unlimited number of distributors. The personal group of a Regional Manager included his directly sponsored District Managers' entire groups, his directly sponsored Supervisors' entire groups, his directly sponsored Senior Keys' entire groups, and his directly sponsored Key Distributors. A District Manager's personal group had to include at least three (3) "qualified direct District Managers" and two (2) "qualified indirect District Managers" (CX 1G), and had to attain a retail purchase volume of \$25,000 in one calendar month in order to entitle such District Manager to ascend to the position of Regional Manager. Thereafter, a monthly minimum retail purchase volume of \$12,500 was required to remain at this level of the program.

A Regional Manager earned 55 percent profit on personal sales, a 20 percent profit on purchases of his Keys, a 15 percent override on his Senior Keys' purchases, a 10 percent override on his Supervisors' purchases, a five percent override on his directly sponsored District Managers' purchases, and three percent override on his directly sponsored Regional Managers' personal group's purchases, a one percent override on indirect Regional Managers, and a one percent override on indirect District Managers. He also earned a \$200 cash car allowance if a \$17,500 monthly retail purchase volume was maintained by his personal group.

Promotion of the Symbra'ette Program to the Public

13. Respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen promoted the Symbra'ette marketing program to the public in a variety of ways including use of promotional literature and a film designed to assist recruiting (CX 74, 75 and 82), and by media advertising (CX 2A and B) and direct mail solicitation for the same purpose (CX 1). Substantial success was achieved. As noted, sales volume grew from a relatively minor figure in 1965 to over \$2,054,000 in 1969, the year before the Commission's investigation commenced.

(a) Symbra'ette's Promotional Literature

(1) The Flip Chart

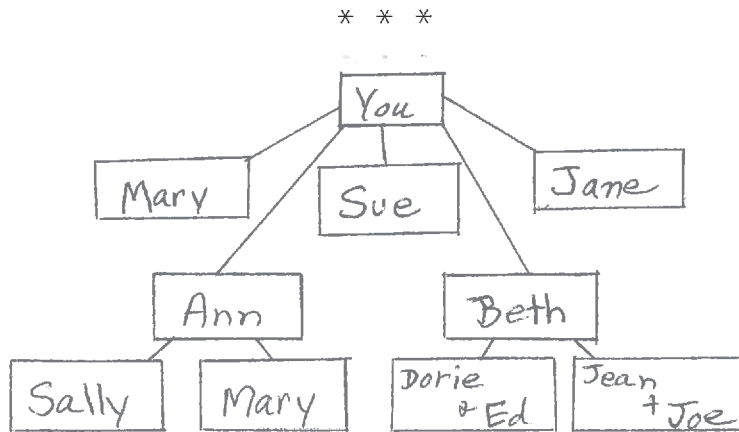
14. The statements and representations of respondents holding out to prospects the lure of earning large sums of money by investing in a Symbra'ette distributorship, and obtaining thereby the right to build a personal organization through the unlimited recruiting of additional distributors, and by such recruiting to obtain the large commissions, overrides, and other compensation held out as flowing from such a personal organization, are illustrated by a promotional aid known in the Symbra'ette organization as the "Flip Chart" (CX 75), by the "Sales Manual" distributed by respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen (CX 74), and by the pamphlet "Your Opportunity with Symbra'ette" used in direct mail advertising (CX 1).

15. The "Flip Chart" (CX 75) was published by respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen, and was used to recruit Symbra'ette distributors by describing and representing its program to them (CX 92(14); Meredith, Tr. 61-65; Sanford, Tr. 204). The "Flip Chart" makes representations of great earnings to prospective participants which, however, could only be realized by every participant through an ever expanding number of new distributors.

16. The "Flip Chart" set out to prospective recruits the terms, structure and form of the Symbra'ette program. The five level "pyramid" distribution system, the requirements, represented opportunities, activities, and earnings of "Key Distributors," "Senior Keys," "Supervisors," "District Managers" and "Regional Managers" were described.

The unlimited recruiting of distributors, and the Symbra'ette system of compensation were also pictured. The "Flip Chart" represented to prospective distributors the large amounts of money available through the Symbra'ette program based on a system of commissions, discounts, overrides, and other compensation, geared to an ever-widening circle of new recruits to be obtained by each new distributor, by their recruits, and by their recruits' recruits, etc., in building each distributor's personal organization. The following are taken directly from the "Flip Chart":

"SYMBRA'ETTE USES THE SPONSOR SYSTEM TO BUILD SALES ORGANIZATIONS IT WORKS LIKE THIS YOUR PURCHASES PLUS THE PURCHASES OF THOSE YOU SPONSOR ARE ACCUMULATED TO TOTAL YOUR OWN PURCHASE VOLUME IN A GIVEN MONTH" (CX 75T).



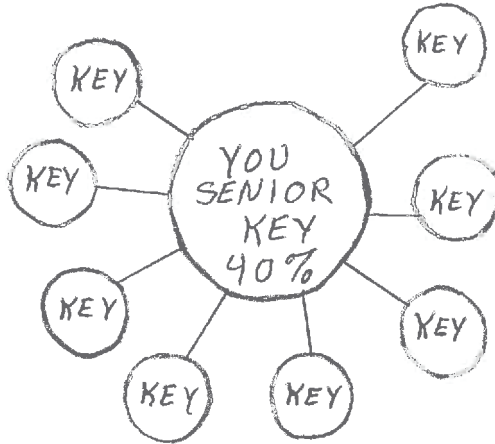
* * *

"WHEN YOU DO THE ABOVE JOB AND INTRODUCE ONLY ONE NEW KEY DISTRIBUTOR IN A MONTH ... YOU QUALIFY AS A SENIOR KEY SO NOW LET'S LOOK AT YOU AS A ... SENIOR KEY" (CX 75X).

* * *

* * *

"YOU AS A SENIOR KEY



YOU

- [BUY DIRECT FROM COMPANY
- [CAN RECRUIT YOUR OWN ORGANIZATION
- [EARN 40% PROFIT
- [ARE A WHOLESALER (SELL TO KEYS)
- [EARN 5% PROFIT ON SALES TO KEYS
- [HAVE A TREMENDOUS GROWTH OPPORTUNITY" (CX 75Y).

* * *

"WHEN YOU [as a Senior Key] SELL
 \$1,000 R.P.V. AND HAVE ONLY 5-KEYS
 BUYING THEIR PRODUCT FROM YOU

YOU WILL EARN

| | | | | |
|----------------|---------|-----------|---------------|-----------|
| YOU SELL | \$1,000 | X 40% | = \$400 | |
| 5-KEYS X \$700 | \$3,500 | X 5% | = \$175 | |
| | | PER MONTH | <u>\$575"</u> | (CX 75Z). |

* * *

"AS YOUR ORGANIZATION GROWS ...

SO DOES YOUR INCOME

YOUR R.P.V. IS NOW MORE THAN
 THE \$3,000 A MONTH NEEDED TO
 ATTAIN THE SUPERVISOR LEVEL" (CX 75Z1).

* * *

* * *

"WHAT DOES A SUPERVISOR MEAN IN \$?

YOU
EARN [45% PROFIT ON PERSONAL SALES
[10% PROFIT ON SALES TO KEYS
[5% OVERRIDE ON SENIOR KEYS
[2% OVERRIDE ON DIRECT SUPERVISORS

YOU ARE ELIGIBLE TO QUALIFY FOR CAR ALLOWANCE" (CX 75Z2).

* * *

"A SMALL ORGANIZATION LIKE THIS
CAN GIVE YOU [Supervisor] THE
FOLLOWING INCOME ...

| | | | |
|----------------------------|------------|---|---------------|
| 5-SENIOR KEYS X 1000 RPV = | 5000 X 5% | - | \$250 |
| SALES TO KEYS | 2000 X 10% | - | \$200 |
| CAR ALLOWANCE | | | \$100 |
| PERSONAL SALES | 1000 X 45% | - | \$450 |
| | | | <u>\$1000</u> |
| | | | PER MONTH |

THIS VOLUME WOULD GIVE YOU MORE THAN THE NECESSARY 7,500 R.P.V. TO QUALIFY FOR DISTRICT MGR." (CX 75Z3).

* * *

"DISTRICT MANAGERS

EARN [50% DISCOUNT ON R.P.V.
[15% ON SALES TO KEY DISTRIBUTORS
[10% OVERRIDE ON DIRECT SENIOR KEYS
[5% OVERRIDE ON COMBINED TOTAL R.P.V.
[OF SUPERVISORS AND THEIR SENIOR KEYS

EARN [3% OVERRIDE ON DIRECT DISTRICT MGRS.
[1% OVERRIDE ON INDIRECT DISTRICT MGRS.

D.M. CAN EARN \$150 PER MONTH CASH CAR ALLOWANCE" (CX 75Z4).

* * *

* * *

"SYMBRA'ETTE DISTRICT MANAGER ORGANIZATION

| | R.P.V. | |
|--------------------|--------------|-------------------|
| DIRECT DM VOLUME | 50,000 X 3% | = \$1,500.00 |
| INDIRECT DM VOLUME | 20,000 X 1% | = 200.00 |
| SUPERVISOR | 27,000 X 5% | = 1,350.00 |
| DIRECT SENIOR KEYS | 12,000 X 10% | = 1,200.00 |
| WHOLESALE TO KEYS | 2,000 X 15% | = 300.00 |
| CASH CAR ALLOWANCE | | 150.00 |
| | | <u>\$4,700.00</u> |

\$4,700 PER MONTH \$56,400 PER YEAR" (CX 75Z5).

* * *

"REGIONAL MANAGERS

EARN [55% DISCOUNT OF R.P.V.
[20% ON SALES TO KEYS
[15% OVERRIDE ON DIRECT SENIOR KEYS
[10% OVERRIDE ON DIRECT SUPERVISORS
[5% OVERRIDE ON DIRECT DISTRICT MGRS.

EARN [3% OVERRIDE ON DIRECT REGIONAL MGRS.
[1% OVERRIDE ON INDIRECT REGIONAL MGRS.
[1% OVERRIDE ON INDIRECT DISTRICT MGRS.
["\$200 MONTHLY CASH CAR ALLOWANCE" (CX 75Z8).

* * *

"SYMBRA'ETTE REGIONAL MANAGER ORGANIZATION

| | R.P.V. | |
|--|---------------|-----------------|
| DIRECT DISTRICT MGR. VOLUME | \$50,000 X 5% | = \$2,500 |
| INDIRECT DISTRICT MGR. VOLUME | 20,000 X 1% | = 200 |
| SUPERVISOR VOLUME | 20,000 X 10% | = 2,000 |
| DIRECT SENIOR KEYS | 10,000 X 15% | = 1,500 |
| WHOLESALES TO KEYS | 2,000 X 20% | = 400 |
| 1-DIRECT REGIONAL MGR. VOLUME | 15,000 X 3% | = 450 |
| IN-DIRECT REGIONAL MGR. VOLUME | 30,000 X 1% | = 300 |
| CASH CAR ALLOWANCE | | 200 |
| \$7,550 PER MO. \$90,600 PER YR. (CX 75Z9). | | <u>\$7,550"</u> |

* * *

* * *

"YOU HAVE SEEN HOW YOU MAY START AS
A KEY DISTRIBUTOR & GROW TO BE A ...

REGIONAL MANAGER

YOU MAY START YOUR SYMBRA'ETTE BUSINESS
IN ANY BRACKET YOU DESIRE
SUPERVISOR • SENIOR KEY
KEY DISTRIBUTOR" (CX 75Z11).

* * *

"TOP LEVEL UNDER THE COMPANY IS THE
REGIONAL MANAGER
(ANYONE CAN ACHIEVE THIS LEVEL)" (CX 75R).

* * *

17. Each Symbra'ette distributor started his association with Symbra'ette by completing an application from his sponsor and purchasing a Symbra'ette inventory in the bracket he desired to work in (CX 75Z15).

(2) The Sales Manual and Direct Mail Brochure

18. The "Sales Manual" (CX 74) reiterated many of the statements and representations set out in the "Flip Chart." The "Sales Manual," like the "Flip Chart," clearly discloses that mounting the ladder of success within the Symbra'ette organization from "Key Distributor," to "Senior Key," to "Supervisor," and then to "District Manager" and "Regional Manager," and receiving the commissions, overrides, and other compensation held out, depended upon each new distributor building a personal organization by recruiting other new distributors, who in turn had to build their own "personal groups" by sponsoring their own new recruits in an ever-widening chain. Commissions, overrides, and other compensation, were represented as growing ever larger in this manner (CX 74). Thus, the "Sales Manual" urged:

"RECRUIT ...

YOU can't make it to the top ALONE...

The opportunity with the Symbra'ette
bra and other Symbra'ette products
is as challenging in many respects as
mountain climbing. A person gets to
the top through the cooperative efforts
of those in his group. The one at the

top in turn helps those with him to boost themselves to a higher plateau. The line that holds them together is the line of sponsorship...

There are potential recruits everywhere!" (CX 74L).

The direct mail brochure (CX 1) contained statements and representations similar to those in the "Sales Manual," and also set out many of the details of the Symbra'ette program found in the "Flip Chart."

(b) Testimony of Former Symbra'ette Distributor

19. A former Symbra'ette distributor testified in this proceeding describing the system in practice, as follows"

Q. "How did you first learn about Symbra'ette?"

A. A person that I had been previously acquainted with, by the name of Jerry Vinett, called me from Nashville, Tennessee."

Q. "During that phone conversation, what did Mr. Vinett say to you and what did you say to him?"

A. Well, Mr. Vinett told me that...they had a product where their method of operation was that you would recruit people and you would train people to recruit....Well, you would just grow and grow and grow...." (Tr. 47).

* * *

A. "...And then, he [Mr. Vinett] took blank paper just like a tablet, and tried to emphasize the method of recruiting to where he'd, say, put a circle at the top, which would indicate my wife and I, and then, drawing lines off--like five lines off of that circle to indicate five of our recruits, and then drew lines off of our recruits and drew circles to indicate

our recruits, recruits, and then, drew lines off of our recruits, recruits, and drew five circles to indicate our recruits, recruits, recruits, and then, he ran out of paper" (Tr. 53).

* * *

Q. "Were both of you active in the Symbra'ette program?

A. Yes.

Q. How did that work?

A. Well, my first efforts were finding some recruits. At the same time, Yvonne did some selling and had some parties. And she made an effort to get recruits at her parties. And I spent all my time recruiting" (Tr. 59).

With respect to commissions and overrides based on an ever-widening organization, this witness testified:

A. "...Then he [Mr. Vinett] went ahead to explain the overrides that we would gain by--off our recruits...[H]e indicated that if we bought in at a higher level...this would qualify us to draw more money off of our recruits, as we recruited them. And it would also allow us to draw more and more off of the recruits that they recruited" (Tr. 53-54).

* * *

Q. "You also described or used the term "buy-in" and clarified it a little bit. When you paid \$742, at the time you signed the contract, what did you understand you had purchased for that \$742?

- A. My personal understanding was that I had purchased the privilege of recruiting people and being paid override on these people. I realized that there was some inventory and supplies involved and, of course, you needed this inventory and supplies to show to people to recruit people" (Tr. 99).

* * *

Respondents Held Out To All Prospects
The Opportunity Of Large Earnings
From A Symbra'ette Distributorship

20. The theme running throughout respondents' promotional literature is that great profits were available to each and every investor in a Symbra'ette distributorship. Thus, in the "Flip Chart," as just set out, prospective distributors were told that the top distributor level under the program is the Regional Manager and that "ANYONE CAN ACHIEVE THIS LEVEL" (CX 75R). Shortly thereafter the "Flip Chart" informs prospects that a Regional Manager's organization produces an income of "\$7,550 Per Mo." and "\$90,600 Per Yr." (CX 75Z9). At the lower level of "Senior Key," requiring an initial investment of about \$700, each and every prospect was led to believe that a monthly income of \$575 could be obtained. The pamphlet "Your Opportunity with Symbra'ette" (CX 1) advised prospects that the program offered to people "from all walks of life" "regardless of who you are, where you are from, or what you are now doing" the opportunity:

"...to earn middle to upper five figure annual incomes, working full time" (CX 1C).

Prospects were advised that the ambitious person:

"....can start small or as large as he desires. Consultants can rapidly work into higher income brackets, or those who would like to enter business on a large scale may buy in as a Supervisor" (CX 1E).

Respondents advertised in periodicals seeking investors in a Symbra'ette distributorship stating "YOUR MARKET HALF THE POPULATION," "YOUR PROFIT PROGRAM UNIQUE IN THE INDUSTRY," and representing:

"...Once you establish your Symbra'ette distributorship, it almost grows by itself....The potential is astronomical-- and the surface has barely been scratched. You can still get in on the ground floor..."

"...You can start as small or big as you wish - and grow from there, expanding your sales organization and collecting automatic overrides on all the sales made by consultants under you..." (CX 2B) (Emphasis added).

The "Sales Manual" used in recruiting represented:

"The Symbra'ette sales program offers more than just security for you and your family. It offers, independence, a promising future, a retirement plan and an income substantial enough so that you can afford the luxuries, as well as the essentials of life....

We know of many who have achieved this goal within a year. Their success story can be yours too!!" (CX 74B).

Key Distributors were represented as making \$220 to \$317 a month, Senior Keys \$575 per month, as just noted, Supervisors \$1,000 per month, District Managers \$4,700 per month, and Regional Managers, as also noted, \$7,550 per month (CX 75).

Testimonials in the Symbra'ette News emphasized the large sums to be earned:

"June 2, 1972

Dear Mr. Simonsen:

....Mr. Simonsen, our satisfaction and happiness has not come only because of the fabulous income that we now receive as Regional Director, ...Symbra'ette has

enriched our lives in a material way by giving us a long dreamed about swimming pool, a new Pontiac station wagon, a new pick-up truck for camping, a newer and lovelier home, a nice serviceable office and we could go on and on...

Forever gratefully and respectfully yours,
Edith Gustin" (RX 10).

* * *

"KILLER KERNS: (Juanita Kerns)

Says to all new recruits, "Dreams come true in '72!"

Started at zero, January 4, 1971, one year later has \$1,200 in bra inventory, a new mobile home and a new car....

Aims for a showing every night and a recruiting opportunity every day...." (RX 10).

Advertisements in periodicals likewise lured prospects with the representation of large earnings:

"You too can open a world of new financial opportunity as a Symbra'ette Consultant, part or full time....offering qualified consultants up to 60% discount, plus a cash car allowance up to \$250 monthly" (CX 2A).

21. Advancement from Key Distributor, or other level at which a participant "bought-in" to the Symbra'ette program, up the ladder of the Symbra'ette "pyramidal" organization, and achievement of the earnings of such higher distributional level, was represented by respondents as a reasonable expectation, feasible and possible for each and every recruit (CX 1, 74-75, prior findings).

Geometric Progression

22. The achievement of the large earnings, and the advancement of all participants in the Symbra'ette program to higher levels, represented by respondents as expectable, feasible and possible for all, could only be accomplished by the building of personal organizations by all participants through recruiting of new distributors, by recruiting by such new recruits, and by their recruits, ad infinitum. Thus, for example, to achieve the \$575 per month held out by the Symbra'ette program, a Senior Key had to recruit into his organization a sufficient number of Key Distributors, suggested by the "Flip Chart" as five (5) or more (CX 75Y and Z), so that the group as a whole would attain a combined monthly retail purchase volume (R.P.V.) of \$4,500 of Symbra'ette products producing the foregoing income. Each Key Distributor recruited, in turn had to recruit one or more additional Key Distributors to advance to Senior Key (CX 75X). Also, to advance to Senior Key a Key Distributor's "personal group" had to have a retail purchase volume (R.P.V.) of Symbra'ette products of \$1,000 in one calendar month (CX 74G), and had to maintain \$500 per month to remain in that category. A Supervisor, to achieve the \$1,000 per month earnings represented, had to recruit in addition to his personally sponsored Key Distributors an organization of Senior Keys, also suggested by the "Flip Chart" as five (5) or more (CX 75Z3), each of which, as just stated, had to recruit his own organization of Key Distributors to achieve the earnings represented and to advance in his turn to Supervisor and higher. The same recruiting factors applied to District Managers and Regional Distributors.

23. The Symbra'ette marketing program thus contemplated and required for each and every participant to achieve the earnings and benefits represented, an ever increasing group of distributors in accordance with the principles of geometric progression.

24. By geometric progression, if an organization were to increase monthly using a function of five (5) as a continuous function, or even a function of two (2) continuously (see Dr. Wassenaar, Tr. 279), at the end of a relatively modest period of time there would be total saturation of the market. In fact, recruits to such an organization theoretically would soon equal the adult population of the nation as a whole.

25. Unlimited, geometrical increases in the number of recruits into the Symbra'ette marketing program constituted an impossibility. Achievement of the large earnings and advancement held out by respondents to all participants entering the program by recruiting their own "organizations" or "personal groups" in accordance with the Symbra'ette marketing plan, and obtaining commissions, overrides and other compensation represented, was impractical and impossible for each and every such recruit, or even for any substantial proportion of them. The great earnings and advancement held out by respondents to all prospective participants in the Symbra'ette program were therefore false, misleading and deceptive.

Chance

26. Uncertainty or chance was at the core of the Symbra'ette marketing plan insofar as the plan held out to prospective participants the promise of large earnings by way of commissions, overrides, and other compensation on sales by a prospective participant's recruits, by the recruits of those recruits, and so on. The continuation of the recruiting chain obviously was wholly beyond the control of any participant in the Symbra'ette program. The success of a Symbra'ette distributor's recruits in obtaining their recruits, and of those recruits in obtaining other recruits, etc., producing large earnings for the original distributor in the form of commissions, overrides, and other compensation, was entirely a "gamble" for any particular Symbra'ette participant.

Vertical Price Fixing

27. Respondents have entered into contracts, agreements, combinations, and understandings with their Symbra'ette distributors ("Consultants") whereby all distributors upon becoming participants in the Symbra'ette program agree to maintain the resale prices established by the respondents. Respondents have entered into contracts, agreements, combinations, and understandings with their Symbra'ette distributors whereby all distributors upon becoming participants in the Symbra'ette program agree on the fees, bonuses, discounts, rebates and overrides required to be paid by one distributor or class of distributors to another distributor or class of distributors. Each distributor agreement signed by respondents and each

individual distributor involved contained the following provision (CX 11-22):

"As a condition of this agreement, I agree to purchase and sell Symbra'ette products according to the procedure set forth in the Sales Manual and referred to in the Rules and Regulations. Said Rules and Regulations are an integral part of this agreement and by this reference are incorporated herein, and I agree to abide by any and all of the terms and conditions set forth therein, and any amendments thereto."

The "Sales Manual" which all distributors and respondents thus agreed and understood would be abided by in making sales, and with which all distributors were required by respondents to abide by in making sales, provided (CX 74P):

"...you buy Symbra'ette products at wholesale prices--to be sold through personal sales direct to the public at suggested retail prices...."

The Symbra'ette suggested resale prices are contained in the forms for ordering Symbra'ette products (CX 24-46).

Customer Restrictions

28. Respondents have entered into contracts, agreements, combinations, and understandings with their Symbra'ette distributors whereby all distributors upon becoming participants in the Symbra'ette program agree not to compete for each others' customers. Respondents and their distributors have agreed that each customer belongs to the distributor who originally acquired that customer. The "Sales Manual" which, as stated, all distributors agreed to follow, provided (CX 74N):

"A retail customer belongs to the Consultant who obtains the order. A consultant retains his customers as long as he continues to service them properly"

Purchase Restrictions

29. Respondents have entered into contracts, agreements, combinations, and understandings with their Symbra'ette distributors which required all Key Distributors upon becoming participants in the Symbra'ette program to purchase merchandise only from their sponsors, and which prevented, restricted and prohibited Key Distributors from purchasing from a Symbra'ette distributor other than their sponsor. This restriction is illustrated by an announcement by respondents in their Symbra'ette News:

"We are receiving orders from Key Consultants who seem to have the impression that they may order direct from the Company. The ordering policy is that Keys must order through their sponsors.

Please ensure that all new recruits be instructed accordingly" (RX 12).

The "Sales Manual," "Flip Chart," and pamphlet "Your Opportunity With Symbra'ette," all likewise provided that "Key Distributors purchase their products from their sponsor" (CX 74D). The Sales Manual further provided:

"If a Consultant prefers to be transferred to another Sponsor for more convenience, he must have the approval of his Sponsor and his District Manager and Regional Manager, and a letter to that effect must be presented to the Home Office for approval."

Retail Outlet Restrictions

30. Respondents have entered into contracts, agreements, combinations, and understandings with their Symbra'ette distributors which require all distributors to restrict the retail sales and the display of Symbra'ette products only through authorized retail channels, i.e., direct home sales, home service routes, exclusive boutiques or similar establishments where custom fitting is done, and establishments where no competitive line is sold. Sales to commercial retail markets are not authorized. The "Sales Manual" which, as stated, all Symbra'ette distributors and respondents agreed and understood would be followed in making sales, and which all distributors were required by respondents to follow in making sales, provided (CX 74P):

"Symbra'ette products are not to be sold in retail stores. Only exclusive boutiques or similar establishments where custom fitting is done, and no competitive line is sold can be considered as acceptable"

Discussion

The Symbra'ette marketing plan had a dual nature. It was an open-ended, multi-level (pyramidal) plan, and it also had a "direct selling" aspect. A distributor could make a profit on direct sales to consumers. However, as has been made clear in the findings set out hitherto, the large earnings held out by the Symbra'ette system, directly and by implication, to potential investors in a Symbra'ette distributorship required the development by every prospect of his own "organization" or "personal group" made up of his recruits, and their recruits, etc. It is this aspect of the Symbra'ette program with which the complaint is concerned. Respondents often confuse these two aspects in their briefs, treating the complaint at times as involving an attack on the "direct selling" phase of the Symbra'ette program. It was stipulated that "[t]here is no contention that any deception, fraud, unethical practice, misrepresentation, or improper conduct is present in the presentation of the [Symbra'ette] products or their prices to consumers" (CX 92(7)). Nothing herein will put respondents "out of business" insofar as their direct selling activities are concerned, and respondents suggestions on this score are misplaced (see Brief After Trial, pp. 6 and 39).

The assertion that the Commission's complaint is arbitrary and capricious because there are competitors selling brassieres, girdles, swimwear and lingerie under similar marketing and sales programs, who have not been challenged, wholly lacks merit. It is well established that the Commission does not have to proceed against every firm violating the law as a condition for proceeding against one. Moog Industries, Inc. v. Federal Trade Commission, 355 U.S. 411 (1958), rehearing denied, 356 U.S. 905 (1958); Federal Trade Commission v. Universal-Rundle Corp., 387 U.S. 244 (1967).

Respondents contend that many Symbra'ette distributors profited from the program and "received a good deal." From this respondents argue that to preclude persons who want to engage in "small business" from entering the program would be contrary to the public interest, and that the proper course of administrative conduct is to eliminate "abuse and misconduct" (Brief After Trial, p. 4). The elimination of "abuse and misconduct" is precisely the purpose of the order issued in this decision. As stated, nothing in it interferes with the lawful "direct selling" aspects of the Symbra'ette program.

The fact that some distributors found "direct selling" of Symbra'ette products a good deal, if true, and that some may have made money through recruiting and from sales of those recruits, and their recruits, etc., does not expunge the unfairness and deception inherent in the open-ended, multi-level (pyramidal) nature of the Symbra'ette program. A distinction must be made between achievement of substantial earnings and advancement in the Symbra'ette organization by an individual distributor, and the realization of the success and earnings held out by the respondents to all participants who were recruited. As the complaint alleged in Paragraph 11, if each new participant in the Symbra'ette system fulfilled the program set out in the "Flip Chart" and "Sales Manual" and succeeded in recruiting five new participants each month, and each of those new recruits succeeded in recruiting five recruits of their own, and so on, the number of distributors in the program would quickly number many millions, as already emphasized. Indeed, growth by a factor of two would produce the same result, only requiring a somewhat longer period.

The fact that enormous numbers of distributors were never actually recruited does not dissipate the deceptive nature of the program. For it is obvious, on the one hand, that the number of distributors must increase geometrically for the plan to provide each and every prospect with an "organization" or "personal group" yielding the returns represented and, on the other, that sustaining such a growth rate for any significant period is utterly impossible because of a lack of potential distributors, i.e., most or all of them would have been recruited. In short, the essence of the Symbra'ette program, aside from its direct-selling aspects, was inherently misleading and deceptive.

The holding out of great earnings from the open-ended, multi-level (pyramidal) Symbra'ette program, which was presented as a legitimate business enterprise, but which in reality was based on a chain of recruiting which was impossible, not only had the capacity to induce prospects unfairly and deceptively to invest substantial sums of money, but to cause them to make a commitment of their labor, time and energy. The latter could well have been one of the most insidious facets of respondents false, misleading, and deceptive representations.

Respondents insist that condemnation of their program on the ground that it required continuous "geometrical" recruiting, which was impossible, is erroneous because it is purely theoretical and conjectural, and bears no relation to reality (Brief After Trial, pp. 19-20, 27-28, 30-32; Reply Brief, pp. 5, 20-22). The fact that the program did not work in practice as designed and no saturation of distributors occurred does not mean that the program must or should be held lawful. It is undeniable that the Symbra'ette program in fact had as its cornerstone "geometric" recruiting. As already pointed out, to achieve the represented earnings and to advance up the distributional level required recruiting of an "organization" or "personal group" by every participant (CX 1, 74-75). The very system of commissions and overrides contemplated recruiting. Yet, as reiterated, continuous expansion of Symbra'ette distributors was impossible. The program, in short, in its very nature and design contemplated and required an impossibility. The program was accordingly unfair and deceptive. Breaking of the chain of recruiting for reasons other than saturation and unavailability of recruits, and the fact that Symbra'ette distributors never numbered more than 3,635, does not negate this conclusion. Failure of geometric expansion of distributors to occur indicates only the difficulty of endless recruiting. Difficulty in carrying out an inherently deceptive and impossible program does not render that program lawful.

The Lottery Count

Count I of the complaint alleges that the Symbra'ette program was in the nature of a lottery and therefore violated Section 5 of the Federal Trade Commission Act. A lottery has traditionally involved three elements, consideration, chance, and a prize. J.C. Martin Corp. v. Federal Trade Commission, 242 F.2d 530 (7th Cir. 1957). In the Symbra'ette program the foregoing three elements would seem to be present. The money paid to respondents

by the prospect for an inventory of Symbra'ette products for resale, which carried with it the right to recruit his own "organization" or "personal group" of distributors constituted "consideration." The commissions, overrides, and other compensation represented to each prospect as obtainable through the Symbra'ette marketing program from sales by the prospect's recruits, by their recruits, etc., constituted the "prize." The "chance" consisted of uncertainty generated by the unknown position of the prospect in the chain of recruiting at the time he joined the program, the effect of that position on the possibility of achieving the great earnings held out by the program and, especially, of uncertainty as to the success of the prospect's recruits in recruiting additional recruits, and of those recruits' success in recruiting yet other recruits, and so on.

Respondents maintain that the Symbra'ette program does not constitute a lottery because the elements of "consideration" and "chance" are both lacking. According to respondents, "consideration" is lacking because a participant's payment under the program is "only for the purchase of merchandise and goods," and there is no "finder fee," "franchise fee," or the like (Brief After Trial, pp. 11-17; Reply Brief, p. 3). Put another way, respondents maintain that a participant does not pay a "consideration" for the right to recruit others, but pays only for an inventory of Symbra'ette products. In the opinion of the undersigned, this is a specious argument. The fact that there was no separate "finder fee," or "franchise fee," does not negate the existence of "consideration." Participants paid from about \$215 to \$1,950 to respondents to become "Key Distributors," "Senior Keys," or "Supervisors," and for this they received an inventory of Symbra'ette products and became distributors with the rights and privileges flowing therefrom, including the right to build their own organizations by recruiting. The payment to Symbra'ette clearly constitutes "consideration." These payments, moreover, contrary to respondents' assertions, were substantial.

As to "chance," respondents argue that uncertainty marks many business endeavors, and that "chance" must dominate over skill for this element to be present in a legal sense. This has been the subject of a prior finding, and is discussed later in this section. Uncertainty or "chance" was at the core of the Symbra'ette program in its non-direct selling aspects, and the element

of "chance" in legal contemplation clearly was present in the program. The fact that classic lottery trappings, i.e., punch boards, raffle techniques, etc., were not present has, of course, no bearing on the essential legal nature of the Symbra'ette program.

Almost 70 years ago, the Supreme Court in Public Clearing House v. Coyne, 194 U.S. 497 (1904), considered a scheme which was not significantly different in its basic principles from the recruiting aspects of the Symbra'ette program. In that case a "League of Equity" was organized which sought members, holding out large returns for a small investment and for work in inducing others to join. Each person who became a member paid three dollars as an enrollment fee, and agreed to pay one dollar a month for sixty months or five years. Each enrollee agreed to recruit others into the program. In this manner a fund or pool of money was created. In consideration of payments and recruiting of new members, each participant at a certain point in time was to receive a pro rata share of the fund or pool accumulated by the League in accordance with a formula based on its rate of growth. On these facts the Court stated (194 U.S. at 502):

"...the realization of any amount whatever by the new members is conditioned absolutely upon the constant acquisition of other new members and the new payments to be made by such new members. And what amount the members or cooperators will realize, as is stated by the league literature, depends entirely upon the ratio of growth of the league."

The Supreme Court concluded that the success of the scheme depended entirely upon the constant increase in the number of subscribers, that no one could predict what such growth would be, and that the resulting uncertainty generated deprived the scheme of the character of a legitimate business enterprise. The

Court decided that the scheme was, in effect, a lottery, and that "chance" in application to the scheme meant (194 U.S. at 512):

"...something that befalls, as the result of unknown or unconsidered forces; the issue of uncertain conditions; an event not calculated upon; an unexpected occurrence; a happening; accident, fortuity, casualty."

The Court noted that "no scheme of investment which must ultimately and inevitably result in failure can be called a legitimate business enterprise" (194 U.S. at 515).

The same rationale is fully applicable to the Symbra'ette marketing plan, and more recent cases have applied similar reasoning. A lottery was found to exist by the Court of Appeals for the Tenth Circuit in a referral sales scheme involving concepts analogous to those in the Symbra'ette program. Zebelman v. United States, 339 F.2d 484 (10th Cir. 1964). In that case the purchaser of an automobile was promised \$100 each time a person whose name he submitted also bought an automobile. The original purchaser likewise was promised \$50 for each person whose name was submitted by the new participant he had referred, and who purchased an automobile. Holding that chance constituted an integral part of the scheme rendering it a "lottery," the court stated (339 F.2d at 486):

"...the original purchaser has no control over the payment or receipt of the \$50 since it is the person whose name he submits that must locate another buyer. Insofar as the original purchaser is concerned, the procuring of this buyer is dependent, at least in part, upon chance and by the terms of the statute that is all that is needed. Thus, the third element is alleged and we must conclude that the indictment is legally sufficient to charge an offense under the statute."

In Blachly v. United States, 380 F.2d 665 (5th Cir. 1967), a somewhat similar scheme involving chain recruiting of new purchasers was involved. In this plan a water softener costing, if paid for in installments, about \$829 was demonstrated to a householder and his wife. If they were interested they were told that the softener not only could be obtained at no cost to themselves, but also that they would have an opportunity to earn a profit. They were to achieve this goal by supplying names of potential purchasers of the softener. For each such person whose name was supplied, and who bought a softener, the original purchasers would receive \$40. No limit was placed on the number of referrals that the original purchaser could supply. The original purchaser was to receive an additional \$40 for every referral who purchased a softener whose name was supplied by the referrals the original purchaser made. As in the case of the Symbra'ette marketing plan, achievement of the goal represented thus depended on endless referrals, i.e., recruiting. The Court of Appeals found this plan to be essentially fraudulent noting that one of its vices consisted of its "demonstrable impossibility." 380 F.2d at 672. See also Fabian v. United States, 358 F.2d 187 (8th Cir. 1966).

Litigation arising in state courts has similarly condemned selling plans offering benefits geared to chain referrals or recruiting by a participant, by his recruits, and by their recruits, etc. In People of the State of Michigan ex rel. Kelly v. Koscot Interplanetary, Inc., 195 N.W.2d 43 (Mich. 1972), a distribution plan was involved which sought to create a network of 40,000 distributors throughout the United States, the "per capita" limit for any given community being one distributor for every 4,000 people. Substantial commissions were paid to distributors who brought in new distributors. "Single level" distributors sponsored prospects who in turn could sponsor other prospects so long as distributorships were available. "Dual Level" distributors recruited and supervised subdistributors called "Supervisors" who purchased from the sponsoring distributor at 45 percent off retail list. A "Supervisor" could ascend to the distributor level if sponsored by a distributor, and was approved by Koscot, provided he first replaced himself with another "Supervisor." The Michigan Court of Appeals agreed that this plan was analogous to a chain letter, "identical to the devices of referral selling," and that it constituted a "lottery" prohibited by Michigan statute.

The court found all three elements of consideration, chance, and prize to be present, noting as to "chance" (195 N.W.2d at 54):

"...if 'A', a distributor, brings 'B', a prospect, to a meeting and 'B' purchases a supervisorship, and 'B' in turn brings 'C' to another meeting, and 'C' purchases a supervisorship; 'A' makes money from both 'B' and 'C', with 'C' being outside 'A's' knowledge and control. This constitutes chance dominating over skill.

In many instances there is virtually no contact maintained after a person is sold a franchise by defendant. He can move anywhere in the country and yet the person who recruited him will receive profits from whatever he does."

In considering the matter the Michigan Court of Appeals analyzed a number of similar distribution and marketing schemes utilized over the years. In Twentieth Century Company v. Quilling, 110 N.W. 174 (Wisc. 1907), the owner of a patented "pole and thill coupling" (for buggies and carriages) devised a scheme by which he sold to participants the exclusive right to market his device in a given county, with the right to sell to others exclusive territorial rights in other counties, with those purchasers having the right to sell exclusive county rights to still others, "and so on without limit." Finding the project not a legitimate business enterprise, the Wisconsin court noted that it "contemplates an endless chain of purchasers, or, rather, a series of constantly multiplying endless chains" containing the possibility of large gains to the original promoters and early purchasers, but "losses to later purchasers, increasing in number with the greater success of the scheme." The Supreme Court of Wisconsin denounced the plan as "contrary to public policy and void." In Sherwood & Roberts-Yakima, Inc. v. Leach, 409 P.2d 160 (Wash. 1965), radio intercoms and fire alarm systems were sold at inflated prices, purchasers receiving the privilege to refer potential customers to the seller, who promised to pay \$100 for each sale to a prospect whose name was submitted, and \$200 for each 15 names submitted to whom the seller made a presentation. Even though the sales scheme did not involve payments on sales to referrals of

referrals, the plan was nevertheless condemned by the Washington Supreme Court as a lottery and contrary to public policy. The Court observed that purchasers of the intercoms and fire alarms, in hoping to recoup their investment from referrals, took the "chance" that the referrals might not be interested, that the salesman might not adequately make his presentation, that the referral might already have been referred by someone else, that the market might be saturated, and that the salesman might not even contact the referral. The Court concluded that chance was an integral part of the plan, but noted that "the measure was not the quantitative proportion of skill and chance in viewing the scheme as a whole." The Court found the principle to be the same as in chain-letter schemes.

M. Lippincott Mortgage Investment Co. v. Childress, 204 So.2d 919 (D.C. of Appeal Fla. 1967), involved a plan very similar to that in the foregoing case except that commissions were to be paid to purchasers on sales made to referrals of referrals submitted by the purchaser. Purchasers were led to believe that "big money" would be made on sales to referrals of referrals because of their large number creating a potential yield of \$7,800 in commissions to the original purchaser. The Court found the plan a plain violation of the Florida statute prohibiting chain selling schemes, pyramid clubs, and the like. The Florida Court noted that the sale had been induced by representations that the promissory note signed by an original purchaser should be of "no concern" to him because purchasers could expect commissions which would more than pay the note in full, and because they would become part of a group which "would increase through a chain process of new members securing other new members and thereby advancing themselves in the group where they in turn would receive commissions" (204 So.2d at 923).

There is no question, and persuasive authority has established, that a "pyramid" marketing or selling plan wherein the earnings accruing to any participant are dependant, as in the Symbra'ette program, upon recruiting of new recruits, on the recruiting by those recruits of still other recruits, etc., constitutes a "lottery" in legal contemplation. The Symbra'ette program was a lottery notwithstanding the absence of classic indicia thereof. The returns to any particular participant were beyond his control, and were determined by chance. Chance was an integral and inherent part of the program.

The fact that the program had a dual aspect, as stated, in that Symbra'ette distributors might engage in direct selling, making a profit on the difference in the price they paid for Symbra'ette products and the price at which they sold those products to the consuming public, in no way alters this conclusion. The circumstance that a program has a legitimate aspect does not render such a program lawful if conjoined with it there is an unlawful aspect. Nor does the fact that the success of a participant in obtaining new recruits, and building his "organization" or "personal group," was dependent in some measure on his skill in proselyting and training change the nature of the program. Notwithstanding such factors, the returns ultimately realized from the sales of recruits, and of their recruits, etc., if any, were completely beyond a participant's control. Chance permeated the entire operation insofar as the non-direct selling aspects of the program were involved.

Lottery methods of merchandising have long been held to violate Section 5 of the Federal Trade Commission Act, Federal Trade Commission v. Keppel & Bro., 291 U.S. 304 (1933), and such have come to be viewed essentially as per se violations. See, e.g., Gellman v. Federal Trade Commission, 290 F.2d 666 (8th Cir. 1961); Dandy Products, Inc. v. Federal Trade Commission, 332 F.2d 985 (7th Cir. 1964), cert. denied, 379 U.S. 961 (1965); Peerless Products, Inc. v. Federal Trade Commission, 284 F.2d 825 (7th Cir. 1960), cert. denied, 365 U.S. 844 (1961); Wren Sales Company, Inc. v. Federal Trade Commission, 296 F.2d 456 (7th Cir. 1961). Considered as a "lottery" comparable to the foregoing cases, the Symbra'ette program would fall within a category of per se violations. Regardless of whether or not it should be so considered, the undersigned has not based this decision on any per se rationale, but on a careful consideration of the non-direct selling aspects of the Symbra'ette program, and there is no doubt that the open-ended, multi-level (pyramidal) aspects were unfair and deceptive. In its potentiality for unfair exploitation and oppression of the public the Symbra'ette program is quite different from, and far worse than, punch-boards, pull-tabs, or raffle type merchandising practices. It bears in this respect little or no resemblance to the practices involved, for example, in Marco Sales Company v. Federal Trade Commission, 453 F.2d 1 (2nd Cir. 1971), in which the Court of Appeals reversed and remanded a cease and desist order enjoining the sale of trinkets, etc., by means of a punch-board. In reversing

Marco, the Second Circuit was of the view that the Commission had not adequately articulated why it had totally prohibited the punch-board sale of small items, but had allowed supermarkets and oil companies to utilize contests governed by chance in food sales and gasoline retailing. The court in Marco, however, did not rule that distribution of goods by lottery was lawful.

The sale of dolls, stuffed dogs, etc., by means of punch-boards obviously bears no resemblance to respondents' program. Respondents' Symbra'ette marketing plan induces, and has the tendency and capacity to induce, prospects to invest substantial amounts of money, as well as valuable time, effort, energy, and hope, in a scheme the results of which are determined by chance, in which success is impossible for all, if not most, and in which the chance or gambling element is concealed and the program is deceptively promoted as a legitimate business opportunity. The amounts of money invested by the public in the Symbra'ette marketing plan, it may be added, were "substantial," contrary to respondents' assertion (Reply Brief, p. 3), and the undersigned specifically so finds.

The Symbra'ette open-ended, multi-level (pyramidal) marketing program, presented deceptively as a legitimate business opportunity, was inherently unfair, exploitive, and oppressive. It is clear from the provisions of the program, and its promotional literature, that it was aimed at persons hoping to go in business "for themselves," and at persons of possibly limited means seeking a way of supplementing their incomes. The program was cleverly designed to make "buying in" at the higher levels of Senior Key or Supervisor seemingly attractive, and the opportunity to achieve the high earnings held out by the "Flip Chart" deceptively plausible. The Symbra'ette program not only caused, or had the capacity to cause, participants to invest their money in the hope of realizing the income held out by respondents as available, when such realization was an impossibility for all recruits, but caused, or had the capacity to cause, them to recruit others including friends, relatives and acquaintances to invest money in a program inherently unfair and deceptive. Beyond that, the Symbra'ette program deprived, or had the capacity to deprive, participants of their time, energy and efforts which they otherwise could have devoted to legitimate enterprises not unfair to them.

A "pyramidal" marketing program such as respondents' "in the nature of a lottery," was described by the Iowa Supreme Court in State of Iowa ex rel. Turner v. Koscot Interplanetary, Inc., 191 N.W.2d 624, 628 (Iowa, 1971):

"Product sales and the selling of positions are effected via use of the aforesaid 'multi-level--distributorship--supervisor--pyramid sales techniques' through which individuals considering position purchases are induced to buy upon the assurance that once "bought in" they will have the right to bring or refer other prospective merchandise-position buyers to the company and receive payments from Koscot for each such referral."

The Iowa Supreme Court found this program infected with fraud holding that although the term "fraudulent conduct" in the Iowa statute was not subject to precise definition, it did include referral or "pyramid" sales schemes. The Court determined that in outlawing merchandising programs with rebates "contingent upon procurement of prospective customers by the purchaser," i.e., programs in the nature of a lottery, the legislative purpose was to brand all pyramiding referral merchandise sales schemes as a "cancerous vice" against which the public should be protected and for that reason suppressed, 191 N.W.2d at 632. And in State by Lefkowitz v. ITM, Incorporated, 275 N.Y.S.2d 303 (1966), an endless chain selling transaction was determined to be so permeated with chance as to constitute a lottery, and was condemned on the ground that such a program had to fail as a matter of economic feasibility and mathematical certainty. Noting that this was the "quicksand" nature of such transactions the Court remarked that (275 N.Y.S. at 315):

"...promoters must be charged with knowledge of the fraud inherent in [them]."

See also with respect to sales and referral schemes based like the Symbra'ette program on "geometrically" expanding referrals or recruiting with chance ("lottery") at their core. HM Distributors of Milwaukee, Inc. v. Dept. of Agriculture of State of Wisconsin, 198 N.W.2d 598 (1972); Commonwealth v. Allen, 404 S.W.2d 464 (Ky. 1966); Kent v. City of Chicago, 22 N.E.2d 799 (Ill. 1939); New v. Tribond Sales Corp., 19 F.2d 671 (D.C. Court of Appeals 1927); and cases involving use of such schemes in an earlier day:

McNamara v. Gargett, 36 N.W. 218, 22-21 (Mich. 1888); Schmueckle v. Waters, 25 N.E. 281 (Ind. 1890); Merrill v. Packer, 45 N.W. 1076 (Iowa 1890); Hubbard v. Freiburger, 94 N.W. 727 (Mich. 1903). A number of states have prohibited pyramid selling and referral schemes. Minnesota, Minn. Stat. Anno. (1966), §325.79, Subd. 2; Wisconsin, Wisc. Stat. Anno. (1973), 422, 416; Iowa, Code (1971) §713.24 (2b); California, Anno. Cal. Code (1970), Penal Code §327.

This proceeding involves practices clearly not comparable in any way with merchandising by punch-boards, or the like. Rather, there is involved a "pyramidal" program masquerading as a legitimate opportunity, attractive to people looking for a way to make a living or who need money, the returns from which, to the extent derived from non-direct selling, are governed basically by chance and beyond the control of participants. Such a "pyramidal" program is inherently unfair to those investing resources and time in it. The Symbra'ette program, as already stated, had the capacity to bilk gullible or uncritical members of the public out of substantial sums of money, and out of their time, energy and efforts. Respondents' suggestion that no one was injured, damaged or deceived is rejected. Beyond that, however, the Symbra'ette marketing plan unquestionably had the capacity and tendency to injure, damage or deceive, and that is sufficient. Federal Trade Commission v. Algoma Lumber Co., 291 U.S. 67, 81 (1934); Goodman v. Federal Trade Commission, 244 F.2d 584 (9th Cir. 1957); Montgomery Ward & Co., Inc. v. Federal Trade Commission, 379 F.2d 666 (7th Cir. 1967). Although the program never attained great size, it did grow rapidly, apparently until Commission intervention, and \$2,054,250 of volume in 1969 is by no means insignificant.

The Symbra'ette Representations Were Misleading and Unfair

Count II and Count III of the complaint raise issues similar to those already discussed. Count II of the complaint charged that the Symbra'ette program involved "geometric" growth which was impossible, and therefore was unfair and deceptive. This aspect has been dwelt on at some length. It should be pointed out, however, that the nature of open-ended, multi-level (pyramidal) sales schemes, as in referral or chain-letter schemes, results in early entrants having a greater chance of achieving some success than later entrants. New entrants into the Symbra'ette program were deceived in two respects.

They were falsely led to believe (1) that the earnings and advancement held out by the program was possible for every new entrant, and (2) that the chances of achieving success were the same for all entrants. Later entrants, however, had a lesser chance of success if the program were carried out as designed because of prior recruitment by earlier entrants, yet made the same investment as earlier entrants. The greater the degree of success achieved by earlier recruits the less the chances of subsequent recruits. The fundamental deception alleged in Count II, and proved by the very terms of the program, however, lay in the fact that the Symbra'ette program held out to all participants financial gains impossible for all.

Some comment should be made with respect to the contention of respondents that the Symbra'ette marketing plan emphasized sales of Symbra'ette products rather than recruiting (Brief After Trial, p. 21; Reply Brief, p. 4). There can be no doubt, however, that recruiting was a major element of the Symbra'ette program. Respondents' Symbra'ette News illustrates the emphasis on the practice of unlimited recruiting in the Symbra'ette system:

"RECRUIT-A-THON REPORT

The list of Consultants [Distributors] earning points toward the prizes they have elected to win is really starting to grow by leaps and bounds...." (CX 8C).

* * *

"ANOTHER SYMBRA'ETTE "EVERYONE CAN WIN" PROMOTION !!!!
The only competition you have in this July-August recruiting promotion is yourself. You can earn \$50 or up to \$1,000 during this six week period, by recruiting new consultants into your group--and don't overlook the fact that you will continue to earn on your consultants as long as each of you remains in the Symbra'ette business, so you win both ways....RECRUIT!!!!" (CX 10C).

* * *

"FROM THE PRESIDENT'S DESK

Dear Consultant,

....I would remind you that the Seminar recruiting contest, with its rich rewards, is now in full swing. This is a three month contest....

Sincerely,

Carl G. Simonsen"

(RX 12; see also RX 9).

* * *

"WEEKLY OPPORTUNITY MEETING here at our office! We have reserved MONDAY NIGHTS (by appointment) to talk to your potential recruits and show the 20-min. film. Make a habit of always being here with a guest. Let us help you build your organization!" (RX 91).

* * *

The Sales Manual in describing the functions of "Supervisor" stated:

"Supervisors not only recruit constantly, ... but continue to function as retailers..." (CX 74H).

As to District Managers the Sales Manual stated:

"Basically, your role is that of recruiter, trainer and motivator...." (CX 74I)

Symbra'ette News continuously exhorted distributors to recruit (CX 7-10). Distributors in March 1970 were told:

"THIS TINY AD PRODUCES RESULTS
FOR JUNE DALTON

Help Wanted - Female

FIVE ladies wanted who would like to work part-time making full-time pay...." (CX 8A).

Letters were emphasized with a "recruiting" theme:

"DO YOU HAVE TIME TO RECRUIT?"

On our way home from Dayton,
we stopped off in Louisville,
Kentucky just long enough to recruit
'SymbraEtte by Dot and Shirley'."...
(CX 8F)

"Lillian, Adeline..., Judy...
and myself made a trip to the
New York area to recruit..." (CX 9F)

"LATEST
'RECRUIT-A-THON'
LIST

...Every recruit they've signed is
worth points in the forthcoming
drawing.

You say you're recruiting? But
you don't see your name on this list.
Better check up and make sure that you
sent the Home Office full details on
your recruits...

Get out there now and RECRUIT!"
(CX 9F)

"GRAND PRIZE
1970 CADILLAC COUPE de VILLE
in
SYMBRA-ETTE Recruit-athon" (CX 9 H)

"Can you see yourself now embraced
by a magnificent Mink Coat? It can be
yours if you get out there now and
recruit, Recruit, RECRUIT." (CX 9H)

"Recruiting is surely one of the
best ways Symbra'ette Consultants have
of sharing their happiness. (CX 10 B).

"If you are a head hunter and
merely go about signing people up and
failing to train them, you are not

operating by the Symbra'ette Creed...

"Help your new people get started ... and when they are ready to start recruiting help them with this also" (CX 8B).

"She [a recruit] knew that the only way to reach her high goals was to build an organization of good consultants who had the ambition to advance in the Symbra'ette Company" (CX 9F) (Emphasis added).

Count III charges that respondents Ger-Ro-Mar, Inc., and Carl G. Simonsen, represented to all potential Symbra'ette participants that it was not difficult for participants in the Symbra'ette program to ascend to higher levels of distribution increasing their earnings in accordance with the representations made by respondents, that every participant had the reasonable expectancy of large profits or earnings, and that the Symbra'ette program was commercially feasible for all recruits.

The record herein establishes that these representations were made, and that all were false, misleading, and deceptive. It is difficult for entrants at the Key Distributor, Senior Key, and Supervisor levels to ascend to ever higher levels of distribution, and impossible for every, or even most, entrants at the foregoing levels to do so. All participants in the Symbra'ette program do not have the reasonable expectancy of building "organizations" or "personal groups" producing the large profits or earnings represented by respondents, and the Symbra'ette "pyramid" program is not commercially feasible for all participants.

Restraints of Trade

With respect to the allegations of vertical price fixing contained in Count IV of the complaint, Symbra'ette distributors by contract agreed to adhere to the rules and regulations set out in the "Sales Manual" (CX 11-22, 74, 87).

Respondents in this manner fixed the prices at which its distributors could resell Symbra'ette products. It is elementary that vertical price fixing outside the limits of fair trade is unlawful and constitutes a per se violation of Section 5 of the Federal Trade Commission Act. Federal Trade Commission v. Beech-Nut Co., 257 U.S. 441 (1922); United States v. McKesson & Robbins, Inc., 351 U.S. 305 (1956); United States v. Parke, Davis & Co., 362 U.S. 29 (1960); Lenox, Incorporated v. Federal Trade Commission, 417 F.2d 126 (2nd Cir. 1969). The existence of vertical price fixing agreements is sufficient for a violation. Dr. Miles Medical Co. v. John D. Park & Sons, 220 U.S. 373 (1911); United States v. Bausch & Lomb Optical Co., 321 U.S. 707, 721 (1944). The Symbra'ette program with its system of discounts and overrides inherently contemplated that all distributors would resell Symbra'ette products at the prices fixed by respondents, and in effect controlled the resale prices of Symbra'ette distributors. See United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940).

Symbra'ette, as alleged in Count V, restricted distributors from selling to the customers of other distributors, prevented distributors from buying Symbra'ette products from each other, except for Key Distributors who were required to purchase from their sponsors and no others, and prohibited distributors from reselling Symbra'ette products to retail stores "except exclusive boutiques" where "no competitive line is sold" (CX 11-22, 74, 87). Such restrictions are plainly unlawful where respondents have sold their Symbra'ette products to distributors and have parted with dominion over them. United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967). The Court there stated (388 U.S. at 379):

"Under the Sherman Act, it is unreasonable without more for a manufacturer to seek to restrict and confine areas or persons with whom an article may be traded after the manufacturer has parted with dominion over it Such restraints are so obviously destructive of competition

that their mere existence is enough. If the manufacturer parts with dominion over his product or transfers risk of loss to another, he may not reserve control over its destiny or the conditions of its resale."

Restrictions on disposition of Symbra'ette products after distributors had bought them were part of respondents' resale price maintenance agreements, and as such must be considered as part of a total package of unlawful restraints. United States v. Sealy, Inc., 388 U.S. 350, 357 (1966).

Revisions in Symbra'ette Program
after Complaint

On April 1, 1972, about five months after the complaint issued respondents revised their Symbra'ette program in some respects (CX 92(3) and (4)). The program as it existed prior to complaint and until the foregoing date, and the program as revised, have been interwoven to some extent in respondents' "Brief After Trial" and "Reply Brief." This initial decision, however, has been concerned exclusively with the Symbra'ette marketing plan as it was being utilized at the time the Commission issued its complaint, and for some years prior thereto.

Among other revisions, respondents have changed the program to provide that the cost of the initial inventory of Symbra'ette products to be purchased by participants is refundable within 90 days at the "sole election of the purchaser", and that the number of active "Consultants" is "limited to 1/10 of one percent of the population of each state taken respectively."

It is by no means clear that these revisions remove the objectionable features of the program. See People of the State of Michigan ex. rel. Kelley v. Koscot Interplanetary, Inc., supra. In any case, revision of the program after complaint in no way inhibits the entry of a cease and desist order. Coro, Inc., 63 F.T.C. 1164, 1178-1201 (1963), modified and aff'd, Coro, Inc. v. Federal Trade Commission, 338 F.2d 149 (1st Cir. 1964), cert. denied, 380 U.S. 954; Goodman v. Federal Trade Commission, supra; Skylark Originals, Inc., CCH Trade Reg. Rep. 1970-73 Transfer Binder ¶19,946 (Order of March 9, 1973).

The Order

The order entered herein is intended to remedy the unfair and deceptive aspects of respondents' open-ended, multi-level (pyramidal) Symbra'ette marketing plan and to prevent their resumption in similar or related forms, but to permit respondents to continue all lawful direct selling aspects of their business. The order would also prohibit continuation of the unreasonable trade restraints challenged in Counts IV and V of the complaint and found to have existed.

CONCLUSIONS

1. The Federal Trade Commission has, and has had, jurisdiction over respondents, and the acts and practices charged in the complaint, and involved herein, took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. Respondents, as demonstrated in the findings of fact and discussion set out earlier herein, engaged in false, misleading and deceptive acts and practices, and utilized unfair methods of competition in the offering for sale, sale and distribution of their Symbra'ette products, and in the promotion and operation of the Symbra'ette marketing program.

3. Such false, misleading and deceptive acts and practices, and unfair methods of competition, had the tendency and capacity for and were to the prejudice and injury of the public and of respondents' competitors, and constituted violations of Section 5 of the Federal Trade Commission Act.

4. As a consequence of the foregoing, and of the findings of fact and discussion set out earlier herein, the following order should be entered:

O R D E R

IT IS ORDERED that respondent Ger-Ro-Mar, Inc., a corporation doing business as Symbra'ette, whose corporate name is now Symbra'ette, Inc., and officers thereof, and respondent Carl G. Simonsen, individually and as an officer

of said corporation, or corporations, and respondents' agents, representatives, employees, successors, and assigns, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of brassieres, girdles, lingerie, wigs, or of any other products, or of distributorships or franchises, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering, operating, or participating in, directly or indirectly, any open-ended, multi-level (pyramidal) marketing or sales plan or program wherein the financial gains to participants are dependent in any manner or to any degree upon the continued recruitment of other participants.
2. Offering, operating, or participating in, directly or indirectly, any marketing or sales plan or program wherein the financial gains to participants are, or are represented to be, based in any manner or to any degree upon the recruiting of other participants who obtain the right under the plan or program to recruit yet other participants.
3. Offering, operating, or participating in, directly or indirectly, any marketing or sales plan or program wherein the financial gains to participants depend in any manner or to any extent, expressly or impliedly, on the number of participants increasing in a geometrical progression, whether infinite or not.

4. Offering, operating, or participating in, directly or indirectly, any marketing or sales plan or program which is in the nature of a lottery.
5. Offering, presenting, or promoting, directly or indirectly, any marketing or sales plan or program as a legitimate business opportunity when the financial gains to participants therefrom are in fact dependent on chance and substantially beyond the control of participants so as to prevent them from significantly affecting, by application of effort, skill, or judgment, the amount of financial gains achieved.
6. Offering to pay, paying, or authorizing payment of any override, commission, cross-commission, discount, bonus, rebate, dividend, or other consideration to any participant in any marketing or sales plan or program in connection with the sale of any products or services unless such participant performs a bona fide and essential supervisory, distributive, selling, or soliciting function in the marketing of such products to the consumer.
7. Representing, directly or by implication, or by use of hypothetical examples or representations of past earnings of participants, that participants in any marketing or sales plan or program, will earn or receive, or have the reasonable expectancy of earning or receiving, any stated or gross or net amounts, unless, in fact, a majority of participants in the community or geographic area in which such representations are made, have achieved the stated or gross or net amounts represented, and the representations accurately reflect typical and average earnings of such participants from the marketing or sales plan or program, under circumstances similar to those under which the participant, or prospective participant, to whom the representations are made, plans to operate.

8. Misrepresenting in any manner, directly or by implication, or placing in the hands of others the means or instrumentalities for misrepresenting, the financial gains reasonably achievable by participants in any marketing or sales plan or program, or the commercial feasibility thereof.
9. Recruiting or accepting a prospective participant in any marketing or sales plan or program, without first disclosing to such prospect in writing the number of other participants in the community or geographic area in which such prospect plans to operate, and the typical and average earnings achieved by such other participants from the marketing or sales plan or program, under circumstances similar to those under which the prospective participant plans to operate.
10. Fixing, establishing, or maintaining, directly or indirectly, the prices at which any products may be resold by any dealer, distributor, or participant, and offering, operating, or participating in, directly or indirectly, any marketing or sales plan or program, or entering into, maintaining, or promoting any contract, agreement, understanding, marketing system or course of conduct, which may have the effect of fixing, establishing or maintaining the prices at which any products may be resold, except that in those states having Fair Trade laws products may be marketed pursuant to the provisions of such laws.
11. Requiring any dealer, distributor, or participant to refrain from selling products which he has purchased to any specified person, class of persons, business, or class of businesses, and

offering, operating, or participating in, directly or indirectly, any marketing or sales plan or program, or entering into, maintaining, or promoting any contract, agreement, understanding, marketing system, or course of conduct, which may have the effect of causing any dealer, distributor, or participant to refrain from selling products which he has purchased to any specified person, class of persons, business, or class of businesses.

12. Publishing, providing, or distributing directly or indirectly, for a period of three (3) years after this order becomes final, any resale price list, or order form, report form, sales manual, or promotional or instructional material, which lists resale prices or sample resale prices, except that in those states having Fair Trade laws products may be marketed pursuant to the provisions of such laws.

IT IS FURTHER ORDERED that respondents deliver a copy of this Order to all present and future dealers, distributors, or participants in any marketing or sales plan or program, or who are engaged in the sale of respondents' products or services, and to secure from each a signed statement acknowledging receipt of this Order.

IT IS FURTHER ORDERED that the respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, incorporation, or sale resulting in the emergence of a successor firm, partnership, or corporation, or any other change which may affect compliance obligations arising out of this Order.

IT IS FURTHER ORDERED that Carl G. Simonsen, the individual respondent named herein, promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

Daniel H. Hanscom
Daniel H. Hanscom,
Administrative Law Judge.

October 11, 1973

