

IN THE MATTER OF
 GER-RO-MAR, INC. T/A SYMBRA'ETTE, ET AL.
 MODIFIED ORDER, IN REGARD TO ALLEGED VIOLATION OF THE
 FEDERAL TRADE COMMISSION ACT

Docket 8872. Decision, July 23, 1974-Modified Order, Oct. 2, 1975

Order modifying an earlier order dated July 23, 1974, 84 F.T.C. 95, 39 F.R. 35133, pursuant to order of the United States Court of Appeals for the Second Circuit dated June 16, 1975, Trade Reg. Rep. ¶ 60,368 at 66,588 (1975 Trade Cases), IX S&D —, by setting aside order paragraphs 1 and 2 proscribing an open-ended, multi-level (pyramid) marketing plan to recruit distributors for its products.

Appearances

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

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

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Second Circuit on Oct. 11, 1974, a petition to review and set aside an order to cease and desist issued herein on July 23, 1974 [84 F.T.C. 95], and the court having rendered its decision and its judgment on June 16, 1975, affirming the order to cease and desist, except for numbered Paragraphs 1 and 2 of the order which it directed be set aside;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

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. Operating any marketing or sales plan or program unless respondents agree to and notify participants that they will promptly

repurchase all or any part of any initial order of merchandise made by any participant, upon written request of the participant mailed within 30 days (or a greater period of time if respondents elect) of the receipt of the initial order by the participant, at the price actually paid by the participant for the merchandise; *Provided, however*, That respondents may insist that prior to making repurchase, the merchandise be returned to respondents' place of business, postage or shipping prepaid, in a resaleable condition, said merchandise to be shipped within 30 days (or a greater period of time if respondents elect) of the date on which written request for repurchase is received.

2. 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 program will earn or receive, or have the reasonable expectancy of earning or receiving, any stated 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 gross or net amounts represented, and the representations accurately reflect the amount of time required by such participants to achieve such gross or net amounts.

3. 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.

4. Failing to maintain adequate records (a) which disclose the facts upon which any claims of the type discussed in paragraphs 2 and 3 of this order are based; and (b) from which the validity of any claim of the type discussed in Paragraphs 2 and 3 of this order can be determined.

5. Requiring that an individual pay a valuable consideration in return for the right to participate in any marketing or sales program, without first disclosing to such prospective participant in writing the number of other participants in the marketing area in which such prospect plans to operate.

6. Representing that the supply of available participants in respondents' marketing program is inexhaustible or virtually inexhaustible.

7. Entering into, maintaining or enforcing any contract, agreement, combination, understanding, or course of conduct which has as its purpose or effect to require any individual to resell at any particular price a product which he or she has purchased, *Provided*, That in those States having Fair Trade laws products may be marketed pursuant to the provisions of such laws.

8. Publishing or distributing, directly or indirectly, any resale price

list, product price list, order form, report form, promotional material or any other document which employs resale prices for commodities sold by respondents without stating clearly and conspicuously in conjunction therewith the following:

The resale prices quoted herein are suggested prices only.

Provided, That in those States having Fair Trade laws products may be marketed pursuant to the provisions of such laws.

9. Entering into, maintaining, or enforcing any contract, agreement, combination, understanding, or course of conduct which has as its purpose or effect to require any individual to refrain from reselling products which he or she has purchased, to any specified person, class of persons, business, or class of businesses.

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 they operate, or who are engaged in the sale of respondents' products or services, and secure from each a signed statement acknowledging receipt of this order.

It is further ordered, That 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.

It is further ordered, That each of the respondents herein and their successors and assigns shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all of the provisions of this order.