

Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Deputy Secretary of the Board.

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FEDERAL TRADE COMMISSION

[File No. 932-3219]

Blenheim Expositions, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, prohibit a Winter Park, Florida-based producer of franchise trade shows and expositions from misrepresenting survey results or making unsubstantiated earnings and success rate claims in promoting and advertising franchise shows.

DATES: Comments must be received on or before December 11, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Tom Cohn, Bureau of Consumer Protection, Federal Trade Commission, H-238, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-3532.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Blenheim Expositions, Inc. a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Blenheim Expositions, Inc., a corporation, and it now appearing that Blenheim Expositions, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Blenheim Expositions, Inc., by its duly authorized officer; the attorneys for the aforementioned party; and counsel for the Federal Trade Commission, that:

1. Proposed respondent Blenheim Expositions, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1133 Louisiana Avenue, Suite 210, in the City of Winter Park, State of Florida.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:
(a) Any further procedural steps;
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission

may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered That respondent, Blenheim Expositions, Inc., a corporation, its successors and assigns, and its officers; and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, affiliate, division or other device, in connection with the advertising, promotion, or marketing of franchise shows in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, purpose, sample, contents, validity, results, conclusions or interpretations of any survey, poll, test, report or study.

II

It is further ordered That respondent, Blenheim Expositions, Inc., a corporation, its successors and assigns, and its officers; and respondent's agents,

representatives and employees, directly or through any corporation, subsidiary, affiliate, division or other device, in connection with the advertising, promotion, marketing, or conducting of franchise shows in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication:

A. The sales, income, or profits that current or prospective franchise owners have earned or can or will earn; or

B. The chances of success or success rates that franchise owners have enjoyed or can or will enjoy,

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean analyses, research, surveys, polls, reports, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered That respondent, Blenheim Expositions, Inc., a corporation, its successors and assigns, and its officers, for a period of five (5) years after the date of entry of this Order, shall distribute, at each franchise show it promotes, directly or through any corporation, subsidiary, affiliate, division or other device, to at least 500 persons attending such show, or to each person attending such show if the total number of such persons is fewer than 500, a brochure entitled, "A Consumer Guide To Buying A Franchise," provided to the respondent by the Federal Trade Commission. The Commission shall provide to the respondent one camera-ready copy of the brochure, and the respondent is responsible for the printing, and printing costs, of the brochure for distribution at the franchise shows. The brochures distributed by respondent pursuant to this paragraph shall be reproduced in a format substantially similar to the original format, as provided by the Federal Trade Commission; provided, however, that reproduction in a black and white format shall be deemed substantially similar to the original for purposes of this paragraph. Respondent may revise

the text of said brochure or substitute another similar document only after submitting said revision or substitution to staff of the Commission, and receiving written approval thereof.

IV

It is further ordered That respondent, Blenheim Expositions, Inc., a corporation, its successors and assigns, and its officers, shall:

A. For a period of five (5) years after the date of the last dissemination by or on behalf of the respondent of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

1. All advertisements and promotional materials setting forth such representation;

2. All polls, surveys, reports, studies, or other documents and materials relied upon by the respondent to substantiate such representation; and

3. All polls, surveys, reports, studies, or other documents and materials (such as correspondence) in the respondent's possession or control that contradict, qualify, or call into question such representation or the basis upon which the respondent relied for such representation;

B. For a period of five (5) years after the date of their creation, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying such other documents and materials as shall demonstrate full compliance with this Order.

V

It is further ordered That, within thirty (30) days after service of this Order upon it, respondent, Blenheim Expositions, Inc., its successors and assigns shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, or other such sales materials covered by this Order.

VI

It is further ordered That respondent, Blenheim Expositions, Inc., its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in said corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect

compliance obligations under this Order.

VII

It is further ordered That this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VIII

It is further ordered That respondent, Blenheim Expositions, Inc., shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Blenheim Expositions, Inc. ("Blenheim").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Blenheim in its advertising and

promotional materials for franchise shows.

The Commission's complaint in this matter charges Blenheim with engaging in unfair or deceptive practices in connection with the advertising of its franchise shows. According to the complaint, Blenheim falsely represented that it had a reasonable basis for claims that franchise owners earn an average income and/or average pre-tax income of more than \$124,000, and that franchise owners earn an average pre-tax income and/or average pre-tax profit of \$124,290.

The complaint also alleges that Blenheim falsely represented that it had a reasonable basis for claims that a prospective franchise owner's chances of success are 94%, and that franchise owners enjoy a 94% success rate.

Finally, the complaint alleges that Blenheim falsely represented that the above representations were proved by a Gallup poll of franchise owners conducted in 1991.

The consent order contains provisions designed to remedy the violations charged and to prevent Blenheim from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Blenheim from misrepresenting the existence, purpose, sample, contents, validity, results, conclusions or interpretations of any survey, poll, test, report or study.

Part II of the order prohibits Blenheim from making any claims about the sales, income, or profits that current or prospective franchise owners have earned or can or will earn, or the chances of success or success rates that franchise owners have enjoyed or can or will enjoy, unless, prior to making such claims, Blenheim has competent and reliable evidence to substantiate the claims, which when appropriate must be competent and reliable scientific evidence.

Part III of the order requires Blenheim, for a period of five years after the date of entry of the order, to distribute at each franchise show it promotes, a brochure entitled, "A Consumer Guide to Buying A Franchise," provided to Blenheim by the Commission. Under this requirement, Blenheim must reproduce the brochure in a format substantially similar to the original format as provided by the Commission; is responsible for the printing costs of the brochure; and must distribute copies of the brochure to at least 500 persons attending each such show, or to each person attending such show if the total number of such persons is fewer than 500. Blenheim may revise the text of the brochure or substitute a similar

document only after submitting said revision or substitution to staff of the Commission and receiving written approval thereof.

Part IV of the order requires Blenheim to maintain copies of all advertisements setting forth any representation covered by the order; all materials relied upon in making any representation covered by the order; all materials in Blenheim's possession or control that contradict such representation or the basis upon which Blenheim relied for it; and any other materials that demonstrate full compliance with the order.

Part V of the order requires Blenheim to distribute copies of the order to each of its operating divisions and to each of its various officers, agents and representatives.

Part VI of the order requires Blenheim to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the order terminates the order twenty years from the date of its issuance, or twenty years from the date a complaint is filed in federal court alleging any violation of the order, whichever comes later.

Part VIII of the order requires Blenheim to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,
Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

Reallotment of Funds for FY 1994 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, Administration for Children and Families, (ACF), DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.), as amended, a notice was published in the Federal Register on August 9, 1995 announcing the Secretary's preliminary determination

that \$81,829 in FY 1994 Low Income Home Energy Assistance Program (LIHEAP) funds may be available for reallotment to other LIHEAP grantees. After further evaluation, the Secretary has determined that no funds from FY 1994 will be reallotted because it was not administratively feasible to do so.

FOR FURTHER INFORMATION CONTACT:

Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401-9351.

Dated: October 4, 1995.

Donald Sykes,

Director, Office of Community Services.

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Public Health Service

Food and Drug Administration; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to establish a new system of records, 09-10-0019, "Mammography Quality Standards Act (MQSA) Training Records, HHS/FDA/CDRH." The purpose of the system is to provide the Food and Drug Administration (FDA) with information about the training and certification of inspectors of mammography facilities. We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before November 21, 1995. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on August 31, 1995. This system of records will be effective 40 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESSES: Please submit comments to: FDA Privacy Act Coordinator (HFI-30), Food and Drug Administration, 5600 Fishers Lane, Room 12A-30, Rockville, MD 20857, (301) 443-1813.

Comments received will be available for inspection at this same address from 9 a.m. to 4 p.m., Monday through Friday.