

IV

It is further ordered that:

(1) Respondent Arizona Institute of Reproductive Medicine, Ltd. Shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in respondent which may affect compliance obligations arising out of this Order; and

(2) Respondent Robert H. Tamis, M.D. shall promptly notify the Commission of the discontinuance of his present business or of his affiliation with the corporate respondent. In addition, for a period of three (3) years from the date of service of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment that involves an infertility program. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

V

It is further ordered that respondents shall, within (60) days after service 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 requirements of 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 the Arizona Institute of Reproductive Medicine, Ltd. and its President, Robert H. Tamis, M.D. The Arizona Institute of Reproductive Medicine offers infertility services to the public, including *in vitro* fertilization.

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.

The Commission has alleged that proposed respondents failed to possess

a reasonable basis for claims they made regarding their comparative success in achieving live births for their patients. The Arizona Institute of Reproductive Medicine claimed a live birth per embryo transfer rate of 17 percent in 1991 and 16 percent for the first six months of 1992, as compared to a national average of 14 percent for 1991.

The Commission alleges that these claims were deceptive because the Arizona Institute of Reproductive Medicine calculated the success statistics in their promotional materials counting multiple births (*i.e.*, twins, triplets, etc.) as multiple deliveries. The national percentage was based on data published by The Society for Assisted Reproductive Technology ("SART"), a national organization whose members, including proposed respondents, are providers of assisted reproductive technologies. SART publishes annually national averages for live births achieved through its members' services. National averages for live births are based on a protocol which requires members to report multiple births as single deliveries. The published report counts a multiple birth as a single delivery. Had proposed respondents likewise counted multiple births as a single delivery, their success statistics for deliveries would have been significantly lower than both the true national average for deliveries per embryo transfer, which was 17 percent for 1991, and the 14 percent represented by respondents.

Part I of the proposed consent order seeks to address the alleged misrepresentation cited in the accompanying complaint by requiring proposed respondents to possess competent and reliable scientific evidence for any future success rate comparative claims for their infertility procedures. Any comparison with other success rates must consist of results that are based upon the same or essentially equivalent tests that were used as a basis for the other rates. Moreover, a fencing-in provision prohibits any misrepresentation of success in achieving pregnancies or live births by respondents as well as prohibiting respondents from misrepresenting the success rates of any single provider or group of providers of these services.

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 in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95-16255 Filed 6-30-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 941-0007]

Council of Fashion Designers of America et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed 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 prohibit, among other things, two New York based corporations or their members from attempting to fix or reduce modeling fees, and would require them to take steps to educate fashion designers that price-fixing is illegal.

DATES: Comments must be received on or before September 1, 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: Michael Antalics or Karen Mills, FTC/S-2627, Washington, DC 20580. (202) 326-2821 or (202) 326-2052.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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: The Council of Fashion Designers of America, a corporation; and 7th on Sixth, Inc., a corporation. File No. 941-0007.

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and

practices of the Council of Fashion Designers of America and 7th on Sixth, Inc., hereinafter sometimes referred to collectively as "proposed respondents," and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from engaging in certain acts and practices being investigated,

It is hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Council of Fashion Designers of America (hereinafter "CFDA") is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412 Broadway, New York, New York 10018.

2. Proposed respondent 7th on Sixth, Inc. (hereinafter "7th on Sixth") is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412 Broadway, New York, New York 10018.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. 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 with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, 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.

7. 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 the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with 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 respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right 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.

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

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondents" means the Council of Fashion Designers of America and 7th on Sixth, Inc.;

B. "Person" means any individual, partnership, association, company, or corporation;

C. "CFDA" means the Council of Fashion Designers of America, its directors, trustees, officers, members, representatives, committees, subcommittees, boards, divisions,

agents, employees, successors and assigns;

D. "7th on Sixth" means 7th on Sixth, Inc., its directors, trustees, officers, members, representatives, committees, subcommittees, boards, divisions, agents, employees, successors and assigns.

II

It is further ordered that respondents CFDA and 7th on Sixth, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue, any combination, agreement, or understanding, express or implied, for the purpose or with the effect of:

A. Raising, lowering, fixing, maintaining or stabilizing the price, terms or other forms or conditions of compensation paid for modeling or modeling agency services; or

B. Encouraging, advising, pressuring, assisting, inducing, or attempting to induce any person to engage in any action prohibited by this order.

Provided, however, that it shall not be deemed a violation of this order for more than one member of CFDA and/or 7th on Sixth to employ or use the services of the same person where such employment or use is not otherwise in furtherance of any action prohibited by this order.

III

It is further ordered that Respondents CFDA and 7th on Sixth each shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute by certified U.S. first-class mail a copy of this order and the accompanying complaint, and the notice attached in Appendix A hereto, to:

1. Each of its members, officers, directors, and employees, and each fashion designer who has shown in the fashion shows organized by 7th on Sixth;

2. Each person to whom it has, at any time prior to the effective date of this order, communicated the benefits of membership in 7th on Sixth, or whom it has invited to join 7th on Sixth, as identified in Appendix B hereto;

3. The International Model Managers Association, c/o David Blasband, Esq., Deutsch, Klagsbrun & Blasband, 800 Third Avenue, New York 10022;

4. Each of the modeling agencies listed in Appendix C attached hereto; and

B. For a period of five (5) years from the date this order becomes final, cause to be made minutes of all business meetings of its membership, its board of directors, its committees and subcommittees. Such minutes shall (i) identify all persons attending such meeting, (ii) include a certification, signed by the presiding officer and secretary under penalty of perjury, that states whether prices, terms, or other forms or conditions of compensation paid for modeling or modeling agency services were discussed at the meeting, and (iii) summarize what was discussed at the meeting. If prices, terms, or other forms or conditions of compensation paid for modeling or modeling agency services were discussed at any business meeting subject to this order, then the minutes of such meeting shall identify the participants in the discussion and state in detail the substance of the discussion(s). Minutes and the required certifications shall be retained for a period of five (5) years from the date the minutes were created. Such minutes shall be provided to the Commission upon request.

C. Within sixty (60) days after the date on which this order becomes final, and annually thereafter for five (5) years, on or before the anniversary date of this order,

1. Communicate either orally or in writing to its officers, directors, employees and members concerning their obligations under this order;

2. Obtain from each of its officers, directors, and employees an annual written certification, that he or she (a) has read, understands and agrees to abide by the terms of this order, (b) is not aware of any violation of this order, and (c) has been advised and understands that failure of CFDA or 7th on Sixth, as defined in the order, to comply with this order may subject either or both of the respondents to penalties for violation of the order; and

3. Retain the certifications required by Section III.C.2. Such certifications shall be provided to the Commission upon request.

IV

It is further ordered that each respondent shall:

A. Notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, bankruptcy, or any other change in the respondent

which may affect compliance obligations under this order; and

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

V

It is further ordered that, for the purpose of determining or securing compliance with this order, each respondent shall permit any duly authorized representative of the Commission:

A. Upon reasonable notice to respondent access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of each respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, employees, or agents of respondent, who may have counsel present.

VI

It is further ordered that this Order shall terminate twenty (20) years from the date this Order becomes final.

Appendix A

Dear _____: [Respondent] has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain conduct. A copy of the Order is enclosed.

The Order spells out [Respondent]'s obligations in greater detail, but we want you to know and understand the following:

The Council of Fashion Designers of America and 7th on Sixth, Inc. may not negotiate on behalf of fashion designers collectively with models or modeling or modeling agency services, and may not enter into or continue any agreement or understanding, express or implied, for the purpose or with the effect of affecting the prices paid for modeling or modeling agency services.

Non-compliance with this Order may subject [Respondent] to penalties for violation of the order, and may be reported to the Federal Trade Commission.

Sincerely,

[Respondent]

Enclosure

Appendix B

Mr. Victor Alfaro, 130 Barrow Street, Suite 105, New York, N.Y. 10014
Mr. Robert Danes, 488 Seventh Avenue, New York, N.Y. 10018
Ms. Gemma Kahng, 550 Seventh Avenue, New York, N.Y. 10018
Ghost, c/o Showroom Seven, 498 Seventh Avenue, New York, N.Y. 10018
Mr. Mark Eisen, 214 West 39th Street, New York, N.Y. 10018
Mr. Byron Lars, 29 West 57 Street, New York, N.Y. 10019
Ms. Mary McFadden, 240 West 35th Street, New York, N.Y. 10001
Magaschioni, Inc., 499 Seventh Avenue, New York, N.Y. 10018
The Next Generation, 242 West 38th Street, New York, N.Y. 10018
Mr. Mark Badgley, Badgley Mischka, 525 Seventh Avenue, New York, N.Y. 10018
Mr. James Mischka, Badgley Mischka, 525 Seventh Avenue, New York, N.Y. 10018
Ms. Jennifer George, Jennifer George, Inc., 530 Seventh Avenue, New York, N.Y. 10018
Mr. Fernando Sanchez, Fernando Sanchez Ltd., 5 West 19th Street, New York, N.Y. 10011
Ms. Joan Vass, Joan Vass NY, 117 East 29th Street, New York, N.Y. 10016
Ms. Adrienne Vittadini, 1441 Broadway, New York, N.Y. 10018
Mr. Byron Lars, 29 West 57th Street, New York, N.Y. 10019

Appendix C

Ms. Bethann Hardison, Bethann Management Co., 36 North Moore Street, New York, NY 10013
Boss Models, 317 West Thirteenth Street, New York, NY 10014
Ms. Frances Grill, President, Click Model Management, 881 7th Ave., Suite 1013, New York, NY 10019
Mr. Michael Flutie, President, Company Ltd., 270 Lafayette St., Suite 1400, New York, NY 10012
Ms. Monique Pillard, President, Elite Model Management, 111 East 2nd Street, New York, NY 10010
Ms. Ellen Harth, Elite Runway, 149 Madison Avenue, New York, NY 10016
Joseph Hunter, President, Ford Models, Inc., 344 East 59th Street, New York, NY 10022
Mr. Charles Bennett, Senior Vice President, International Management Group, 170 Fifth Avenue, 10th Floor, New York, NY 10010
Ms. Irene Marie, President, I'M New York, 120 Wooster St., New York, NY 10012
Ms. Irene Marie, President, Irene Marie, Inc., 728 Ocean Drive, Miami Beach, FL 33139
Ms. Milie Pellet, President, Next Management, 23 Watts Street, 5th Floor, New York, NY 10013
Now Model Management, 568 Broadway, Suite 504-A, New York, NY 10012
Pauline Bernatchez, President, Pauline's, 379 West Broadway, 5th Floor, New York, NY 10012
Ms. Natasha Esch, President, Wilhelmina Models, Inc., 300 Park Avenue South, 2nd Floor, New York, NY 10010
Women Model Management, 107 Greene Street, New York, NY 10012
Ms. Barbara Lantz, President, Zoli Management, 3 West 18th Street, New York, NY 10011

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Council of Fashion Designers of America, Inc. (CFDA) and 7th on Sixth, Inc.

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.

The complaint alleges that CFDA, a trade association of fashion designers, and 7th on Sixth, a not-for-profit corporation, and their members, have engaged in acts and practices that have unreasonably restrained competition among fashion designers. The complaint alleges that CFDA and 7th on Sixth fixed prices for the hiring of runway models. The complaint alleges that this price fixing agreement among purchasers of modeling and modeling agency services violates Section 5 of the Federal Trade Commission Act.

CFDA and 7th on Sixth have signed a proposed consent agreement that requires them to cease and desist from any agreement which has the purpose or effect of fixing prices paid or terms of employment for modeling or modeling agency services and from encouraging others to engage in such activities. The proposed consent order requires that CFDA and 7th on Sixth distribute a copy of the complaint and a letter notifying their members and employees, modeling agencies and other designated parties listed in the order that neither the CFDA nor 7th on Sixth may negotiate on behalf of fashion designers collectively with models or modeling agencies, and they may neither continue nor enter into any agreement for the purpose of affecting modeling prices.

The proposed order includes a proviso which makes clear that fashion designers who choose to employ or use the services of the same model will not be deemed in violation of the order, where such employment or use is not otherwise in furtherance of any action prohibited by the order. The proviso will permit fashion designers to hire models independently without fear that the fact that they hire the same model itself will result in liability. The order also permits two or more designers to agree to hire and use models jointly without violating the order, so long as they do not agree to do so in furtherance

of the kind of prohibited agreement to which CFDA and 7th on Sixth were party.

In order to deter future law violations and facilitate FTC review of compliance with the order, the proposed order requires CFDA and 7th on Sixth to make and keep minutes of all meetings of their membership board, committees or subcommittees, for five years. These minutes must indicate if prices or terms of modeling services are discussed at any meeting. CFDA and 7th on Sixth must provide these minutes to the FTC upon request. The parties must also communicate to their members, officers, directors and employees their obligations under this order. Officers, directors and employees must in turn provide annual written certification that they have received such notice.

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 in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95-16254 Filed 6-30-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 942-3058]

Live-Lee Productions, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed 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 prohibit, among other things, a Los Angeles based corporation, and Ruta Lee, who directs and controls the corporation, from making claims for any food, dietary supplement or drug unless they have competent and reliable scientific evidence to support the claims.

DATES: Comments must be received on or before September 1, 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: Lisa B. Kopchik or Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3139 or (202) 326-3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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)).

In the Matter of: Live-Lee Productions, Inc., a corporation, and Ruta Lee, individually and as an officer and director of said corporation, File No. 942-3058.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Live-Lee Productions, Inc., a corporation, and Ruta Lee, individually and as an officer and director of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appears that proposed respondents are 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 Live-Lee Productions, Inc., a corporation, by its duly authorized officer, and Ruta Lee, individually and as an officer and director of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed respondent Live-Lee Productions, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its offices and principal place and business at 2761 Laurel Canyon Boulevard, Los Angeles, California 90046.

Proposed respondent Ruta Lee is an officer and director of said corporation. She formulates, directs, and controls the policies, acts, and practices of said corporation. She resides at 2436 Shirley Avenue, Fort Worth, Texas 76109.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint.

3. Proposed respondents waive:

(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.