

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**LIBERTY SUPPLY CO., a corporation,
also d/b/a Omni Services;**

**MIA L. MCCRARY, individually and as an
officer of Liberty Supply Co., also d/b/a
Omni Services;**

**JOHN B. HART, individually and as an
officer of Liberty Supply Co., also d/b/a
Omni Services;**

Defendants, and

**NOR-JAY ENTERPRISES, INC., a
corporation,**

Relief Defendant.

Case No. _____

FILED UNDER SEAL

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (FTC), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the FioOr2 Tf1 1

practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §

DEFENDANTS

6. Defendant Liberty Supply Co. also doing business as Omni Services (Omni) is a Texas corporation with its principal place of business at 4241 E Hwy 82, Gainesville, Texas 76240. Omni has marketed, sold, or offered to sell nonconductive supplies to organizations, such as schools, churches, and small businesses. Omni acts or has transacted business in this district and throughout the United States.

7. Defendant Mia L. McCrary (McCrary) is an owner and president of Omni. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Omni, including the acts or practices set forth in this Complaint. Defendant McCrary resides in this district and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

8. Defendant John B. Hart (Hart) is a vice president of Omni. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Omni, including the acts or practices set forth in this Complaint. Defendant Hart resides in this district and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Relief Defendant Noted 2>> BDC BT 4 T 1 0 0 ICC2.33 Tm [(R 0 g 1 0 0 1 462.7 3 Tm

often quote the cost per unit offered for sale even though Defendants are selling the items in multi-unit packages. Defendants often fail to disclose that the price quoted applies to a package of items, instead of each individual unit. This results in prices or quantities of goods that are substantially higher than consumers agreed to pay for or receive. For example, Defendants tell consumers that they are offering highlighters for \$0.69 each, but fail to clearly explain that the \$0.69 refers to each highlighter, not each box of 12 highlighters and to be invoiced \$8.28. Instead consumers receive either one box of 12 highlighters and are invoiced \$8.28 or receive 12 boxes containing a total of 144 highlighters and are invoiced \$99.36.

18. Defendants routinely ship nondurable office supplies to consumers without an invoice. 'HIHQGDQWV¶ VKLSPHQWV RI RIILFH VXSSOLHV W\SLFD the quantities of supplies without disclosing any prices. Consumers initially learn from 'HIHQGDQWV¶ SDFNLQJ VOLSV WKDW FRQVXPXUHV XPRK R ZDQW written authorization within a short timeframe in order to do so. Defendants typically do not send an invoice disclosing the prices of their nondurable office supplies until after the timeframe for returns has elapsed.

19.

WKH % % % WR UHWXUQ PHUFKDQGLVH :KHQ 'HIHQGDQWV ¶ W
duly authorized orders, Defendants have not provided any such proof to consumers or the BBB.

26. The BBB has notified Omni regarding the % % ¶ V REVHUYDWLRQ RI D S
FRQVXPHU FRPSODLQWV FRQFHUQLQJ WKH &RUSRUDWH 'HI
% % % ¶ V the observed pattern of consumer complaints regarding RUSRUDWH 'HIHQGDQ
deceptive practices continues.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

27. 6HFWLRQ D RI WKH)7 & \$FW 8 6 & † D SUR
DFWV RU SUDFWLFHV LQ RU DIIHFWLQJ FRPPHUFH '

28. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I: Failure to Disclose

29. In numerous instances, in connection with the marketing, selling, offering for sale, or distribution of nondurable office supplies, Defendants have represented, expressly or by implication, that Defendants are offering package of item at a particular price per unit.

30. In numerous instances, Defendants have failed to disclose, or failed to disclose adequately, to consumers material terms and conditions of their offer, including:

- (a) that the package of items contains numerous units; and
- (b) the total amount Defendants will charge to consumers.

31. 7KH 'HIHQGDQWV ¶ IDLOXUH WR GLVFORVH RU GLVFC
information described in Paragraph 30, in light of the representation described in ¶ 29,

37. 8 Q G H U W K H 7 6 5 D Q 3 R X W E R X Q G W H O H S K R Q H F D O O
a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.
16 C.F.R. § 310.2(v).

38. Telephone calls between a telemarketer and a business that involve the retail sale
R I Q R Q G X U D E O H R I I L F H V X S S O L H V D U H V X E M H F W W R W K H 7
telemarketing acts or practices. 16 C.F.R. § 310.6(b)(7). In its Statement of Basis and Purpose
for the TSR, the Commission stated:

> 7 @ K H & R P P L V V L R Q 1 V H Q I R U F H P H Q W H [S H U L H Q F H D
indicates that office . . . supplies have been by far the most significant
to- E X V L Q H V V S U R E O H P D U H D V X F K W H O H P D U N H W L Q
definition of deceptive telemarketing acts or practices.

60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

39. The TSR prohibits sellers and telemarketers from failing to disclose truthfully, in
a clear and conspicuous manner, before a customer consents to pay for goods or services offered,
the total costs to purchase, receive, or use, and the quantity of, any goods or services that are the
subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(i).

40. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by
implication, in the sale of goods or services, the total costs to purchase, receive, or use, and the
quantity of, any goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(2)(i).

41. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an
unfair or deceptive act or practice in interstate commerce, in violation of Section 5(a) of the
FTC Act, 15 U.S.C. § 45(a).

Count III: Failure to Disclose Total Cost and Quantity

42.

Count V: Sending and Billing for Unordered Merchandise

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to temporary

