

## Decision

IN THE MATTER OF  
MID-TEX CORPORATION ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 6788. Complaint, Apr. 30, 1957—Decision, Oct. 30, 1958*

Order requiring five affiliated concerns, including two wholesale distributors who sold aluminum storm windows, screens, and doors to three retailers, to cease using bait advertising featuring low-priced merchandise, the true purpose of which was to obtain leads to prospective customers for higher priced products.

A similar consent order was accepted by one respondent corporation on May 8, 1958, 54 F.T.C. 1581.

*Mr. Edward F. Downs* and *Mr. Thomas A. Sterner* for the Commission.

*Nachamie & Benjamin*, by *Mr. Max Nachamie* and *Mr. Jay H. Siskin*, of New York, N.Y., for Mid-Tex Corporation, Apex Window Company, Inc., Arnold Semenoff and Sidney Tobinick.

*Mr. Marcus Miller*, of New York, N.Y., for Martin Austin and Jack Rachell.

## SECOND INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that the several respondents have violated the Federal Trade Commission Act through the use of false, misleading and deceptive advertising in connection with the sale and distribution of aluminum storm windows, screens and doors. Specifically, respondents are charged with representing that certain of their products were available to the public and could be procured at various low prices listed in newspaper, radio and television advertisements, whereas, in fact, "respondents were not interested in selling and were not making a bona fide offer to sell" the advertised items, but wanted to obtain leads and information "on persons interested in purchasing" products of better quality and higher price than those advertised.

All of the respondents, excepting Dolph Greene and Herbert Armstrong, were duly served with summons and a copy of the complaint. Answers were filed by Famous Window Company of Pennsylvania, a corporation, and by Harold Brown and Jesse Kessler individually and as officers of said corporation; Arnold Semenoff, Sidney Tobinick, Mid-Tex Corporation, Apex Window

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Company, Inc., Jack Rachell, and Martin Austin. On February 26, 1958, an agreement containing consent order to cease and desist, signed by Famous Window Company of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually and as officers of said corporation, was submitted to the hearing examiner, and an initial decision based thereon has heretofore been issued. In the same decision the complaint was dismissed without prejudice as to Dolph Greene and Herbert Armstrong, who had not been served.

After hearings at which evidence in support of the allegations of the complaint was received, duly recorded and filed in the office of the Commission, respondents Martin Austin and Jack Rachell, individually and as copartners trading as Martin Window Company, Arnold Semenoff, Sidney Tobinick, Mid-Tex Corporation and Apex Window Company, Inc., waived further hearings and consented the said proceeding be closed insofar as the reception of evidence was concerned. Counsel in support of the complaint and counsel for Apex, Mid-Tex, Arnold Semenoff and Sidney Tobinick submitted proposed findings and presented oral argument before the hearing examiner. Respondents Famous Window Co., Inc., a corporation; Oscar J. Reiss and Sam Spector, individually and as officers of said corporation; Ace Window Company of Missouri, Inc., a corporation; and Albert H. Nadler, individually and as an officer of said corporation, were and are in default for answer and appearance, and as to them, under the rules of the Commission, the hearing examiner, without further notice, is authorized to find the facts to be as alleged in the complaint.

Upon the basis of the entire record the following findings of fact and conclusions are made, applicable to the respondents who were in default and to those by whom the allegations of the complaint were contested:

1. (a) At all times involved in this proceeding, respondent Mid-Tex Corporation was a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its office and principal place of business, was, at the time of hearings, located at 2608 Coney Island Avenue, Brooklyn, N.Y.; respondent Apex Window Company, Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and its office and principal place of business was also at 2608 Coney Island Avenue, Brooklyn; respondents Arnold Semenoff and Sidney Tobinick were officers of both of said corporations, and formulated, directed and

controlled the policies thereof; their address was the same as that of said corporate respondents.

(b) Apex and Mix-Tex were wholesale distributors, engaged in the business of buying storm windows, doors and screens from manufacturers and selling them to the retail-operating respondents named in the complaint and to others.

(c) Respondents Martin Austin and Jack Rachell were co-partners trading as Martin Window Company, a partnership organized, existing and doing business under and by virtue of the laws of the State of New York, with offices and principal place of business also at 2608 Coney Island Avenue, Brooklyn, N.Y.

(d) Respondent Famous Window Co., Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 12065 Wyoming Avenue, Detroit, Mich. Respondents Oscar J. Reiss and Sam Spector were officers of said corporation, and managed its operations. Their address was the same as that of said corporation.

(e) Respondent Ace Window Company of Missouri, Inc., was a corporation organized, existing and doing business under the laws of the State of Delaware. Its office and principal place of business was located at 1518 McGee Street, Kansas City, Mo. Respondent Albert H. Nadler was an officer of said corporation, and participated in the management of its operations. His business address was the same as that of said corporation.

(f) Respondents Arnold Semenoff and Sidney Tobinick, in cooperation and conjunction with the other individual respondents named herein, formulated, directed and controlled the policies, acts and practices of the respective named corporate respondents and the partnership. All were engaged in commerce in the sale and distribution of aluminum combination storm windows, screens and doors. Their total sales, severally and collectively, were substantial. For the fifteen months, February 1955 through April 1956, Apex sales amounted to \$2,440,000. The April 1956 sales were less than 10 percent of the sales for March 1956. Mid-Tex records for the nine months' period from August 1955 through April 1956 show total sales of over \$695,000. Its April 1956 sales amounted to only \$7,604, a marked decrease from the March 1956 sales, which totaled \$112,825. About that time or shortly thereafter, the record shows, respondents went out of business. However, there is no evidence that the several companies were ever dissolved.

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2. In the course and conduct of their business, respondents were engaged in competition in commerce with other corporations, firms and individuals who likewise sold combination storm windows, screens, doors, and other related products.

3. In the course and conduct of their business respondents named in paragraph 1, above, caused their said products, when sold, to be transported from the State of New York, or other places where they were manufactured or sold, to purchasers thereof located in various other States of the United States, and have maintained a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Respondents, in the course and conduct of their business, and for the purpose of inducing the sale of their products, advertised the same by means of newspapers of general circulation, and by broadcasts over radio and television stations. Typical of statements used by the respondents in newspaper and magazine advertisements, but with varying prices ranging from \$7.50 to more than \$10.00 per window, are the following, taken from the February 27, 1956, issue of *Life Magazine*:

\* \* \* On Sale Nationally! Sale Price  
Minimum 6 Windows Double Hung type  
\$7.50 all sizes up to and including Giant 40" x 80"  
Normal INSTALLATION INCLUDED First payment May 1956 then up  
to 3 YEARS TO PAY \* \* \*.

A variation of this advertisement, sponsored by respondent Martin Window Company, appeared in *Pictorial TV*, Sunday, May 6, 1956, the pertinent parts of which were as follows:

\* \* \* Nation-Wide SALE \* \* \* New 1956 Model Triple-Insert 100% All Aluminum Screen & Storm Windows \* \* \* All Sizes up to and including GIANT 40" x 80" Double-Hung Type \* \* \* \$7.50 per window for immediate delivery. Normal Installation Included. No payments till Aug. Then pay only 50C a WEEK \* \* \*.

A somewhat similar Martin advertisement had appeared in the Sunday News, December 18, 1955, the price there stated being \$7.77. Statements of the same or similar import were used by respondents in radio and television advertisements, the only substantive difference being in the price of the products advertised.

5. By and through the use of the aforementioned statements in their advertising, and other statements of the same or similar import not set out herein, respondents represented, contrary to fact, that they were making a bona fide offer to sell to the public

the advertised storm windows and screens for prices stated in the advertisements, providing, in some instances, that a minimum number were purchased.

6. Actually respondents were not interested in selling and were not making a bona fide offer to sell the advertised products at the advertised prices. The advertisements were for the purpose of obtaining leads and information as to persons to whom higher-priced combination storm windows and doors could be sold. This conclusion is amply warranted by the record.

7. Approximately twenty individuals, customers, prospective customers, or investigators of Martin Window Company, Famous Window Company, Inc., and Famous Window Company of Pennsylvania, were witnesses in New York, Detroit and Pittsburgh. All testified substantially alike—that they had been contacted by salesmen of one of the named respondent companies; that the advertised window was shown and briefly described; that in many cases a purchase contract was signed and deposit made; that thereafter the salesman began to deprecate the window, and exerted much effort to, and in many cases did, sell a much higher-priced product; that in such cases the original order was destroyed; that in some instances where sale of the higher-priced window was not consummated, delivery of the cheaper windows was not made. The testimony of the customer-witnesses who appeared at the Detroit hearing is typical.

8. One, an elevator operator, heard and saw a television commercial pertaining to a combination storm window and screen which was offered for \$7.88. He called the telephone number given. A salesman from Famous Window Company, Inc., came out, inquired as to how many windows were needed, showed the advertised window, “talked and talked and talked” about the window, then said, “‘Look,’ he says, ‘Gordon,’ [the witness name] he says, ‘I got a good window here,’ referring to a better window he had with him. ‘Now you take this window, this is a better window. It will not pit, it wouldn’t corrode, and you wouldn’t have half as much trouble, plus you’re getting a free door.’” The salesman, who was there at least a couple of hours, stated that the advertised window was a good window, but that it would pit and corrode, and would have to be cleaned with steel wool a couple of times a month. The witness eventually signed an order for some fourteen of the better windows for a total of approximately \$507.00.

9. Another witness, a Hamtramck food inspector, saw a tele-

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vision commercial, advertising storm windows and screens, first for \$10.00, then for \$9.00, then about a week later for \$7.88. He called the number given—Famous, Inc. and a salesman came, bringing an advertised window sample. The witness said he didn't want to sign a contract, but the salesman told him it was the last day, so he signed a contract for eighteen windows at \$7.88 each. Then the salesman said, "But wait a minute, I didn't tell you. This window is not as good," adding that it would corrode and had to be cleaned with steel wool. The witness refused to buy the better window which was then offered him, and said he would still take the cheaper one, whereupon the salesman said, "I will be honest with you. We're all out. We don't have any more of this kind of windows." Later some lady from Famous called the witness and reiterated that they were all out of the cheap window, but had the better-quality ones. The witness told her then to cancel the order and send back his deposit, which later was done.

10. Another witness, a housewife, saw the windows advertised on television for \$10.00. A Famous, Inc., salesman came in response to her telephone call, and after some discussion a contract was signed by her and her husband for eight windows at \$10.00 each; \$40.00 was paid down. Then the salesman said, "Well, could I show you my better windows?" During the hour which followed, the salesman said the advertised windows would have to be steel-wooled every three months to keep them from corroding; that eventually the rubber around the window would crack; that if they didn't fit just right the workmen would have to do certain types of work which would cost extra; that he wouldn't want to live in a house which had that type of storm windows. As a result of this talk, "we ended up tearing up the contract and the check."

11. Still another witness from Van Dyke, Mich., saw the \$10.00 television commercial, and was visited by a salesman who sold her and her husband a better window after disparaging the advertised product. "He told us we would have to, every three months, take them off from the house, be sanded and then waxed with a simonize, and he said if not, they would rust and be no good." He added that he had a better window "which we bought at \$29.95 or \$29.75 each."

12. In January or February of 1956 an inquiry in response to a \$7.88 television advertisement was made by an assistant vice-president of a Detroit bank, and a Famous salesman called,

bringing with him the cheap window, which he did not seem to be "particularly eager to sell." The salesman said the window was not good; they would not recommend it; it would turn black, and no bank would finance it. He then brought in a better window which he priced at \$46.00, but said, "if I'd take ten I could have them at \$30.00." When the witness insisted on taking the cheaper window, the salesman said he would take an order, but 50% would have to be paid cash in advance; that the deal would have to be closed immediately; and that it would be at least six weeks before the windows could be delivered. No contract was signed.

13. In Detroit and New York the operations of respondents were checked by the Better Business Bureaus. A Bureau representative in Detroit testified that in the latter part of 1955 he saw the windows advertised over television for \$10.00, completely installed. Pursuant to his telephone call, he and his wife were visited on October 25, 1955, by a Famous, Inc. salesman, who brought with him a sample of the advertised window, demonstrated it and praised it as being a very good window. Upon being told that they liked the windows, the salesman wrote up the contract, all except the price. Then he asked, "Do you know how to maintain these windows?", and added that the windows would pit and corrode and that "every so often" they would have to be rubbed down with steel wool. He praised a higher-priced window, a piece or corner of which he had with him—said it was an inset window, custom made, would fit better, and was guaranteed for approximately ten years. The price was \$30.00 per window. When unable to sell the better windows, he wrote up a contract at the advertised price, accepted a \$10.00 downpayment, and promised delivery in about five weeks. When the windows did not come, the purchasers contacted Mr. Harwood, Famous, Inc. sales manager, and received correspondence that there would be further delay. Later, in February 1956, Harwood told them the windows would never be delivered, nor would the initial payment be returned. However, a refund check was later received, dated June 28, 1956, mailed in Brooklyn, and signed by Arnold Semenoff and Oscar J. Reiss. In the meantime a false-advertising warrant against Famous Windows, Inc. had been issued in Detroit, and some financial difficulties had arisen between Famous, Inc., and Tobinick and Semenoff.

14. The Detroit Bureau representative arranged for another Famous, Inc. salesman to call upon his mother-in-law at a time when he could be present. This salesman demonstrated the ad-

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vertised window, said it was a good buy, then added, "I don't think these are the windows you want. You have \* \* \* on the house wooden storm windows. \* \* \* These advertised windows would have to be maintained, they would have to be steel-wooled, \* \* \* (O)therwise, they would pit and corrode, \* \* \* last maybe four or five years." He then demonstrated the higher-priced windows, which he said were sold by the square foot and would cost about \$50.00 apiece. He offered an allowance of \$60.00 for a storm door if the full order was signed, and finally reduced his price to approximately \$30.00 per window. The Detroit Bureau representative also sent in an inquiry based on the Apex advertisement in Life Magazine, quoted in paragraph 4 above, using the name of another Better Business Bureau employee upon whom another Famous, Inc. salesman called, on March 14, 1956, saying that "Famous is Apex and Apex is Famous. There is no difference." A tape recording was taken of his statements. He said the advertised windows were cheap windows; would pit, corrode, have to be rubbed down with steel wool, and were not guaranteed. The better windows were then described but no sale developed, so a contract was signed for six of the advertised windows, accompanied by a deposit of \$20.00. These windows were delivered and installed some time after the false-advertising action had been started in Detroit against Famous, Inc.

15. In New York an experienced private investigator working for the Better Business Bureau called upon Martin Window Company in response to an advertisement for salesmen, talked to Martin Austin, and was hired. He received instructions and with another salesman made two calls on prospects. In one case, husband and wife both being present, an order for ten of the advertised windows was taken at \$7.77 per window, and a down-payment of \$8.00 accepted. As they were about to leave, the accompanying salesman told the customers he was supposed to give them a booklet about the care of the windows, but had forgotten it. He then told them it would be necessary to wipe off the outside of the window frames every week or ten days, otherwise they would get black and pit; that he had a better window outside in the car, which he would like to demonstrate. During the demonstration, he said that the advertised windows were of poor-grade aluminum, spot welded so the panes of glass could not be removed, making it necessary to buy frame and all if a pane were broken. The glass in the better windows, he said, was readily replaceable at small cost. He told them that if he were permitted

to put up a small sign in the yard for a month, he could give them a special price on the better windows—that the ten windows ordinarily would sell for \$530.00, but he could give them a special price of \$299.44. After further discussion, this offer was accepted, a new contract signed, and the original deposit made applicable to it. Over two hours were spent on this sale. On the second prospect call, practically the same procedure was followed, an order was written up at the \$7.77 price, then the better window was brought in and demonstrated. A “special price” of \$249 was made for six windows on the promise that when more windows were needed, they would be bought from the same salesman. The regular price was quoted as \$460. A contract for the better windows was procured. Substantially the same statements were made in both cases.

16. In discussing selling price and commissions, respondent Martin Austin told this investigator that their windows were advertised at \$7.77 or \$9.79, depending on the medium used, but that they had a better window priced from \$28 to \$46. On the better window, the salesman’s commission would be \$1 on each window sold at \$28; on each window sold for more than \$28, commission would be \$1 plus 50 percent of the amount over \$28 for which the window was sold. For example, if the window were sold for \$40, the salesman would get a total of \$7—\$1 plus 50 percent of the \$12 overage. As to the advertised window, the witness was told there would be very little commission—from 15 cents to 25 cents per window; and that he could not expect to make a living selling it, “because there was next to nothing in it.”

17. Respondents Apex, Mid-Tex, Semenoff and Tobinick claim that they had nothing to do with the management, operation or control of the retail organizations whose practices have just been described and who are referred to by them as customers. The nature of the relationship, however, is disclosed by the terms of written contracts, by joint participation in advertising matters, and by other conduct. The individuals who became partners in, or officers of, the scattered retail organizations had prior thereto been employed by Semenoff and Tobinick directly or through one of the companies which they controlled. Between Semenoff and Tobinick or one of their companies and each separate retail organization there existed a formal contract.

18. Between the partnership, Martin Window Company, and Mid-Tex there was a contract dated September 16, 1955, in which Mid-Tex was referred to as seller and Martin Company as buyer.

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Among other things the contract recited that the seller had advanced "substantial credit" for use of the buyer and would make available to the buyer "various lists of customers, trade secrets and information of a confidential nature." It was agreed that (1) the seller would furnish the entire requirements of the buyer, who would buy exclusively from the seller all storm windows and doors needed; (2) the buyer would "purchase from the Seller all advertising obtained by the Seller" appertaining to the New York area; (3) the seller should have the "sole right to purchase advertising in newspapers, radio, and other advertising media to promote the sale of the Buyer's products"; (4) the buyer would pay the seller all the cost thereof plus an additional service charge of 15 percent; (5) the price of storm doors and windows to the buyer would be seller's cost plus shipping expenses and overhead plus \$1, but in no event less than \$12 per window; (6) neither partner, Rachell or Austin, would, during the term of the contract or within three years after its termination, engage in the same or any similar line of business within a radius of 100 miles from New York; (7) the contract could not be assigned by the buyer without written consent of seller; (8) the buyer would "reimburse the seller for expenses in connection with services rendered to the Buyer, the sum of \$200 per week"; and (9) the seller could assign the agreement "to a corporation providing the stockholders [Semenoff and Tobinick] comprising the Seller are the principal stockholders of such corporation."

19. There was a contract between Best Window Company, described therein as a copartnership consisting of Arnold Semenoff and Sidney Tobinick, as seller, and Famous Window Company of Pennsylvania, a corporation, and Harold Brown and Jesse Kessler, individually, as buyers, entered into in July of 1955 or earlier, which was almost identical in terms to that described in paragraph 18, except that the provision restricting operations of the individual signers during or after termination of the contract applied to the Pittsburgh area, and the contract contained a further provision that at any time within six years from the date of the contract the sellers could, at their option, purchase all the stock owned by Brown and Kessler, the name, goodwill and trade secrets of the company to be included, but all the assets of the company were to be transferred to Brown and Kessler, less any outstanding liability of the company. Under the contract the stock originally issued to Brown and Kessler could not be resold by them "save with the joint consent" of Tobinick and

Semenoff. Although this contract was originally with Best, the clause relating to reimbursement provided that the buyers were to reimburse Apex at the rate of \$200 per week "for office expenses incurred in connection with the services rendered to the Buyers." In July of 1955, this contract was transferred by Best to Apex.

20. On July 26, 1955, Best entered into a contract, with Ace Window Company of Missouri and its individual officers, only slightly different from the contract between Best and Famous of Pennsylvania. The restrictive provisions were applicable to the Kansas City area; the six-year option to purchase stock provided for the payment to the three Ace officers, Herbert Armstrong, Albert H. Nadler and Dolph Greene, of an amount equal to the original price paid by them. This contract also was assigned by Best to Apex. There was a similar contract between Best or Semenoff and Tobinick, in one of their other capacities, as seller, and Famous Window Company, Inc., a Michigan corporation, and its officers individually, as buyer. The voting stock in each of the retailing corporations was held by Semenoff and Tobinick, the participating but nonvoting stock being held by the individuals serving as officers.

21. Respondents Semenoff and Tobinick, either personally or through one of the companies which they owned and controlled, engaged an advertising agency to prepare and arrange for the publication and broadcasting of advertisements of storm windows, screens and doors, and assumed the obligation of paying for the same. However, pursuant to the terms of the various contracts, the cost was allocated among and charged to the various retail organizations who benefited thereby. For example, the Life advertisement included a list of telephone numbers in the metropolitan areas of New York, Detroit, Kansas City, Pittsburgh, Boston, Chicago, and Indianapolis, through which one of the retailing organizations could be contacted by prospective customers, but was charged to and paid for by Semenoff and Tobinick, who in turn, after adding 15 percent for their own services, allocated the cost among the various benefiting retailing organizations and presumably collected from them. The handling of local advertising was similar. The record shows a billing dated July 15, 1955, from Apex to Famous of Pennsylvania for 26 one-minute spot Famous advertisements carried over WBBW during the week of July 12, 1955 to July 17, 1955, the charge amounting to \$208.40, of which \$181.22 was the station's charge and \$27.18

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was Semenoff and Tobinick's 15 percent service charge. Illustrative of another phase of the operation is a billing of the advertising agency to Mid-Tex, dated January 18, 1956, in the amount of \$579.78 for newspaper and agency service charge covering a Martin advertisement in the New York Daily Mirror, Sunday, January 15, 1956.

22. The participation of Semenoff and Tobinick in the advertising program was described by a representative of the advertising agency who said the general advertising was arranged for, approved and paid for by Semenoff and Tobinick; that as to local advertising, the several retail organizations were consulted, and frequently conferences were held in which Semenoff and Tobinick and representatives of the local organizations sat down and discussed with the advertising agency representative the various matters involved. One typical conference, held in Pittsburgh, was described as follows, the advertising agency representative being on the witness stand: "Mr. Semenoff, Mr. Tobinick, one of my account executives and myself, Mr. Brown, Mr. Kessler had more or less a round-table discussion with the pros and cons and so forth with my so-called expert opinion thrown in between." Thus an advertising program was agreed upon.

23. From all the circumstances, it is found that Apex and Mid-Tex, through their officers, and Semenoff and Tobinick individually, actively participated in the formulation, direction and control of the policies, acts and practices of the several retailing corporations and partnerships named, particularly including policies, acts and practices relating to advertising.

## CONCLUSION

(a) The advertising, and other acts and practices hereinabove delineated, are false, misleading and deceptive, and had and have the capacity and tendency to mislead and deceive the purchasing public, inducing them to purchase substantial quantities of respondents' products. As a result thereof, trade in commerce has been unfairly diverted to the respondents from their competitors and injury has been done to the public.

(b) The aforesaid acts and practices of the respondents were and are to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of com-

petition in commerce, within the intent and meaning of the Federal Trade Commission Act.

(c) This proceeding is in the public interest. Accordingly,

*It is ordered,* That respondents Mid-Tex Corporation, a corporation; Apex Window Company, Inc., a corporation, and Arnold Semenoff and Sidney Tobinick, individually and as officers of said corporations; Martin Austin and Jack Rachell, individually and as copartners trading as Martin Window Company; Famous Window Co., Inc., a corporation, and Oscar J. Reiss and Sam Spector, individually and as officers of said corporation; Ace Window Company of Missouri, Inc., a corporation, and Albert H. Nadler, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of storm doors, windows, screens, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that such storm doors, windows, screens or other products are offered for sale, when such offer is not a *bona fide* offer to sell such products.

DECISION OF THE COMMISSION AND ORDER TO FILE  
REPORT OF COMPLIANCE

The Commission having issued its decision on May 8, 1958, in disposition of this proceeding with respect to the respondents therein designated and the hearing examiner having filed an initial decision on May 13, 1958, disposing of the charges of the complaint insofar as they relate to certain of the respondents additionally named as parties to this proceeding, and the Commission on June 27, 1958, having stayed until further order the date on which that initial decision would otherwise become the decision of the Commission pursuant to the provisions of §3.21 of the Commission's Rules of Practice; and

It appearing that said initial decision fails to dispose in any manner of the charges of the complaint insofar as they relate to respondents Dolph Greene and Herbert Armstrong, as to whom service of the complaint in this proceeding could not be effected, but the Commission having further determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding as to the respondents named in the order contained in the initial decision:

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*It is ordered,* That the charges of the complaint be, and they hereby are, dismissed insofar as they relate to respondents Dolph Greene and Herbert Armstrong, such action being without prejudice to the right of the Commission to reopen this proceeding or to take such other action in the future respecting them as may be warranted by then existing circumstances.

*It is further ordered,* That the aforesaid initial decision be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondents Mid-Tex Corporation, Apex Window Company, Inc., Arnold Semenoff, Sidney Tobinick, Martin Austin, Jack Rachell, Famous Window Co., Inc., Oscar J. Reiss, Sam Spector, Ace Window Company of Missouri, Inc., and Albert H. Nadler 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 the order to cease and desist.

## Complaint

IN THE MATTER OF  
SPERRY RAND CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT AND OF SECS. 2(a) AND 2(d)  
OF THE CLAYTON ACT

*Docket 6701. Complaint, Dec. 27, 1956—Decision, Nov. 3, 1958*

Consent order requiring the largest producer of electric shavers in the United States, with sales volume for 1955 approximating \$44,000,000, to cease discriminating in price by selling its "Remington" electric shavers to any purchaser at net prices higher than those charged its competitors, and by paying advertising or other allowances in varying amounts to some customers but not to their competitors or in amounts not equal to the same percentage of the latter's net purchases; and to cease fixing and maintaining minimum wholesale and retail resale prices for its customers competing with its own wholly owned branches and its retail or service stores.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Sperry Rand Corporation has violated, and is now violating, the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and has been, and is now, using unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public the Commission hereby issues its complaint charging as follows:

## Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Sperry Rand Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Rockefeller Plaza,, New York, N.Y.

PAR. 2. Respondent Sperry Rand Corporation is the successor by consolidation or merger of Remington Rand, Inc., and the Sperry Corporation, which consolidation or merger became effective on June 30, 1955.

Respondent Sperry Rand Corporation is made up of two principal divisions, the Sperry division and the Remington Rand