

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of February 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

ARMSTRONG ALUMINUM WINDOW CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8127. Complaint, Sept. 26, 1960—Decision, Feb. 9, 1961

Consent order requiring a West Springfield, Mass., distributor of aluminum siding, storm windows and doors, aluminum patios, etc., to cease making offers to sell in advertising in newspapers and other media which were not bona fide but were made to obtain leads to prospective buyers, whose purchases at the advertised prices they then discouraged and to whom they attempted to sell much higher priced products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Armstrong Aluminum Window Co., Inc., a corporation, and Leonard B. Paul, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Armstrong Aluminum Window Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 1702 Riverdale Road, West Springfield, Massachusetts.

Respondent Leonard B. Paul is an officer of the corporate respondent. He formulates, directs and controls the policies, practices and acts of said corporate respondent, including the practices and acts

hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time past have been, engaged in the advertising, offering for sale, sale and distribution of various items of merchandise suitable for installation in private homes, including aluminum siding, storm windows and doors, and aluminum patios.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time past have caused, their said products to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in the State of Connecticut, and maintain, and at all times have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their aluminum products, respondents have made statements in newspapers and other media, typical of which, but not all inclusive are the following:

Save Now! Pay
Next Fall
Aluminum Siding
Includes Labor
And Materials
No Extras
Any 5-Room House
Completely Installed
Only \$329
Up to 1000 sq. ft.
Aluminum Siding
Cover your entire house
Completely Installed
\$299 Per 1000 sq. ft.
In 14 Beautiful colors
No Down Payment

PAR. 5. By means of the statements in the aforesaid advertisements, and others of the same import not specifically set out herein, respondents represented, directly or by implication, that they were making a bona fide offer to sell the product advertised at the price set out in the advertisements.

PAR. 6. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact:

1. The offers set forth in Paragraph Four above were not genuine and bona fide offers but were made for the purpose of obtaining leads and information as to persons interested in the purchase of respondent's products. After obtaining such leads through response

to such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the advertised products at the advertised price, but, instead, disparaged such products in such a manner as to discourage their purchase and attempted to, and frequently did, sell much higher priced products.

2. Prospective customers who did purchase certain of respondents advertised products were in many instances switched to more expensive items after such a sale by respondents' practice of not delivering the purchased product to the homeowner.

PAR. 7. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all 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 competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Theodor P. von Brand, Esq., for the Commission.

Irving Fein, Esq., of Springfield, Mass., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on September 26, 1960, issued its complaint against the above-named respondents charging them with having violated the Federal Trade Commission Act, by misrepresenting the price of their products. Respondents appeared and entered into an agreement dated December 1, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to

act as hearing examiner herein, for his consideration in accordance with §3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Armstrong Aluminum Window Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 1702 Riverdale Road, in the City of West Springfield, State of Massachusetts.

2. Individual respondent Leonard B. Paul is President and Treasurer of the corporate respondent. He formulates, directs and controls the policies, practices and acts of said corporate respondent. His address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

Complaint

58 F.T.C.

It is ordered, That respondents Armstrong Aluminum Window Co., Inc., and its officers, and Leonard B. Paul, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of aluminum siding, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or indirectly, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

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Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of February 1961, become the decision of the Commission; and accordingly:

It is ordered, That the above-named respondents 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.