

IN THE MATTER OF
COMMERCE CONTRACTING COMPANY ET AL.

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

Docket 8125. Complaint, Sept. 26, 1960—Decision, Sept. 14, 1961

Consent order requiring affiliated concerns in Baltimore and Washington, D.C., to cease using deception in the sale of aluminum siding and storm windows and doors, including false statements by their salesmen that they represented the Kaiser Aluminum Company and the Reynolds Aluminum Company, and that the prospective customer's home had been selected as a "model home" and as a result, the purchaser would receive \$50 for each additional customer secured after viewing the installation.

Complaint

59 F.T.C.

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 Commerce Contracting Company, a corporation, Columbia Contracting Company, a corporation, and Bernard Caplan and Stanley Bergstein, individually and as officers of said corporation; Phillip Brouman, individually and as an officer of Commerce Contracting Company, and Tevis Margolis, individually and as an officer of Columbia Contracting Company, 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. Respondents Commerce Contracting Company and Columbia Contracting Company are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland. The principal office and place of business of Commerce Contracting Company is located at 1003 West North Avenue, in the City of Baltimore, State of Maryland, and the principal office and place of business of Columbia Contracting Company is located at 2009 Bunker Hill Road, N.E., in the City of Washington, D.C.

Respondents Bernard Caplan and Stanley Bergstein are officers of the corporate respondents. Respondent Phillip Brouman is an officer of Commerce Contracting Company and Tevis Margolis is an officer of Columbia Contracting Company. These individual respondents formulate, direct and control the acts and practices of the corporate respondents of which they are officers, including those set forth hereinafter in this complaint.

The address of respondents Bernard Caplan, Stanley Bergstein and Tevis Margolis is the same as that of the corporate respondent Commerce Contracting Company. The address of Phillip Brouman is 5910 Penn Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum siding, storm windows and doors, and installation thereof, to home owners.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the State of Maryland and in the District of Columbia to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein 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 siding, storm windows and doors, respondents have made certain statements with respect to the companies they represent. Salesmen of the respondent Commerce Contracting Company state to prospective purchasers that they represent the Kaiser Aluminum Company, ask prospective purchasers if they have seen their television program "Maverick" and further state to prospective purchasers that their homes have been selected as a "model home" in the community, and that said prospective purchasers, as a result thereof, will receive \$50 for each additional customer secured by respondent after such additional customer views the installation on the prospective customers' homes.

Salesmen of the Columbia Contracting Company state to prospective purchasers that they represent the Reynolds Aluminum Company and that the prospective customers' homes have been selected as a "model home" in the community, and that said purchasers, as a result thereof, will receive \$50 for each additional customer secured by respondent after such additional customer views the installation on the prospective customers' homes.

PAR. 5. Said statements are false, misleading and deceptive. In truth and in fact, salesmen or representatives of the Commerce Contracting Company do not represent, and have never represented or been agents of, or connected with, the Kaiser Aluminum Company, and in fact, salesmen of or representatives of Columbia Contracting Company do not represent, and have never represented or been agents of or connected with the Reynolds Aluminum Company. In truth and in fact, no "model homes" were selected by either company nor did purchasers ever receive any premium or emolument for any similar installation on other homes in their community as a result of their own installation.

PAR. 6. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale and installation of aluminum siding and storm windows and doors of the same general kind and nature as those sold by respondent.

PAR. 7. The use by the respondents of the above false, misleading and deceptive statements 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 said 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. 8. The aforesaid acts and practices of the 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.

Mr. Morton Nesmith for the Commission:

Mr. Harry W. League, Jr., and *Mr. Maurice Cardin.* of Baltimore, Md., 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 misrepresentations in connection with the sale of their products. Respondents appeared and entered into an agreement dated June 15, 1961, 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 and 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 of 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 issues the following order:

1. Respondents Commerce Contracting Company and Columbia Contracting Company are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland. The principal office and place of business of Commerce Contracting Company is located at 1003 West North Avenue, in the City of Baltimore, State of Maryland, and the principal office and place of business of Columbia Contracting Company is located at 2009 Bunker Hill Road, N.E., in the City of Washington, D.C.

Respondent Phillip Brouman, although an officer of respondent Commerce Contracting Company, did not formulate, direct or control the policies, acts and practices of said corporation, and is not bound hereby individually.

Respondents Bernard Caplan and Stanley Bergstein are officers of both corporate respondents. Respondent Tevis Margolis is an officer of respondent Columbia Contracting Company. These individual respondents formulate, direct and control the policies, acts and practices of said corporations.

The address of respondents Bernard Caplan and Stanley Bergstein is the same as that of the corporate respondent Commerce Contracting Company. The address of respondent Tevis Margolis is the same as that of the corporate respondent Columbia Contracting Company. The address of respondent Phillip Brouman is 5910 Penn Avenue, Pittsburgh, Pennsylvania.

2. 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.

It is ordered, That respondents Commerce Contracting Company, a corporation, Columbia Contracting Company, a corporation, and their officers, and Bernard Caplan and Stanley Bergstein, individually and as officers of said corporations, Phillip Brouman, as an officer of respondent Commerce Contracting Company and Tevis Margolis,

individually and as an officer of Columbia Contracting Company, 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, storm windows and doors, and 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:

1. That they are representatives or agents of, or connected in any manner with, the Kaiser Aluminum Company, the Reynolds Aluminum Company; or are representatives of or connected with any other firm or corporation unless such is the fact;

2. That prospective purchasers' homes have been selected as "model homes" or that the owners thereof will receive any amount of money or other thing of value predicated upon similar work being done on other homes in the community.

It is further ordered, That the allegations of the complaint be, and the same are hereby, dismissed as to the respondent Phillip Brouman individually.

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 did, on the 14th day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Commerce Contracting Company, a corporation, Columbia Contracting Company, a corporation, and their officers, and Bernard Caplan and Stanley Bergstein, individually and as officers of said corporations; Phillip Brouman, as an officer of respondent Commerce Contracting Company and Tevis Margolis, individually and as an officer of Columbia Contracting Company, 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.

IN THE MATTER OF

MURRAY LUBELL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS