

any buyer.

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

IN THE MATTER OF
MISSOURI-KANSAS FURNACE COMPANY ET AL.

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

Docket 8847. Complaint, Apr. 5, 1961—Decision, Sept. 20, 1961

Consent order requiring a Kansas City firm to cease using scare tactics and other unfair means to sell its furnaces, heating equipment and parts and to get repair jobs, including deceptive offers of free inspection and low-cost cleaning services, representing its sales and service men falsely as engineers, misinforming the home owner that his furnace is defective or dangerous, dismantling furnaces and refusing to reassemble them, etc.

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 the Missouri-Kansas Furnace Company, a corporation, and Harley H. Pruitt, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Missouri-Kansas Furnace Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 429 East 6th Street, Trafficway, Kansas City, Missouri.

Respondent Harley H. Pruitt is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of furnaces, heating equipment and parts therefor to the purchasing public, and in the repair and servicing of heating equipment.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their principal place of business in the State of Missouri to purchasers thereof located in the States of the United States other than the State in which the shipments originated. In the course of the repairing of furnaces, heating equipment or the parts thereof, respondents have sent their employees to repair and service such furnaces, heating equipment and the parts thereof at the homes of customers located in States of the United States other than the State in which the principal office and place of business of the corporate respondent was located, and at all times mentioned herein respondents have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of selling their products or services, respondents, directly and through representatives, employ many unfair and deceptive practices. Among and typical of such practices are the following:

(1) Respondents through phone solicitations and otherwise offer free inspection services or low cost cleaning services, thereby gaining access to home owners' heating plants or equipment.

(2) Respondents' salesmen and servicemen falsely represent themselves or each other to be engineers.

(3) Respondents' salesmen and servicemen falsely represent to the owner of a furnace or heating equipment that the said furnace or heating equipment is defective, is not reparable, or is dangerous to use, to the extent that continued use will result in asphyxiation, carbon monoxide poisoning, fires or other damage.

(4) Respondents' employees have refused to reassemble furnaces which they have dismantled or have left them unassembled for long

periods of time and have misrepresented the condition of such furnaces, and have stated to the owners of such furnaces and heating equipment that reassembling and continued use of the equipment will result in gas poisoning, asphyxiation, or fires, when such is not the fact. In this connection, the employees of respondents have misrepresented the condition of the furnaces and asserted, contrary to the fact, that the continued use thereof would be dangerous, thereby causing the owners of said furnaces to purchase furnaces or parts thereof from respondents, which they would not have otherwise purchased.

PAR. 5. 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 in the sale, repair and servicing of furnaces, heating equipment and the parts thereof of the same general kind and nature as sold, repaired or serviced by respondents.

PAR. 6. The use by respondents of the aforesaid acts and practices in connection with the conduct of their business has had, and now has, the capacity and tendency to mislead and deceive a substantial number of the public, to cause many owners of furnaces and heating equipment, through fear of continuing to use such equipment, to discard such furnaces and heating equipment before the completion of the useful life of such products and to purchase furnaces, heating equipment and parts thereof sold by respondents, or to contract for extensive but unnecessary repairs of existing furnaces and heating equipment. As a result thereof, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 7. 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.

Mr. James A. Broaddus, Kansas City, Mo., for respondents.

Mr. Anthony J. Kennedy, Jr., and *Mr. John W. Brookfield, Jr.*, supporting the complaint.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding issued against the above-named respondents on April 5, 1961. It charges respondents with violation of the Federal Trade Commission Act by making false, misleading, and deceptive representations in selling their furnaces, heating equipment, and parts therefor, in commerce, as "commerce" is defined in the Fed-

eral Trade Commission Act. A copy of the complaint was served upon respondents as required by law; respondents answered the complaint; and the cause was set down for a hearing which was convened. Thereafter, respondents, through their counsel, entered into an agreement dated July 25, 1961, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Acting Chief, Division of General Advertising, and the Director, Bureau of Deceptive Practices. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. The agreement was submitted to the undersigned hearing examiner on August 2, 1961, for his consideration, in accordance with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and 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.

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

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Missouri-Kansas Furance Company is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 429 West 6th Street (erroneously designated in complaint as 429 East 6th Street), Trafficway, Kansas City, Missouri;

3. Respondent Harley H. Pruitt is an officer of the said corporation. He formulates, directs and controls the acts and practices of the corporate respondent. His address is the same as that of the corporate respondent;

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

5. The complaint filed herein states a cause of action against the respondents under the Federal Trade Commission Act; and this proceeding is in the public interest. Now, therefore,

It is ordered, That the Missouri-Kansas Furnace Company, a corporation, its officers and Harley H. Pruitt, individually and as an officer of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the sale, repair or servicing of furnaces, heating equipment or the parts thereof, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Respondents will inspect without charge or clean a prospective customer's furnace or heating equipment for a nominal fee unless, as a matter of fact, such offer is a bona fide offer to inspect or to clean such furnace or heating equipment;

(b) Respondents' salesmen or servicemen are engineers;

(c) Any furnace, heating equipment or parts thereof are defective, not repairable or repairable only at extensive cost, unless such are the facts;

(d) The continued use of any furnace, heating equipment or parts thereof is dangerous or hazardous to the health of the owner thereof or his family, due to escaping carbon monoxide, fire or other causes, unless such are the facts;

(e) A furnace which has been dismantled by respondents' employees cannot be reassembled and used without danger of asphyxiation, gas poisoning, fires or other damage, when such is not a fact;

2. Refusing to immediately reassemble, at the request of the owner, any furnace which has been dismantled by respondents' employees;

3. Misrepresenting in any manner the condition of any furnace, heating equipment or the parts thereof which have been inspected by respondents or their employees.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 20th day of September 1961, become the decision of the Commission; and, accordingly: