

CENTRAL CONSTRUCTION COMPANY ET AL.

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

Docket 8378. Complaint, Apr. 26, 1961—Decision, Oct. 24, 1961

Consent order requiring an Omaha seller and installer of building siding to cease representing falsely in advertising and through its salesmen that it offered reduced prices to home and building owners who permitted their

property to be used for demonstrations and advertising, and that it would pay them commissions on resulting sales to others; that said offers must be accepted at once; and that the soliciting salesman was an officer, co-owner, or engineer of the corporation.

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 Central Construction Company, a corporation, and Irving Herzog and Jack J. Schrager, individually and as officers 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. Central Construction Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal place of business located at 2301 Cuming Street, Omaha, Nebraska.

Respondents Irving Herzog and Jack J. Schrager are individuals and officers of the aforesaid corporate respondent, with their offices and principal place of business located at the same address as that of the corporate respondent. Said individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of house or building siding and roofing materials. Respondents' sales of said materials are at retail to the owners of houses or buildings. Respondents cause, and have cause, said siding and roofing materials, when sold, to be shipped from their aforesaid place of business in the State of Nebraska to purchasers thereof located in various other States of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said siding materials, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have been, and now are, in direct substantial competition with other individuals and with various firms and corporations in the sale and installation, in commerce, of house and building siding materials.

PAR. 4. In the course and conduct of their said business, as aforesaid, and for the purpose of inducing the purchase of their said mate-

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rials, respondents have made, and are continuing to make, various statements in letters, circulars, folders and other advertising material sent, mailed or published by respondents or their agents, representatives or employees, and in sales talks made by their salesmen to prospective purchasers. Through the aforesaid statements respondents represented, directly or indirectly, that:

1. They are offering their siding materials and the installation thereof at reduced prices from their usual and customary prices to prospective purchasers who will permit their homes or buildings to be used for demonstrations and advertising after purchase and completion of the improvements.

2. They will use the homes or buildings of such purchasers for demonstration or advertising purposes and will pay commissions to such purchasers when sales are made to others as a result of such demonstrations or advertising.

3. The said offer of reduced prices must be accepted at once or within a limited time.

4. Respondents' representative or salesman, soliciting the sale of materials, is an officer, co-owner or engineer of the corporate respondent.

PAR. 5. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. The prices at which respondents offer their siding materials and installation thereof to persons, who agree that their homes or buildings may be used for demonstration purposes, are not reduced prices from respondents' usual and customary prices but are respondents' usual and customary prices.

2. Respondents do not use the homes or buildings of such purchasers for demonstration or advertising purposes and do not pay commissions to such persons. This practice is engaged in for the purpose of leading prospective purchasers into the belief that they are obtaining a reduced price which will be further reduced by commissions, both of which are untrue.

3. Respondents' offer need not be accepted at once or within a limited time.

4. Respondents' representatives or salesmen, soliciting the sale of materials, are not officers, co-owners or engineers of the corporate respondent.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices had, and now has, the tendency and capacity to mislead and deceive a substantial portion 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' siding materials because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has 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. William A. Somers supporting the complaint.

Abrahams, Kaslow & Cassman of Omaha, Nebr., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission duly issued its complaint in this matter on April 26, 1961, charging violation of Section 5 of the Federal Trade Commission Act in connection with the sale, distribution and installation of house or building siding and roofing materials. The complaint alleged false, misleading and deceptive statements, representations and practices with respect to prices charged, demonstration or advertising commissions, limited offers, and salesmen's positions.

On August 24, 1961, counsel submitted to the undersigned hearing examiner an agreement for the entry of an order on consent without further notice dated August 23, 1961 and executed by respondents, their counsel and counsel supporting the complaint. Said agreement was duly approved by the Acting Chief of the Division of General Advertising and by the Director of the Bureau of Deceptive Practices.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent parties of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

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(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders.

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law.

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of 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.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Central Construction Company is a corporation existing and doing business under and by virtue of the laws of the State of Nebraska. Respondents Irving Herzog and Jack J. Schrager are individuals and officers of said corporate respondent. The office and principal place of business of said respondents is located at 2301 Cumming Street, Omaha, Nebraska.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Central Construction Company, a corporation, and its officers, and Irving Herzog and Jack J. Schrager, individually and as officers 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 building siding, or other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Any product is offered for sale at a reduced price from respondents' usual price, unless the price at which it is offered constitutes a

reduction from the price at which the product has been usually and customarily sold by respondents in the recent regular course of business.

2. The homes or buildings of the purchasers of their products will be used for demonstration or advertising purposes or that respondents will pay commissions to such purchasers when sales are made as a result of such demonstrations or advertising, or for any other reason, unless such is the fact.

3. Any offer must be accepted at any specific time or within any limited time, unless such is the fact.

4. Any person represents or is connected with the Central Construction Company or with any other company or person, in any manner or capacity, that is not in accordance with the facts.

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 24th day of October, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.