

## Complaint

## IN THE MATTER OF

## MICHAEL-LAWRENCE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-30. Complaint, Nov. 21, 1961—Decision, Nov. 21, 1961*

Consent order requiring Inglewood, Calif., manufacturers of their "Sincere" or "Outside White Paint" to cease representing falsely in letters and advertising literature mailed to purchasers that they offer limited amounts of distress merchandise at special reduced prices; and to cease misrepresenting the durability, quality, ingredients, and guarantee of their said paint.

## 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 Michael-Lawrence Co., Inc., a corporation, and Samuel Swimmer, 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 Michael-Lawrence Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 535 North Eucalyptus, Inglewood, California.

Respondent Samuel Swimmer is president of respondent corporation and formulates, directs and controls its policies and practices. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for many years last past have been, engaged in the manufacture and sale of paint under the brand name of "Sincere", which they also describe as "Outside White Paint". Said paint is essentially composed of the following ingredients:

Pigment—(approximately 58% by weight) principally calcium carbonate, and to a considerably lesser extent, titanium dioxide;

Vehicle—(approximately 42% by weight) principally volatile hydrocarbon solvents and water, and to a considerably lesser extent, non-volatile matter including linseed oil, soaps, driers, etc.

PAR. 3. In the course and conduct of their business respondents ship, and have shipped, their said paint from their place of business

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in the State of California to purchasers thereof located in that State and other States of the United States, and have also shipped said paint to public warehouses located in various states for storage and transshipment to purchasers thereof located in various States of the United States, and maintain and have maintained, a substantial course of trade in said paint, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their business, are engaged in substantial competition with corporations, firms and individuals engaged in the sale and distribution of paint.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said paints, it is, and has been, the practice of respondents to mail letters and advertising literature to purchasers and prospective purchasers located in various States of the United States and therein make statements with respect to the availability, price and quality of said products. Typical, but not all inclusive, of the statements so made are the following:

In storage near you, we are holding 192 gallons of our highest grade Outside White Paint, which bears our SINCERE BRAND label . . . This paint must be moved immediately, and we will accept \$2.75 per gallon, delivered to your door. You may take all or any part of this lot . . . with the understanding that unless you are completely satisfied, material can be returned at no cost to you. Enclosed specification sheet fully describes this product. . . .

The specification sheet accompanying such form letters contains the following:

TYPE: An outside White Pure Linseed Oil and Titanium base paint, formulated for exceptional durability and protection. Will not crack, chip, peel or yellow even after long exposure on outside surfaces. Made to withstand adverse weather conditions. COVERAGE: Up to 650 sq. feet per gallon one coat, depending on the type and surface to be painted. . . . USES: All outside surfaces such as wood, metal, brick, concrete, stucco, trim and all general maintenance. Works equally well as a finish or prime coat over new or previously painted surfaces. . . . The combination of durable, high-hiding Titanium pigments, kettle bodied Pure Linseed Oil and finely ground selected extenders, gives this paint all those qualities necessary in every good exterior paint: DURABILITY, HIDING POWER and GLOSS RETENTION. As extra protection, fortified with anti-mold, mildew and fungus retardant.

Respondents also distribute point of sale brochures to be used in connection with the resale of their said paint by certain of their customers to members of the public located in various states. Typical, but not all inclusive, of the statements in said brochures, is the following:

THE TOUGH PAINT THAT ENDURES! . . . . Manufactured under a highly exclusive process—a combined sealing and hiding coat to produce

a completed finish in one operation: . . . It will not crack, chip or peel and will not yellow even after years of exposure under extreme climatic conditions. . . . Because of its Pure Titanium base, one gallon will cover up to 650 square feet solid in one coat on most surfaces. . . . Exceptionally resistant to dampness, mildew, smoke, chemical fumes, salt air and water. . . . especially formulated for DURABILITY. Remarkable results on old weather-beaten surfaces . . . Economical. Its unsurpassed HIDING POWER makes a little go a long way.

PAR. 6. Through the use and by means of the foregoing statements, and others of similar import and meaning not specifically set forth herein, respondents represented, and now represent, directly or by implication, that:

(a) Their said paint is being offered at a special reduced price of \$2.75 (and, more recently, \$2.85) a gallon.

(b) Said paint is distress merchandise and it is necessary to sell the designated quantity immediately.

(c) Only the quantity of paint set out in the advertisement is available for sale.

(d) Said paint is of excellent durability and provides excellent protection.

(e) Respondents sell more than one grade of exterior paint and their "Sincere" brand is their highest quality exterior paint.

(f) Satisfaction is guaranteed in that refunds will be made for unused cans of paint returned by the purchaser.

(g) One coat of said paint gives solid coverage.

(h) Said paint will not crack or yellow after years of exposure.

(i) Said paint is not subject to mildew.

(j) Titanium is a major ingredient in said paint.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(a) The price of \$2.75 (and, more recently, \$2.85) a gallon is not a special or reduced price but said amount is the usual and customary price at which said paint is sold by respondents.

(b) Said paint is not distress merchandise, and it is not necessary for respondents to sell any quantity of said paint immediately or at any other time.

(c) The quantity of paint on hand or otherwise available for sale is frequently greatly in excess of the amount offered for sale.

(d) Said paint is not of excellent durability nor does it provide excellent protection.

(e) The paint sold by respondents under the brand name of "Sincere" is the only exterior paint sold by them.

(f) The guarantee of satisfaction that is given by respondents is limited and conditional, which limitations and conditions and the

manner in which respondents will perform thereunder are not set out in their advertisements.

(g) One coat of said paint will not give solid coverage at reasonable spreading rates when used as directed.

(h) Said paint will crack and yellow in a relatively short period of time.

(i) Said paint is subject to mildew.

(j) Titanium is only a minor ingredient of said paint.

PAR. 8. The use by respondents of the foregoing false and misleading statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations were, and are, true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

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 methods of competition, in commerce, and unfair and deceptive acts and practices, in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

#### DISCUSSION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Michael-Lawrence Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of busi-

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ness located at 535 North Eucalyptus, in the City of Inglewood, State of California.

Respondent Samuel Swimmer is president of said corporation, and his business address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

*It is ordered*, That respondents Michael-Lawrence Co., Inc., a corporation, and its officers, and Samuel Swimmer, 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 their "Sincere" brand of paint or any other paint of substantially the same composition or possessing substantially the same properties, whether sold under said name or any other name, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(a) Any amount is a reduced price for their paint, unless it is less than the price at which respondents usually and customarily sell their paint in the normal course of business.

(b) Said paint is distress merchandise or that it is necessary to sell any designated quantity immediately, or at any other time.

(c) Only a limited or designated quantity of paint is available for sale.

(d) Said paint is of excellent durability or provides excellent protection; or that it possesses any degree of durability or provides any degree of protection that is not in accordance with the facts.

(e) Respondents sell more than one grade of paint.

(f) Such product is guaranteed, unless the terms and conditions of such guarantee and the manner and form in which the guarantor will perform are clearly set forth.

(g) One coat of said paint gives solid coverage or that one or any number of coats give coverage to any degree that is not in accordance with the facts.

(h) Said paint will not crack or yellow after years of exposure.

(i) Said paint is not subject to mildew.

(j) Titanium is a major ingredient in said paint.

*It is further 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 this order.

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IN THE MATTER OF

GRADY L. RUSHING  
DOING BUSINESS AS MARCEL COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT*Docket 8138. Complaint, Oct. 12, 1960—Decision, Nov. 27, 1961*

Order requiring a New Orleans seller of correspondence courses on civil service preparation to cease making false job-assurance claims, representing falsely connection with the U.S. Civil Service, and simulating court summons and complaint to collect unpaid balances, among other unfair practices as set forth in detail in the order below.

As to the remaining respondent, Claude I. Woolwine doing business as Universal Training Service et al., the proceeding was disposed of by consent order Sept. 28, 1962, 61 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 Claude I. Woolwine, doing business as Universal Training Service, and Grady L. Rushing, doing business as Marcel 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Claude I. Woolwine is an individual doing business as Universal Training Service, with his office and principal place of business located at 150 Powell Street, San Francisco, California.

Respondent Grady L. Rushing is an individual doing business as Marcel Company, with his office and principal place of business located at 8210 Hickory Street, New Orleans, Louisiana.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a course of study and instruction purporting to prepare purchasers thereof for United States Civil Service examinations and positions with the United States Government, which said course is pursued by correspondence through the United States mail. Respondent Grady L. Rushing, doing business as Marcel Company, has a contract with respondent Claude I. Woolwine, doing business as Universal Training Service, to supply said course of instruction to respondent Rushing's customers and for the grading of papers in connection