

1225

Complaint

tions promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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.

IN THE MATTER OF

LIFETIME, INC., ET AL.

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

Docket 7616. Complaint, Oct. 19, 1959—Decision, Dec. 1, 1961

Order requiring two associated companies engaged in home construction and improvement in Philadelphia—acting as a sales and financing organization, and sub-contracting construction and installation work to other parties—to cease using bait advertising in newspapers and other publications to get leads to prospects, which made false representations as to the costs and quality of their services and materials, guarantees, their connections with well-known concerns, and professional status of their salesmen; and to cease securing purchasers' signatures to negotiable promissory notes deceptively.

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 Lifetime, Inc., a corporation, Youngstown Homes, Inc., a corporation, and Sam Leonard and Samuel Moskowitz, individually and as officers of each of said corporations, 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 Lifetime, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Youngstown Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. Respondents Sam Leonard and Samuel Moskowitz are individuals and are president and secretary-treasurer, respectively, of each of the said corporate respondents. Said corporate respondents are wholly-owned by the said individual

Complaint

59 F.T.C.

respondents. The said individual respondents formulate, direct and control the acts, practices and policies of each of the said corporate respondents. The office and principal place of business of the respondents is located at 3931 North Broad Street, Philadelphia 40, Pennsylvania.

PAR. 2. Respondents are now, and for several years last past, have been engaged in the advertising, offering for sale, sale and distribution, and the installation and construction of houses, garages, house building materials, including stone fronts, roofs, bathrooms, heating equipment and basement water proofing.

In the course and conduct of their businesses, said respondents cause their said products, when sold, to be shipped and transported from their place of business in the State of Pennsylvania to purchasers thereof located in the various other states of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, between and among the various states of the United States and in the District of Columbia.

Advertisements offering the aforesaid products for sale are contained in newspapers and other publications which are shipped and transported from the State of Pennsylvania to various other states of the United States, including the District of Columbia.

PAR. 3. Respondents' method of doing business is to advertise their aforesaid products and services for sale in newspapers and other publications. Certain of their advertisements are under respondents' own name. Certain other advertisements are carried under the name of Youngstown Industries. Youngstown Industries, Inc., is a corporation located at 8116 Old York Road, Philadelphia, Pennsylvania, and is wholly separate and apart from the respondents. Persons responding to the aforesaid advertisements are contacted by respondents' salesmen. Such salesmen show literature to the prospective purchasers and make numerous oral representations respecting the aforesaid products and services offered by respondents. Said salesmen induce purchasers to sign contracts and enter into various financial arrangements with the respondents. Respondents act largely as a sales and financing organization. For the most part, respondents enter into sub-contracts and agreements with other parties to perform such construction and installation work as may be required. At the time of the sale purchasers are induced to execute promissory notes and other documents necessary to finance the transaction. Said promissory notes are then sold by respondents to various financial institutions.

PAR. 4. In the course and conduct of their businesses, as aforesaid, and for the purpose of soliciting the sale of the aforesaid prod-

ncts and services, respondents make numerous representations in their aforesaid advertising and by the oral statements of their salesmen respecting prices, guarantees, business associations and affiliations, status of salesman, and the composition, characteristics and quality of the aforesaid products and services.

Typical and illustrative of the aforesaid acts and practices, but not all inclusive thereof, are the following:

Stop wet, damp, leaking basements. Basements made dry without digging . . . Basement sealed from outside under pressure . . . Written guarantee with every job . . . Jobs done low as \$44.00.

. . . Youngstown Homes . . . "Completely erected . . . Including Foundations" . . . Complete shell homes erected on your lot for as low as \$1995.00! Beautiful modern bathroom . . . Complete heating system . . . Stunning "hostess" Kitchen Cabinets and Sinks. (Pictured in connection therewith is a house of ample proportions with a divided bathroom, heating plant in large basement, ample kitchen with eating space, large picture window and other characteristics indicating that the house is of substantial size.)

Youngstown one and two-car garages . . . \$300 delivered. (Pictured in connection therewith is a large, completely erected garage.)

Youngstown . . . glass-lined roofing guaranteed to out last any other roofing material.

Youngstown glass-lined roofing . . . \$66.00. (Pictured in connection therewith is roofing being applied to an entire house top.)

Youngstown stone fashioned front section . . . sale price! Act now . . . for single, or row home. Jobs done low as \$44.00. (Pictured in connection therewith is the entire front of a stone covered house.)

Home improvements . . . Modern bathroom . . . Jobs done low as \$44. (Pictured in connection therewith is a completely installed bathroom.)

Genuine Youngstown Guaranteed Automatic Heat, Gas, Forced Air, delivered \$139.00 complete with all equipment. \$50.00 cash trade-in on your old furnace. (Pictured in connection therewith is a gas fired furnace with hot air ducts.)

Guaranteed. We at Youngstown Industries unconditionally and unequivocally guarantee in writing first class craftsmanship and materials. We further agree to furnish especially trained mechanics to assure proper installation. Absolute satisfaction shall be yours.

STONE Fashion Front Section. Save up to 50% over ordinary stone.

Youngstown smashes prices! . . . Youngstown Industries. 21st at Godfrey Avenue, Philadelphia 38, Pa.

New homes for old through the magic of Youngstown's products! . . . Youngstown Industries an American institution, 11200 Roosevelt Blvd., Phila., Penna.

Respondents' salesmen in the manner aforesaid have shown literature to prospective purchasers and made oral representations containing the foregoing and other statements. Said salesmen have also stated that they were sales managers, owners of Youngstown, engineers and presented themselves in various other capacities other than as salesmen.

PAR. 5. Through the use of the foregoing statements and the pictorial representations made in connection therewith, and others of similar import and meaning, but not specifically set out herein, made

Complaint

59 F.T.C.

by respondents or their representatives, agents or employees in advertising and promotional literature and in oral presentations to prospective purchasers, respondents have represented and do now represent, directly or indirectly, to a substantial portion of the purchasing public:

(a) That basements are made water-proof for \$44.00, that large and substantial shell houses of the kind adequate to accommodate a three-compartmented bathroom, kitchen with eating space, large picture window and basement are sold for \$1995.00, that completely erected garages are sold for \$300, that glass-lined roofs are installed for \$66.00, that genuine stone fronts are installed for \$44.00 or 50% of the cost of stone, that complete bathrooms are installed for \$44.00 and that gas forced air furnaces complete with ducts and all equipment necessary for the operation thereof are sold for \$139.00;

(b) That the aforesaid products and services are unconditionally and unequivocally guaranteed;

(c) That respondents are a part of or affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, and that they are a part of or affiliated with Youngstown Industries, Inc., of Philadelphia, Pennsylvania.

(d) That respondents' salesmen are sales managers, owners of Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, engineers or have other business or professional status different from that of salesman;

(e) That the so-called glass-lined roofing will outlast any other kind of roofing material;

(f) That the so-called "stone fashion front" is genuine stone;

(g) That damp and leaking basements will be made dry without digging;

(h) That all of the aforesaid products sold and services performed by respondents would be of the first grade and the highest quality.

PAR. 6. The foregoing representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents do not and will not make a damp and leaking basement dry for \$44, do not and will not sell a large and substantial shell home of the kind hereinabove described for \$1995, do not and will not completely erect a garage for \$300, do not and will not install a glass-lined roof for \$66, do not and will not install a genuine stone front or a simulated stone front on a house for \$44 or for 50% of the cost of natural stone, do not and will not install a complete bathroom, including fixtures, for \$44 and do not and will not sell a gas forced air furnace complete with ducts and all equipment necessary for the operation thereof for \$139. The aforesaid price amounts and other

1231

Complaint

price amounts not specifically set out herein were made by respondents for the purpose of inducing prospective purchasers to make inquiries respecting the said goods and services offered for sale. Upon contacting such prospective purchasers respondents, their salesmen, agents or representatives then undertake to sell such persons other and more expensive products and services.

(b) Respondents' aforesaid products and services are not unconditionally guaranteed. Such guarantees as may be given by respondents are subject to numerous restrictions with respect to time, material and services.

(c) Respondents are not a part of or in any manner affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, nor are they a part of Youngstown Industries, Inc., of Philadelphia, Pennsylvania.

In truth and in fact, respondents have a kind of joint advertising arrangement with the said Youngstown Industries, Inc., of Philadelphia, wherein Youngstown Industries, Inc. specializes in one line of house building materials and repairs and respondents specialize in another type and kind of house building materials and repairs and construction.

(d) Respondents' salesmen are not sales managers or owners of Youngstown Kitchens or engineers, nor do they occupy any other business or professional status other than that of salesman.

(e) Respondents' glass-lined roofing will not outlast any other kind of roofing materials.

(f) The so-called stone offered for sale by respondents is not genuine stone in its natural state.

(g) Respondents are unable to make all basements dry without digging.

(h) All of the goods sold and services performed by respondents are not of first-class and high quality. Many of the products sold and the services performed by the respondents are deficient and defective. For example, roofs and stone fronts leaked, bathroom fixtures were not properly installed, heating units did not adequately perform, and various other deficiencies and defects characterized respondents' said products and services.

PAR. 7. Respondents' salesmen, in the manner aforesaid, have represented and implied that respondents did their own financing, and that respondents held the promissory notes executed by purchaser or that purchasers were signing a duplicate copy of the contract when in fact they were signing a negotiable promissory note and in other ways induced such purchasers without knowledge to sign negotiable promis-

sory notes providing for the payment of financing charges in amounts not agreed to by them. Subsequent to the receipt of said promissory notes, respondents have transferred said notes to various purchasers who take and hold said notes as bona fide holders for value without notice and demand payment thereof free from the agreements and obligations existing between respondents and said purchasers.

PAR. 8. Youngstown Kitchens is a division of American Radiator and Standard Sanitary Corporation, 520 Ellsworth Avenue, Salem, Ohio. The products of the said Youngstown Kitchens are nationally advertised and widely sold.

PAR. 9. Respondents, in the course and conduct of their business, as aforesaid, are in substantial competition in commerce with other corporations and with individuals, partnerships and others engaged in the sale and distribution of houses, garages and building materials, including stone fronts, roofs, bathrooms, heating equipment and basement water proofing.

PAR. 10. The use by respondents of the foregoing false, misleading and deceptive representations and statements has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true, and into the purchase of substantial quantities of respondents' said products and services because of such erroneous and mistaken beliefs. As a result thereof, trade has been unfairly diverted and is now being diverted to respondents from their competitors in commerce and substantial injury has been and is being done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral A. Jordan for the Commission.

Mr. Nathan L. Posner of *Fox, Rothschild, O'Brien & Frankel*, Philadelphia, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Respondents are charged with violation of the Federal Trade Commission Act by using false, misleading, and deceptive representations and statements in the solicitation and sale of houses, garages, and building materials including stone fronts, roofs, bathrooms, heating equipment and basement waterproofing. Respondents filed answers, requesting dismissal of the complaint. Hearings were held in Phila-

delphia, Pennsylvania, and Cleveland, Ohio, following which proposed findings and conclusions were submitted by both counsel.

The hearing examiner has given consideration to the proposed findings and conclusions, and all findings of fact and conclusions of law proposed by the parties not hereinafter found or concluded are herewith rejected.

FINDINGS OF FACT

1. Respondent Lifetime, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania. Respondent Youngstown Homes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey. The office and principal place of business of respondent Lifetime, Inc., was formerly located at 3931 North Broad Street, Philadelphia, Pennsylvania, and was later moved to 6701 North Broad Street, Philadelphia, Pennsylvania.

2. Respondents Sam Leonard and Samuel Moskowitz are individuals and are president and secretary-treasurer, respectively, of each of the said corporate respondents. Each of the individual respondents own 50% of the stock of each of the corporate respondents. The said individual respondents formulate, direct and control the acts, practices and policies of each of the said corporate respondents including the acts, practices and policies hereinafter found to have been engaged in by each of the said corporate respondents. The office and principal place of business of the individual respondents is the same as that of the corporate respondents.

3. Respondents are now, and for several years last past have been, engaged in the advertising, offering for sale, sale and distribution, and in the installation and construction of houses, garages, house building materials, including simulated stone fronts, roofs, bathrooms, heating equipment, and basement waterproofing.

In the course and conduct of their business said respondents cause their said products, when sold, to be shipped and transported from their place of business to purchasers thereof located in the various other states of the United States. Said respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said products, in commerce, between and among the various states of the United States.

Advertisements offering the aforesaid products for sale are contained in newspapers and other publications which are shipped and transported from the State of Pennsylvania to various other states of the United States. Said newspaper advertisements have induced persons residing in states other than Pennsylvania to purchase the aforesaid goods and services offered for sale by respondents.

Findings

59 F.T.C.

4. Respondents' method of doing business is to advertise their aforesaid products and services for sale in newspapers and other publications. Certain of their advertisements are under respondents' own names. Certain other advertisements are carried under the name of Youngstown Industries. Youngstown Industries, Inc., is a corporation located at 8116 Old York Road, Philadelphia, Pennsylvania, and is wholly separate and apart from respondents. Persons responding to the aforesaid advertisements are contacted by respondents' salesmen. Such salesmen show literature to the prospective purchasers and make numerous oral representations respecting the aforesaid products and services offered by the respondents. Said salesmen induce purchasers to sign contracts and enter into various financial arrangements with the respondents.

Respondents act largely as a sales and financing organization. For the most part, respondents enter into subcontracts and agreements with other parties to perform such construction and installation work as may be required. At the time of the sales, purchasers are induced to execute promissory notes and other documents necessary to finance the transaction. Said promissory notes are then sold by respondents to various financial institutions.

5. In the course and conduct of their businesses, as aforesaid, and for the purpose of soliciting the sale of the aforesaid products and services, respondents make numerous representations in their aforesaid advertising and by the oral statements of their salesmen respecting prices, guarantees, business associations and affiliations, status of salesmen, and the composition, characteristics and quality of the aforesaid products and services.

Typical and illustrative of the aforesaid acts and practices, but not all inclusive thereof, are the following:

a. Stop wet, damp, leaking basements. Basements made dry without digging Basement sealed from outside under pressure Written guarantee with every job Jobs done low as \$44.00.

b. . . . Youngstown Homes . . . "Completely erected . . . Including Foundations" . . . Complete shell homes erected on your lot for as low as \$1995.00! Beautiful modern bathroom . . . Complete heating system . . . Stunning "hostess" Kitchen Cabinets and Sinks. (Pictured in connection therewith is a house with a divided bathroom, heating plant in large basement, ample kitchen with eating space, large picture window and other characteristics indicating that the house is not of minimal size.)

c. Youngstown one and two-car garages . . . \$300 and up delivered. (Pictured in connection therewith is a large, completely erected double-car garage.)

d. Youngstown . . . glass-lined roofing guaranteed to outlast any other roofing material.

e. Youngstown glass-lined roofing . . . \$66.00. (Pictured in connection therewith is roofing being applied to an entire house top.)

f. Youngstown STONE fashion front section . . . sale price! Act now . . . for single, or row home. Jobs done low as \$44.00. (Pictured in connection therewith is the entire front of a stone-covered house.)

g. Home improvements . . . Modern bathroom . . . Jobs done low as \$44. (Pictured in connection therewith is a completely installed bathroom.)

h. Genuine Youngstown Guaranteed Automatic Heat, Gas, Forced Air, delivered \$139.00 complete with all equipment. \$50.00 cash trade-in on your old furnace. (Pictured in connection therewith is a gas-fired furnace with hot air ducts.)

i. Guarantee. We at Youngstown Industries unconditionally and unequivocally guarantee in writing first class craftsmanship and materials. We further agree to furnish especially trained mechanics to assure proper installation. Absolute satisfaction shall be yours.

j. STONE Fashion Front Section. Save up to 50% over ordinary stone.

k. Youngstown smashes prices! . . . Youngstown Industries, 21st at Godfrey Avenue, Philadelphia 38, Pa.

l. New homes for old through the magic of Youngstown's products! . . . Youngstown Industries an American institution, 11200 Roosevelt Blvd., Phila., Penna.

Respondents' salesmen in the manner aforesaid have shown literature to prospective purchasers and made oral representations containing the foregoing and other statements. Said salesmen have also stated that they were sales managers or owners of Youngstown, and presented themselves in various other capacities other than as salesmen.

6. Through the use of the foregoing statements and the pictorial representations made in connection therewith, and others of similar import and meaning, but not specifically set out herein, made by respondents or their representatives, agents or employees in advertising and promotional literature and in oral presentations to prospective purchasers, respondents have represented, directly or indirectly, to a substantial portion of the purchasing public:

(a) that all basements are made waterproof for \$44.00; that large and substantial shell houses are the kind adequate to accommodate a three compartmented bathroom, kitchen with eating space, large picture window and basement and are sold for \$1,995.00; that completely erected garages are sold for \$300.00; that glass-lined roofs are installed for \$66.00; that genuine stone fronts are installed for \$44.00 or 50% of the cost of stone; that complete bathrooms are installed for \$44.00; and that gas-fired air furnaces, complete with ducts and all other equipment necessary for the operation thereof are sold for \$139.00;

(b) that the aforesaid products and services are unconditionally and unequivocally guaranteed;

(c) that respondents are a part of or affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, and that they

Findings

59 F.T.C.

are a part of or affiliated with Youngstown Industries, Inc., Philadelphia, Pennsylvania;

(d) that respondents' salesmen are sales managers or owners of Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, salesmen for Youngstown Industries, Inc., or have other business or professional status different from that of salesmen;

(e) that the so-called glass lined roofing will outlast any other kind of roofing material;

(f) that the so-called "STONE fashion front" is genuine stone;

(g) that damp and leaking basements will be made dry without digging;

(h) that all of the aforesaid products sold and services performed by respondents are of first class and highest quality;

7. The foregoing representations are false, misleading, and deceptive. In truth and in fact:

(a) Respondents do not and will not make damp and leaking basements dry for \$44, do not and will not sell a large and substantial shell home of the kind hereinabove described for \$1995, do not and will not completely erect a garage for \$300, do not and will not install a glass-lined roof for \$66, do not and will not install a genuine stone front or a simulated stone front on a house for \$44, do not and will not install a complete bathroom, including fixtures, for \$44, and do not and will not sell a gas-fired air furnace complete with ducts and all equipment necessary for the operation thereof for \$139. The aforesaid price amounts and other price amounts not specifically set out herein were made by respondents for the purpose of inducing prospective purchasers to make inquiries respecting the said goods and services offered for sale. Upon contacting such prospective purchasers, respondents, their salesmen, agents or representatives then undertake to sell such persons other and more expensive products and services.

(b) Respondents' aforesaid products and services are not unconditionally guaranteed. Such guarantees as may be given by respondents are subject to numerous restrictions with respect to time, material and services.

(c) Respondents are not a part of or in any manner affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, nor are they a part of Youngstown Industries, Inc., of Philadelphia, Pennsylvania.

In truth and in fact, respondents have a kind of joint advertising arrangement with the Youngstown Industries, Inc., of Philadelphia, wherein Youngstown Industries, Inc., specializes in one line of house

building materials and repairs and respondents specialize in another type and kind of house building materials and repairs and construction.

(d) Respondents' salesmen are not sales managers or owners of Youngstown Kitchens, nor do they occupy any other business or professional status other than that of salesman.

(e) Respondents' glass-lined roofing will not outlast all other kinds of roofing materials.

(f) The so-called stone offered for sale by respondents is not genuine stone in its natural state.

(g) Respondents are unable to make all basements dry without digging.

(h) Not all of the goods sold and services performed by respondents are of first-class quality. Many of the products sold and the services performed by the respondents are deficient and defective. For example, roofs and stone fronts leaked, bathroom fixtures were not properly installed, heating units did not adequately perform, and various other deficiencies and defects characterized respondents' said products and services.

8. Respondents falsely represented that they did their own financing and held the promissory notes executed by purchasers and that the purchasers were signing the contract or a duplicate copy thereof when in fact they were signing a promissory note; and in other ways induced the purchasers without knowledge to sign negotiable promissory notes which provided for the payment of financing charges in amounts and on conditions not agreed to by them.

9. Youngstown Kitchens is a division of American Radiator and Standard Sanitary Corporation, 520 Ellsworth Ave., Salem, Ohio. The products of the said Youngstown Kitchen are nationally advertised and widely sold.

10. Respondents, in the course and conduct of their business, as aforesaid, are in substantial competition in commerce with other corporations and with individuals, partnerships, and others engaged in the sale and distribution of houses, garages and building materials, including simulated stone fronts, roofs, bathrooms, heating equipment and basement waterproofing.

11. The use by respondents of the foregoing false, misleading and deceptive representations and statements has had and now has the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations and statements were and are true, and into the purchase of substantial quantities of respondents' said products and services because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted and is now being diverted to respondents from their

Discussion

59 F.T.C.

competitors in commerce and substantial injury has been and is being done to competition in commerce.

DISCUSSION

Respondent, Lifetime, Inc., urges the dismissal of the complaint, arguing that the charges have not been supported by evidence. In addition, it is argued that CX 14 was admitted into evidence erroneously; that the testimony of certain witnesses was improperly permitted concerning the similarity of the advertisements seen by them with those received in evidence and concerning the terms of a written contract without production of the contract.

There is no dispute that the questioned advertisements were made by respondent Lifetime, Inc. The corporation instead argues that these advertisements were not deceptive nor were they untrue.

The advertisement with respect to "basements made dry" contains no limiting qualification and, if read literally, must be construed to be an advertisement for the water-proofing of *all* basements, not just some. The advertisement of the shell home might be open to some difference in interpretation were it not for the illustration accompanying the advertisement, showing details which are usually associated with a house of substantial size. Similarly, the illustrations contained in the advertisements would lead the reader to assume that a double-car garage could be had, installed, for \$300, a complete roofing job for \$66, and an entire stone front for \$44. The pictured bathroom jobs for \$44 are clearly complete bathrooms if one is to place any reliance on the illustration accompanying that advertisement; and the \$139 furnace "delivered complete" must be taken to include the hot air ducts which are clearly shown in the illustration for that advertisement. The use of "Youngstown Industries" in the advertisement is more than adequate as a representation that the products are those of Youngstown Industries. As respects the guarantee, the plain language requires no further explanation.

The consumer evidence adduced fully supports the meanings found for these advertisements. Appearance and general impressions are the governing criteria, and not the fine spun distinctions and arguments that may be made in excuse (*P. Lorillard Co. v. FTC*, 186 F. 2d 52, CA-4, 1950 [5 S. & D. 210]). Nor does it matter that many of the witnesses were finally persuaded to contract for one or more of the respondents' products or services at a price well in excess of the advertised price, nor that they have been well satisfied with the results at the higher price. The important thing is that they were under the impression, which was given by the advertisements and the statements of

the respondents' salesmen, that the products and services of the respondents were obtainable and at the advertised prices. The only issue that must be decided is whether, in fact, the products and services so advertised were actually obtainable and at the advertised prices.

At the outset it would be advisable to observe that actual deception of the public need not be shown in Federal Trade Commission proceedings. (See *Charles of the Ritz Dist. Corp. v. Federal Trade Commission*, 143 F. 2d 676, CA-2, 1944 [4 S. & D. 226]).

Respondent Leonard admitted that not all walls could be water-proofed for the advertised price of \$44. No such qualifying conditions were contained or suggested in the advertisement. In a tabulation of waterproofing done by respondents between October 1, 1957, and April 30, 1958, there was one job for \$150; all others ran from \$500 to \$1,000.

As respects the shell home advertised for \$1,995, respondent Leonard made it quite clear that the dimensions of the house obtainable at that price provided living space 14 feet wide by 20 feet long. That area is entirely incompatible with the advertised illustration showing a compartmented bathroom, a kitchen with breakfast area and large picture window. Moreover, although the illustrated advertisement shows a furnace in a basement, the \$1,995 shell home does not include a basement. During the period covered by the tabulation, one house was sold for \$4,700; all the other 61 houses sold during that period ranged in price from \$5,000 to over \$9,000.

As respects the garage, respondent Leonard admitted quite freely that the \$300 price was only for the lumber delivered to the premises, not for any installed garage. Again, during the tabulation period 24 garages were sold, the lowest price of which was over \$1,000 and the highest price was over \$2,000.

The advertised price of the roofing job which is illustrated appears to be the price for an entire roofing job. It is quite clear that the \$66 price was completely fictitious. One witness was told by respondents' salesman that she could not get the work done for the advertised price; instead her roofing job was \$688. Another customer testified that the respondents' salesman told her the stated price of the roofing was just advertising. During the period covered by the tabulation, 58 contracts for roofing were involved; one was for \$97, a second for \$100, and all of the others ranged in price from \$175 to \$700.

It is quite clear that the respondents had no intention of providing an entire stone front for anything like the advertising price of \$44. Respondent Leonard testified that for that price only a doorway arch or window trim would be done. One witness who thought that the advertisement meant she would have an entire stone front for \$49

(another advertised price) was told by the respondents' salesman that he didn't want to talk about the \$49 job. During the tabulated period, there were only eight stone jobs, but the lowest price was \$387 and the highest price almost \$4,000.

Respondent Leonard testified that the price of \$44, represented by the respondents to be the price for a complete bathroom, would actually cover only a half day's work to do odd jobs and was a minimum charge. The \$44, testified Mr. Leonard, did not cover the cost of providing the fixtures and installation of a bathroom. During the period covered by the tabulation, there were 28 contracts involving a bathroom, the price ranging from a low of \$617 to a high of over \$1,600.

As respects the advertised price of \$139 for a heating plant, Mr. Leonard testified that that price was only an arbitrary figure which did not cover any particular article of merchandise. Customers who dealt with the respondents under the impression that the heating plant was available at the advertised price, finally contracted for the service at a much higher figure. During the period covered by the tabulation, there were 91 heating contracts, six of which were for \$179, \$190, \$195, \$235, \$259, and \$295. All the others ranged upward in price to a maximum of over \$1,800. There were none at the advertised price.

Although the respondents' guarantees were advertised to be unconditional and unequivocal, the respondents' answer admits that the products are not unconditionally guaranteed and are subject to certain limitations in time and amount. The standard form of contract used by respondents states:

Contractor guarantees that all materials furnished by it will be of standard quality, free from defects, and will be installed or applied in a good and workmanlike manner for a period of one year from date of installation. The liability of the contractor for defective material or installation under this guarantee is hereby limited to the replacement or correction of said defective material and/or installation, and no other claims or demands whatsoever shall be made upon or required to be allowed by the contractor.

Respondent Leonard testified that the advertised expression "guaranteed heat" meant a guarantee of one year on the furnace and a guarantee of five years on the controls. He also testified that the roofing guarantee could be anywhere from one to 20 years depending upon what the salesman chose to insert in the contract. As for waterproofing, the guarantee varied from one to five years, again depending upon the salesman. In response to an inquiry from a customer as to the meaning of "lifetime guarantee," respondent Lifetime, Inc., stated it "covered one year free service on all equipment, controls and motors fully guaranteed for one year and balance of equipment guaranteed for five years." In other contracts there were no written or printed guarantees whatsoever. The representation of an uncondi-

tional and unequivocal guarantee falls in the realm of pure fiction in the light of these variations in guarantees, where in fact there were any guarantees whatever.

The advertisements of respondents appearing with the name "Youngstown Industries" and the representations by various of the respondents' salesman of a purported connection with Youngstown Industries are in fact, and admittedly so, entirely untrue. The same is true of the representations by the respondents' salesmen that they are sales managers or owners of Youngstown Kitchens.

The representations concerning the lasting qualities of the glass-lined roofing are admittedly incorrect. Respondent Leonard stated that this representation meant only that such glass-lined roofing would outlast ordinary paper built-up roofing. Inasmuch as there are many other types of roofing such as slate, copper, composition, etc., which this glass-lined roofing would not outlast, the advertised representation of outlasting any other roofing is patently false. An expert in the roofing industry testified without contradiction that the product is a maintenance material which must be renewed every five to seven years. Roofing having a greater life expectancy than five to seven years would obviously outlast the glass-lined roofing.

As respects the representation concerning the stone fronts, it is admitted that the stone offered for sale by respondents is not genuine stone in its natural state.

As respects the ability of respondents to make all basements dry without digging, respondent Leonard admitted that some basements would require digging.

Finally, as respects the quality of the work done by the respondents, the evidence in this case is most persuasive that the goods and services sold by the respondents were not always first-class quality, as advertised. Witness after witness testified about leaking roofs, defective furnaces, cracking joints, incomplete work, improper plumbing, loose knot holes in the lumber, leaking basement walls, etc.

In sum, it is obvious from the testimony of the respondents themselves, as well as from the customer witnesses, that the respondents had no intention of selling the advertised goods and services at the stated prices. The evidence of over \$600,000 sales for the period between October 1957 and April 1958 together with the testimony of various witnesses concerning their inability to obtain the advertised product at the advertised price and the admissions of the respondents themselves, make it clear that the advertisements were just bait for the credulous and unsuspecting. The calloused statements of some of the salesmen that this was just "advertising" was undoubtedly the literal truth. The advertised representations, whether of price, per-

formance, quality, guarantee, or company affiliation, were false, misleading, and deceptive.

The same is true of the respondents' representations concerning financing. Many customers of the respondents testified that they were completely unaware that they had signed a promissory note in connection with their purchase from the respondents. This is understandable inasmuch as the customer copies of the contracts contained no copy of the promissory note which was found only on the original retained by the respondents. Statements made by some of the respondents' salesmen represented that the respondents did their own financing and extended the credit necessary to the customer. This was confirmed by the experience of some of the customers who found to their surprise that they had to deal with a bank when they desired to make full cash payments.

With the findings of unfair practices as described above, it follows logically that there has been injury to the public and loss of business to competitors (*Federal Trade Commission v. Raladam Company*, 316 U.S. 149, 152, 1941 [3 S. & D. 474]).

Respondent Lifetime, Inc., also objects to the admission of CX 14, which is the transcript of hearings conducted by an attorney-examiner of the Federal Trade Commission on September 3, 1958, prior to the issuance of the complaint herein. It contains the sworn testimony of respondent Sam Leonard who appeared with his attorney, the same attorney representing him in this proceeding. Respondents' counsel objected to the admission of this document "when it is not used for the purpose of attacking credibility, but is only used in the main case of the Commission." He cites, however, no authority in support of his argument; nor, indeed, do I believe he could. Counsel's objections regarding the impeachment of a witness are perfectly correct, but have no application here where the statements are those of a party in interest and constitute admissions. (See Wigmore on Evidence, Vol. 4, par. 1048 through 1052.) As respects counsel's objections to the testimony of some of the witnesses as to the contents of a contract or an advertisement without the production of such contract or advertisement, it should be noted that such testimony was adduced only after it was ascertained that the witness did not have a copy of the document. Oral testimony on the contents of a writing should be allowed where the writing has been lost or is missing or is otherwise not in court. Moreover, in this particular case very little depends upon the testimony of any witness regarding the terms or contents of a writing, be it a contract or an advertisement. As has been shown above, the reasonable meaning of the respondents' advertisements can be ascertained from the advertisements themselves. The terms

of the contracts entered into with the respondents, insofar as relevant to this proceeding, are ascertainable from the printed forms admittedly used by the respondents and from the explanations of these contracts given by respondent Sam Leonard.

Counsel for the respondents argues that the complaint should be dismissed as respects respondent Youngstown Homes because there is no proof that the respondent inserted advertising in the newspapers or is engaged in interstate commerce, or that it made any representations concerning its product. This argument has no substance. The individual respondents in this proceeding, Messrs. Moskowitz and Leonard, are the sole stockholders of both corporations. Contracts for shell homes are made with Youngstown Homes; contracts for other products and services are made with Lifetime, Inc. Lifetime, Inc., arranged for the advertising in newspapers, and, in that connection, advertised the Youngstown Homes for that corporate respondent. Salesmen following up leads generated by such advertisements represented both Lifetime, Inc., and Youngstown Homes in soliciting contracts. It must be concluded, therefore, that respondent Youngstown Homes does advertise in newspapers through Lifetime, Inc.; that it is engaged in interstate commerce in soliciting contracts within and without the State of New Jersey; that it uses salesmen in the sale of these products which salesmen make representations concerning its products. As counsel for the respondents stated, Youngstown Homes, Inc., is actively conducting a major portion of the business resulting from those advertisements; the stock of Youngstown Homes, Inc., is owned by the same stockholders as Lifetime, Inc., and for all intents and purposes they use Youngstown Homes for the major portion of their work today.

Finally, counsel for the respondents urges that the individual respondents, Samuel Moskowitz and Sam Leonard, have no personal responsibility for any of the charges made by the Commission. With this argument I cannot agree. In the Commission's case in chief it was developed that these respondents are the president and secretary-treasurer of the two corporate respondents, each owning 50% of the stock of each of the corporations. Mr. Mickelson of Youngstown Industries, Inc., who negotiated cooperative advertising arrangements with these corporations, testified that he dealt with these men. Mr. Leonard testified that he entered into the contract for advertising with Youngstown Industries as president of the corporate respondents. He further admitted that he and Mr. Moskowitz entered into contracts, consulted with subordinates, wrote checks, approved advertising, dealt with the advertising agency and signed checks for advertising. The supplier of the roofing materials testified that he

Order

59 F.T.C.

dealt with Mr. Leonard in connection with price, delivery and normal inter-company matters. In addition, several of the customer witnesses identified respondent Moskowitz as the man with whom they dealt.

Respondents were given every opportunity to present evidence in support of their case. Respondents called but two witnesses to the stand. One of them, Mr. Schorza, the general manager of Lifetime, Inc., testified that he was the general manager of the company and ran its affairs. He confirmed, however, that the individual respondents were actively engaged in the day-by-day business operations of the corporate respondents. He stated that Mr. Leonard determined the advertising budget, that respondent Moskowitz handled the complaint department, that Mr. Schorza would persuade Mr. Leonard to hire the salesmen; that Mr. Leonard worked out the advertising arrangements with Mr. Mickelson. Respondents' other witness, a Mr. Gold, who was with the advertising agency, confirmed Mr. Leonard's control of the advertising budget. After the examination of these two witnesses, which consumed less than one and one half hours, counsel for the respondents stated, "In view of what has happened here, sir, I am not going to call any more witnesses. I will rest at this point. I feel that we are in an inquisition, sir, rather than. * * *"

If the respondents had evidence to refute the charge of the Commission, their failure to produce such evidence warrants the justifiable inference that such evidence would be unfavorable to them and constitutes strong confirmation of the Commission's charges. Wild accusations of inquisition are no substitute for evidence.

CONCLUSION

The aforesaid acts and practices 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.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondents Lifetime, Inc., a corporation, and its officers, and Youngstown Homes, Inc., a corporation, and its officers, and Sam Leonard and Samuel Moskowitz, individually and as officers of each of the said corporations, 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 houses, garages or building materials and supplies, including simu-

1231

Order

lated stone fronts, roofs, bathrooms, heating equipment and basement waterproofing or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing, directly or indirectly, that merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered, or that merchandise is offered for sale at a specified price unless the price so represented is in fact the price of the merchandise offered for sale;

2. Representing, directly or indirectly, that said products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of the said guarantee;

3. Representing, directly or indirectly, that respondents are a part of or affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, or Youngstown Industries, Inc., a Pennsylvania corporation; or that respondents are a part of or affiliated with any other person, firm or corporation unless such is the fact;

4. Representing, directly or indirectly, that respondents' salesmen are sales managers or owners of Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation; or that respondents' salesmen occupy any business or professional status other than is the fact;

5. Representing, directly or indirectly, that respondents' so-called "glass-lined roofing will outlast any other kind or form of roofing; or that any of the aforesaid products will outlast our out-perform any other product or kinds of products or will perform in a manner or to a degree or extent contrary to fact;

6. Representing, directly or indirectly, the respondents' "fashion stone" is natural stone; or that any of said products are of a certain grade, quality or composition unless such is the fact;

7. Representing, directly or indirectly, that respondents will or can make all basements waterproof from the exterior without digging; or that respondents will or can install or construct any of the aforesaid goods or products or perform any of the aforesaid services in a manner or to a degree or extent contrary to fact;

8. Representing, directly or indirectly, that the aforesaid products and services sold or performed by respondents are of first-class quality, unless such is the fact;

9. Procuring the signature of purchasers on negotiable promissory notes without revealing to such purchasers that they are signing a

Opinion

59 F.T.C.

negotiable promissory note and revealing the amount, terms and conditions of the promissory note; or representing, directly or indirectly, that respondents themselves finance the contractual indebtedness assumed by purchasers of the aforesaid goods and services unless such is the fact.

OPINION OF THE COMMISSION

By DIXON, Commissioner:

The complaint in this matter charges respondents with unfair methods of competition and unfair and deceptive acts and practices in violation of the Federal Trade Commission Act through misrepresentation with relation to prices, guarantees, business associations and affiliations, status of salesmen, and the composition, characteristics and quality of products and services offered or sold. It further alleges that respondents have induced purchasers without their knowledge to sign negotiable promissory notes providing for payment of financing charges in amounts not agreed to by them.

The hearing examiner, in his initial decision filed April 21, 1961, as amended to correct a typographical error by his order of May 15, 1961, found that all the charges in the complaint had been sustained by the evidence. His decision contains an order to cease and desist the practices so found to be illegal.

Respondents have appealed from the initial decision. They have presented the issues in the following terms: (1) whether the complaint should be dismissed for alleged failure in the proof of the charges and (2) whether in any event, the complaint should be dismissed as to Youngstown Homes, Inc., and as to Sam Leonard and Samuel Moskowitz, individually, because of the alleged failure to show responsibility of these respondents for the practices charged.

Respondents are Lifetime, Inc., a Pennsylvania corporation, Youngstown Homes, Inc., a New Jersey corporation, and individuals, Sam Leonard and Samuel Moskowitz. The individual respondents each own 50% of the stock of the corporate respondents, and they are the corporations' sole officers. Sam Leonard and Samuel Moskowitz are, respectively, president and secretary-treasurer, of the corporate concerns.

The business of the respondents is in the home improvement and home construction fields.* Respondents have engaged in advertising, offering for sale, and selling, and in the installation and construction of houses, garages and home building materials including simulated

*In this outline of the facts we use the term "respondents" to mean those respondents found by the examiner to be responsible for the acts and practices charged, but we reserve the question of the sufficiency of the evidence to sustain the charges as to certain of the respondents for later discussion and determination.

stone fronts, roofs, bathrooms, heating equipment and basement waterproofing.

The method of business employed is to advertise such products and services for sale in newspapers and other publications. Some of the advertisements were under respondents' own names; others were carried under the name of Youngstown Industries. The latter company is Youngstown Industries, Inc., a concern separate from the respondents and not involved in this proceeding. Youngstown Industries and the respondents jointly advertised their separate products and services and shared the expenses of such advertisements. Under the arrangement, telephone inquiries to the numbers listed in the advertisements, which were generally telephone answering services, would be relayed to the company whose products were concerned, i.e., Lifetime, Inc., and Youngstown Homes, Inc., on the one hand, or Youngstown Industries on the other.

Persons responding to the advertisements were contacted by salesmen of the respondents. These salesmen would show literature to the prospects and would make oral representations concerning the goods and services offered, and they would induce purchasers to sign contracts and enter into financial arrangements with respondents.

The Issue on the Substantiality of the Evidence.

As to the charge dealing with false representations on prices and offers to sell, the hearing examiner found that, contrary to their representations, respondents do not and will not make damp and leaking basements dry for \$44.00, do not and will not sell a large and substantial shell home of a kind adequate to accommodate a three compartmented bathroom, kitchen with eating space, large picture window and basement for \$1,995.00, do not and will not completely erect a garage for \$300.00, do not and will not install a glass-lined roof for \$66.00, do not and will not install a genuine stone front or a simulated stone front on a house for \$44.00, do not and will not install a complete bathroom including fixtures for \$44.00, and do not and will not sell a gas-forced air furnace complete with ducts and all equipment necessary for the operation thereof for \$139.00. He further found that such price amounts were advertised for the purpose of inducing inquiry and that thereafter respondents undertook to sell the prospective purchasers other and more expensive products and services.

Respondents do not contend in most of the instances, as we understand their argument, that the products and services, as found to be represented, were available at the advertised prices. Their principal objection is to the examiner's interpretation of their advertisements. Respondents say that the examiner has ignored qualifying

expressions in the various contested representations such as "for as low as" in reference to the shell house for \$1,995; "\$300 and up" and "delivered" as to the garage advertisement; "Additions, Repairs, Remodeling, Alterations", "No job too large or small", and "Jobs done low as" referring to the home improvements advertisement; and other similar qualifying statements. Such qualifications in the various advertisements do not make the representations truthful.

The advertisements of shell houses provide a good example for consideration. No shell house of the dimensions and quality represented was available for \$1,995.00. This the respondents do not deny but claim that a small shell frame (apparently a 16' x 20' structure, not including porch) would be built for the stated amount and that the expression "for as low as" in conjunction with the advertised price sufficiently demonstrated it to be the minimum price. In this instance, however, the house as represented, i.e., a substantial shell home adequate to accommodate a three compartmented bathroom, kitchen with eating space, large picture window and basement, was not available at the minimum price. This advertisement was no mere exaggeration; it illustrated a completely different structure from that which could be obtained at the advertised price. To that extent it was false and deceptive. Respondents' reliance on *Ostermoor & Co., Inc. v. Federal Trade Commission*, 16 F. 2d 962 (2d Cir. 1927) [1 S. & D. 589], to justify or defend this and other pictorial deceptions is misplaced. The Court's holding in the case that there was no basis for the Commission's finding that substantial numbers of purchasers had been misled and deceived would distinguish it from this proceeding. We also note that the case in certain respects appears not to be in accord with more recent developments in the law in this area, but we find no necessity for a discussion here of such considerations.

Respondents' garage advertisement offers a further example. No erected garage, as pictorially represented, would be sold for the price of \$300. For that price respondents would deliver materials to construct the garage. The advertisement is false even though the words "and up" appear because no garage would be built for the minimum. The word "delivered" would fail in our opinion to instruct a prospective purchaser to expect only the materials for a garage.

As a further example for discussion we refer to the advertisement relating to bathrooms. Respondents assert that no one would be misled to believe they would receive a modern bathroom for \$44.00, the price quoted in a typical advertisement, because it contains the words "Additions, Repairs, Remodeling, Alterations", "No job too large or small" and "Jobs done low as". In this instance it is the over-all impression received from the advertisement which creates the decep-

tion. The words "Modern Bathrooms" in large block letters so connect the illustration of a modern bathroom with the price of \$44.00 that the effect is to convey the impression that the offer is a modern bathroom for \$44.00. The added language fails to dispel such an impression. Several witnesses testified that they believed from the advertisement that they could get a bathroom installed for the quoted price. No bathroom was available for such price, a fact not in dispute.

We have examined the other contested advertisements and have considered the evidence as to dry basements, glass-lined roofing, stone fronts, and automatic gas heat and conclude that in each case the advertisements, by illustration and otherwise, promise to provide at a certain low price merchandise and service which was not available at such price. We note, however, that on the advertisements for a dry basement the hearing examiner has construed such to mean that *all* basements are made waterproof. We do not believe that interpretation is correct and will amend the initial decision in this respect.

That the goods or services offered were not available for the prices stated is clear from all the evidence including a tabulation of over \$600,000.00 of respondents' sales made between October 1957 and April 1958 covering 388 contracts. In that period it does not appear that even one sale was made of any of the above mentioned products and services at the prices advertised. Moreover, the testimony of various purchasers-witnesses makes clear that respondents did not seek to sell products and services at the low prices mentioned, but, through salesmen, advised prospective purchasers that the goods were not available or that they would not want them. We concur in the examiner's findings on this question. Respondents' exceptions, therefore, to the substantiality of the evidence on the above discussed charge are rejected.

We note that in *Better Living, Inc., et al. v. Federal Trade Commission*, 259 F. 2d 271 (3d Cir., 1958) [6 S. & D. 453], the Third Circuit Court of Appeals affirmed per curiam the Commission's order which included a prohibition against representing that articles are offered for sale at a certain price or under certain conditions when such offer is not a bona fide offer to sell the articles so, and as, offered.

We have considered the points raised by the respondents on the hearing examiner's findings as to the other specific charges, and we are satisfied that in each instance these findings are supported by substantial evidence.

Among such charges is one that respondents have falsely represented that their products sold and services performed would be of the first grade and the highest quality. The hearing examiner found this allegation supported by the record, to which finding respondents take exception. They say they have not so represented: that their repre-

sentation of "first class" is a customary claim of American suppliers and artisans and is no more than puffing.

Respondent's advertising representations as to quality of work and materials include this statement:

We at Youngstown Industries [meaning Lifetime, Inc.] unconditionally and unequivocally guarantee in writing first class craftsmanship and materials. We further agree to furnish especially trained mechanics to assure proper installation. Absolute satisfaction shall be yours.

The Commission is satisfied that this would be read by many prospective purchasers as assuring them that the job and the materials used would be of the first grade and highest quality. Such an absolute assurance of quality in a field in which grade and quality distinctions can be and are made and where quality is of prime importance to prospective purchasers cannot be regarded in the category of puffing. This is especially so when consideration is given to the form in which the representation appears, that is, a guarantee of the premium nature of the work and materials.

The examiner found that not all of the goods sold and services performed by respondents were of first class quality, and the record contains substantial evidence to support such finding. Respondents' contentions on this and the questions as to other specific charges here considered are rejected.

Responsibility of Youngstown Homes, Inc., and individuals.

Sam Leonard and Samuel Moskowitz each own 50% of the stock in Lifetime, Inc., a Pennsylvania Corporation, and Youngstown Homes, Inc., a New Jersey corporation, the corporate respondents. They are, respectively, president and secretary-treasurer of both corporations. All formulation of policy, direction and control of the corporations is in their hands. There are no other officers. In 1956 Sam Leonard and Samuel Moskowitz signed Stipulation No. 8807 with the Federal Trade Commission for Lifetime, Inc., agreeing not to engage in certain unfair and deceptive acts and practices. We believe that the examiner's findings as to the responsibility of the individuals are fully supported by the record.

Moreover, the individuals charged have done business through one corporation after another. Lifetime, Inc., incorporated sometime in 1952, ceased its active operations in October 1959, about the same time as the complaint in this proceeding was issued, and the business thereafter was largely continued through Youngstown Homes, Inc. Respondents Leonard and Moskowitz each own 25% of the stock of another corporation, Standard American, Inc., with offices at 6701 North Broad Street, Philadelphia, Pennsylvania, the same address as that used by Lifetime, Inc. The record shows that Sam Leonard is president and that Samuel Moskowitz is treasurer of Standard

American, Inc., and that such corporation is engaged in advertising and selling items relating to home improvement, repairs and alterations, including certain of the products involved in this proceeding.

To make the order in this matter fully effective in preventing the unfair practices as charged and found, it is essential that respondents Leonard and Moskowitz be individually included in such prohibition. The cases clearly sustain the Commission's authority in this connection. *Federal Trade Commission v. Standard Education Society, et al.*, 302 U.S. 112, 120 (1937) [2 S. & D. 429]; *Steelco Stainless Steel, Inc., et al. v. Federal Trade Commission*, 187 F. 2d 693, 697 (7th Cir., 1951) [5 S. & D. 265]. See also the Commission decision in *Trans-Continental Clearing House, Inc., et al.*, Docket No. 7146 (October 20, 1959) and cases cited therein.

Respondents also contend that there is no evidence of the complicity of Youngstown Homes, Inc., in the practices charged to be illegal. It is apparent from respondents' answer to the complaint that respondent Youngstown Homes, Inc., shares the responsibility for the unfair practices alleged and proved. For example, respondents admit in Paragraph Three of their answer that the corporate respondents have caused products sold and services rendered by them to be advertised in newspapers and other publications appearing under the name Youngstown Industries and that salesmen contact customers on behalf or corporate respondents. Another example is contained in Paragraph Six of the answer where respondents admit in part "that the advertising, as in all advertising, was placed by *corporate respondents* for the purpose of having prospective purchasers make inquiries respecting said goods and services offered for sale." (Emphasis supplied.)

We conclude from the admissions and from the evidence that the business of the two corporations was so interwoven as to make both corporations responsible for the acts and practices herein charged and proved. The contentions regarding the responsibility of Youngstown Homes, Inc., and the individual respondents are rejected.

We note that the order is inappropriate in several respects. The findings on certain items cover both products and services whereas the order on some such items is restricted to merchandise. Paragraph 6 of the order in referring to "fashion stone" does not appear to conform to the finding on the subject. Certain of the prohibitions use the phrase "unless such is the fact" or similar expressions which should be eliminated. The initial decision will be modified as to these matters.

Additionally, the initial decision in part (c) of paragraph 7 thereof will be modified to make clear that respondents are not affiliated with Youngstown Industries, Inc., except that these parties engage in a joint advertising activity.

Order

59 F.T.C.

Respondents' appeal is denied. It is directed that the initial decision be modified in conformity with the views herein expressed and that, thereafter, the initial decision, as so modified, be adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having denied the respondents' appeal, and having directed that the initial decision be modified to conform to its views expressed in the opinion, and that, thereafter, such decision, as modified, be adopted as the decision of the Commission:

It is ordered, That the first line in part (a) of paragraph 6 of the Findings of Fact contained in the initial decision be, and it hereby is, modified to read as follows:

(a) that basements are made waterproof for \$44.00;

It is further ordered, That the first sentence of part (c) of paragraph 7 of the Findings of Fact contained in the initial decision be, and it hereby is, modified to read as follows:

(c) Respondents are not a part of or in any manner affiliated with Youngstown Kitchens, a division of American Radiator and Standard Sanitary Corporation, 520 South Ellsworth Avenue, Salem, Ohio, nor are they a part of, or affiliated with, Youngstown Industries, Inc., of Philadelphia, Pennsylvania, except that as to the latter there is a joint activity.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents Lifetime, Inc., a corporation, and its officers, and Youngstown Homes, Inc., a corporation, and its officers, and Sam Leonard and Samuel Moskowitz, individually and as officers of each of the said corporations, 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 houses, garages or building materials and supplies, including simulated stone fronts, roofs, bathrooms, heating equipment and basement waterproofing or any other articles of merchandise is commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

1231

Order

offered for sale at a specified price unless the price so represented is in fact the price of the merchandise or service offered for sale;

2. Representing, directly or indirectly, that said products or services are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of the said guarantee;

3. Representing, directly or indirectly, that respondents are a part of or affiliated with Youngstown Kitchens, or Youngstown Industries, Inc., a Pennsylvania corporation; or misrepresenting respondents' connection or affiliation with any other person, firm or corporation;

4. Representing, directly or indirectly, that respondents' salesmen are sales managers or owners of Youngstown Kitchens, or otherwise misrepresenting the business or professional status which respondents' salesmen occupy;

5. Representing, directly or indirectly, that respondents' so-called "glass-lined" roofing will outlast any other kind or form of roofing; or otherwise misrepresenting the lasting or performance qualities of the aforesaid products in relation to any other product or kinds of products or misrepresenting the performance qualities of said products in any other manner;

6. Representing, directly or indirectly, that respondents' simulated or so-called stone is natural stone; or otherwise misrepresenting the grade, quality or composition of any of said products;

7. Representing, directly or indirectly, that respondents will or can make all basements waterproof from the exterior without digging;

8. Representing, directly or indirectly, that respondents' products or services which are defective or deficient sold or performed by respondents are of first-class quality;

9. Procuring the signature of purchasers on negotiable promissory notes without revealing to such purchasers that they are signing a negotiable promissory note and revealing the amount, terms and conditions of the promissory note; or representing, directly or indirectly, that respondents themselves finance the contractual indebtedness assumed by purchasers of the aforesaid goods and services.

It is further ordered, That the initial decision as so modified be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the 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 contained in the initial decision as modified.

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to or place on each product, a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

3. Failing to identify each of the fibers contained in such products by its common generic name.

It is further ordered, That respondents Einiger Mills, Inc., a corporation and its officers, and Jack H. Einiger, 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 fabric or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

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.