

sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
PATI-PORT, INC., ET AL.

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

Docket 7665. Complaint, Nov. 24, 1959—Decision, Jan. 4, 1962

Order requiring Baltimore installers of patios and carports to cease using bait advertisements to get leads to prospects whom they then urged and frequently persuaded to buy much higher priced items; and representing falsely that the usual price of their carport or patio was \$249 but they were offering it at a special low price of \$77, that the merchandise was guaranteed, and that it was "all aluminum".

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 Pati-Port, Inc., a corporation, and Al B. Wolf, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the

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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 Pati-Port, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 8110 Fleet Street, in the city of Baltimore, State of Maryland.

Respondent Al B. Wolf is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 4 Carlton Street, Floral Park, N.Y.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, carports or patios to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Maryland to purchasers thereof located in various other states of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain statements and representations with respect thereto in newspapers of general circulation and through other advertising medias. By and through the use of such statements and representations, and through oral statements made by their salesmen, respondents have represented, directly or by implication:

(1) That they are making a bona fide offer to sell carports or patios for the full price of \$77.00;

(2) That respondents' usual and regular retail selling price of the carport or patio advertised is \$249.00 but is offered for sale at a special low price of \$77.00;

(3) That persons who allowed the carport or patio installed by respondents to be used for model home demonstration purposes in selling to others, would receive a reduction in price;

(4) That said carport or patio is unconditionally guaranteed;

(5) That the carport or patio referred to in subparagraph (1) above was "all aluminum";

(6) Through the use of pictures in advertisements, the carport or patio referred to in subparagraph (1) includes a supporting foundation wall and a completed floor.

PAR. 5. The aforesaid representations are false, misleading and deceptive. In truth and in fact:

(1) The offer to sell carports or patios for the full price of \$77.00 was not a genuine or bona fide offer but was made for the purpose of obtaining leads and information as to persons interested in the purchase of said merchandise. After obtaining such leads through response of such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the carport or patio at the advertised price, but instead, disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell much higher priced carports or patios.

(2) The carport or patio advertised for sale at \$77.00 is not a special sale price reduced from the usual and regular retail price of \$249.00. In fact, said merchandise offered is advertised regularly at the price of \$77.00. This practice is used in conjunction with the charge set forth in subparagraph (1) above.

(3) Respondents did not intend to use, nor did they use, the home of any of their purchasers for demonstration purposes, this statement being used only as a means to induce resistant purchasers into the buying of said merchandise under the mistaken impression that they were receiving some sort of a special price because of their willingness to allow their homes to be used for this purpose.

(4) Respondents' guarantee is not unconditional. It is limited in certain respects and this limitation is not disclosed to the purchaser.

(5) The carport and patio referred to in subparagraph (5) of paragraph 4 above is not all-aluminum but instead has wooden supporting rafters and wooden supporting posts.

(6) The carport or patio depicted in the advertisement and offered for sale at \$77.00 does not include a supporting foundation wall or a floor.

PAR. 6. In the course and conduct of their business at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such state-

ments and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of 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. Michael J. Vitale supporting the complaint.

Mr. Walter G. Horowitz for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 24, 1959, the Federal Trade Commission issued a complaint charging the respondents named in the caption hereof with false and deceptive advertising in violation of the Federal Trade Commission Act. Hearings have been completed and proposed findings of fact, conclusions and order filed by counsel supporting the complaint. Proposed findings of fact, conclusions and order have not been filed by or on behalf of respondents. All findings of fact proposed by counsel supporting the complaint have been adopted with the exception of those proposed in subparagraph (6) of Proposed Findings Four and Five. These proposed findings are not established by a preponderance of the evidence.

Upon the basis of the entire record, the undersigned Hearing Examiner makes the following findings of fact and conclusions of law and issues the following order:

1. The respondent Pati-Port, Inc., is a corporation organized and doing business under the laws of the State of Maryland with its office and principal place of business located at 3110 Fleet Street, Baltimore, Md. The individual respondent Abraham B. Wolf, also known as Al B. Wolf, is president of the respondent corporation and formulates, directs and controls the acts and practices of said corporation, including those hereinafter found. His business address is 4 Carlton Street, Floral Park, N.Y. His residence is 80 Carol Lane, New Rochelle, N.Y.

2. The respondents are now and for sometime last past have been engaged in the advertising, offering for sale, sale and distribution of, among other things, carports and patios to the public.

3. In the course and conduct of their business, respondents cause and have caused their said products when sold to be shipped from their place of business in the State of Maryland to purchasers thereof located in various states of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in carports and patios in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents have made certain statements and representations with respect thereto in newspapers of general circulation and through other advertising media, including oral statements by their salesmen. By and through their use of such statements and representations, respondents have represented, directly or by implication:

(1) That they are making a bona fide offer to sell carports or patios for the price of \$77 for any size up to eight feet by 20 feet, and with no additional charge for installation;

(2) That respondents' usual and regular retail sale price of the carports or patios advertised is \$249 but are offered for sale at a special price of \$77;

(3) That persons who would allow the carports or patios installed by respondents to be used for demonstration purposes in selling to others, would receive a reduction in price;

(4) That said carports or patios were unconditionally guaranteed.

(5) That the carports or patios referred to in subparagraph (1) above were "all aluminum."

5. Whereas, in truth and in fact:

(1) The offer to sell carports or patios for the full price of \$77 was not a genuine and bona fide offer but was made for the purpose of obtaining leads and information with respect to persons interested in the purchase of carports or patios. After obtaining such leads through response to such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the carport or patio at the advertised price of \$77, but instead, disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell carports or patios at substantially higher prices than the advertised price of \$77. Although the evidence discloses numerous sales of carports or patios at prices substantially in excess of the advertised price of \$77, only one sale at the advertised price of \$77 is disclosed by the record and this sale was canceled before its consummation. Furthermore, the evidence does not show a sale at the advertised so-called "regular" price of \$249 but does show

sales at prices above and below said so-called "regular" price of \$249. The evidence of record of actual sales of carports and patios by respondents do not establish a regular or standard price but sales were made at various prices in excess of \$130.

(2) The price of \$77 advertised for said carports or patios is not a special sale price reduced from the usual and regular retail price of \$249 but was frequently advertised for sale at the price of \$77.

(3) Respondents did not use nor did they intend to use the home of any of their customer purchasers for demonstration purposes, but used this statement and representation as a means to induce prospective customers to purchase respondents' merchandise under the mistaken belief that they were receiving some sort of special price by reason of their agreement to permit their homes to be used for demonstration of respondents' merchandise.

(4) Respondents' guarantee is not unconditional but is limited in certain respects. Such limitation is not disclosed to the purchaser.

(5) The carports and patios referred to in subparagraph 5 of paragraph 4 above were not "all aluminum," but have wooden supporting rafters and wooden supporting posts at the corners and sides.

6. In the course and conduct of their business and at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as that sold by respondents.

7. The use by respondents of the false, misleading and deceptive statements, representations and practices herein found has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the buying of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

8. The individual respondent Abraham B. Wolf, sometimes known as Al B. Wolf, denies that he controlled the activities of the respondent corporation or participated in the unlawful acts and practices found herein and alleged in the complaint, and says that said acts and practices were committed under the direction of one Bernard Weissman, an officer of respondent Pati-Port, Inc., and one Charles Berman, who succeeded Mr. Weissman as director of sales for respondent corporation. The individual respondent Wolf was the first secretary

of the respondent corporation and remained as secretary until he became president in November, 1958. The violations alleged in the complaint cover the period of time subsequent to the time when Bernard Weissman left the employ of the respondent corporation and after the respondent Abraham B. Wolf became president in 1958. Approximately one or two weeks before Mr. Weissman severed his connection with the respondent corporation in 1958, the individual respondent Wolf employed Mr. Charles Berman to replace Mr. Weissman, and Mr. Weissman trained Mr. Berman in the method of operations of the respondent corporation, including advertising and sales promotion. Mr. Berman was made vice-president of the respondent corporation. When Mr. Weissman left the respondent corporation, Mr. Wolf succeeded him as president and Mr. Wolf authorized Mr. Berman to handle advertising and sales of respondent corporation. Mr. Wolf is an accountant by profession. Some of the other original stockholders of the respondent corporation were: Louis Wolf, cousin of the individual respondent Abraham B. Wolf; Corinne Wolf, a cousin; Milton Wolf, brother; Sarah Wolf, wife of the individual respondent Abraham B. Wolf; Bernard Weissman, formerly president, and Myron C. Gelrod, who is under a Commission cease and desist order in *Universal Educational Guild, Inc., et al*, Docket No. 5938, (1954), 51 FTC 452. Mr. Wolf countersigned most of the checks issued by the corporate respondent and periodically visited the corporate office in Baltimore for the purpose of examining its books and records. Mr. Wolf testified that the respondent corporation was dissolved in May or June, 1959, but advertisements for the sale of carports and patios appeared in newspapers, including the Washington Post, as late as July 19, 1959 and checks were written and issued against corporate funds as late as December 1959. The complaint herein was issued under date of November 24, 1959. These facts and circumstances demonstrate that the individual respondent Abraham B. Wolf was responsible for the activities and operations of the corporation and its employees after he became president on or about the month of November, 1958. The cease and desist order to be issued herein should include the respondent Al B. Wolf as an officer of said corporation as well as in his individual capacity.

CONCLUSIONS

The acts and practices of respondents as herein found, were, and are, 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.

ORDER

It is ordered, That respondent, Pati-Port, Inc., a corporation, and its officers, and respondent Abraham B. Wolf, also known as Al B. Wolf, 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 carports, patios or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That any merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. That any amount is respondents' usual and regular retail price of merchandise, when such amounts are in excess of the price at which said merchandise is usually and regularly sold at retail by respondents in the trade area or areas where the representations are made;
3. That merchandise is sold at a special or reduced price unless such price constitutes a reduction from the price at which the merchandise has been usually and regularly sold by respondents in the recent regular course of business;
4. That any merchandise sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;
5. That said merchandise is of all-aluminum construction, or otherwise misrepresenting the materials of which any product is made.

ORDER DENYING PETITION FOR REVIEW, DECISION OF THE COMMISSION AND
ORDER TO FILE REPORT OF COMPLIANCE

The initial decision of the hearing examiner having been filed in this matter on November 27, 1961, and respondent Abraham B. Wolf, also known as Al B. Wolf, on December 18, 1961, having filed a petition for review of said initial decision pursuant to Section 4.20 of the Commission's Rules of Practice; and

The Commission having examined said petition and the entire record and being of the opinion that no substantial questions of law or fact are presented, and that granting of the petition for review is not necessary or appropriate under the law to insure a just and proper dis-

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position of the proceeding and to protect the rights of the petitioner;
and

The Commission having also determined that said initial decision is appropriate in all respects to dispose of this proceeding as to respondent Pati-Port, Inc.:

It is ordered, That said petition for review, filed December 18, 1961, be, and it hereby is, denied.

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

It is further ordered, That respondents Pati-Port, Inc., and Abraham B. Wolf, also known as Al B. Wolf, 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