

Complaint

IN THE MATTER OF

VAN-R, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8552. Complaint, Jan. 3, 1963—Decision, Apr. 24, 1963*

Order entered on respondents' default requiring Chicago sellers of "Rinse-Away" garbage disposal units to distributors for resale or to the public directly, to cease making various misrepresentations—by statements of sales representatives and by means of sales aids, brochures, and other literature employed by them—concerning the capacity, comparative merits, price and terms of sale of the product, opportunities for dealers, scope of the business, services available, etc., as in the order below in detail set forth.

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 Van-R, Inc., a corporation, and Vanar, Inc., a corporation, and Allen Terson, individually and as an officer of said corporations, hereinafter referred to as the 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 Van-R, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 5435 West Diversey Avenue, Chicago, Illinois.

Respondent Vanar, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business formerly located at 410 West Creighton Avenue, Fort Wayne, Indiana.

Respondent Allen Terson is an officer of the corporate respondents Van-R, Inc., and Vanar, Inc. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is 2111 West Granville Avenue, Chicago, Illinois.

PAR. 2. For some time last past the respondents have been engaged in the advertising, offering for sale, sale and distribution of "Rinse-Away" garbage disposal units to distributors for resale to the public, or to the public directly.

PAR. 3. In the course and conduct of their business the respondents

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have caused their said product, when sold, to be shipped from its place of manufacture in the State of Wisconsin to purchasers thereof located in various other States of the United States, 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 garbage disposal units, by means of oral statements of sales representatives, and by means of sales aids, brochures and other literature which sales representatives have employed when soliciting prospective purchasers, respondents have represented, directly or by implication:

1. That appointments with prospective customers are solicited for the purpose of explaining an "advertising plan".

2. That the prospect has been especially "selected" to participate in the plan.

3. That respondents' product will process all waste animal and vegetable matter commonly disposed of through the use of a garbage can, and will thus eliminate the necessity of maintaining and using a garbage can.

4. That the health of the prospect and his family is endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

5. That the Rinse-Away garbage disposal unit is safer, more efficient and quieter than similar models of comparable price.

6. That respondents' business is national in scope; that they employ statisticians and engineers among others; and that they are financially capable of spending many thousands of dollars annually in nationwide advertising media.

7. That current and valid statistics indicate that 50 percent of prospects interviewed will become purchasers.

8. That the price at which the Rinse-Away is being offered is available for a limited time only, and that the prospect must take advantage of such offer immediately, or forego indefinitely such special price.

9. That purchasers will recover all or a substantial part of the total cost of the disposal unit through the receipt of referral fees.

10. That there are liquidated damages which the purchaser must pay if he cancels his order prior to installation.

11. That the respondents have a credit department which handles personal credit matters, and that the respondents do not contemplate the immediate discounting of purchasers' negotiable paper.

PAR. 5. In truth and in fact:

1. Appointments with prospective customers are not solicited for the purpose of explaining an advertising plan, but for the purpose of selling respondents' product.

2. The prospect has not been especially selected to participate in any plan or sale.

3. Respondents' product will not process all waste animal and vegetable matter commonly disposed of through the use of a garbage can, and will not eliminate the necessity of maintaining and using a garbage can.

4. The health of the prospect or his family is not endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

5. The Rinse-Away garbage disposal unit is neither safer, more efficient, nor quieter than similar models of comparable price.

6. Respondents' business is not national in scope; they do not employ statisticians or engineers; and they are not financially capable of spending many thousands of dollars annually in nation-wide advertising media.

7. There are no current and valid statistics which indicate that 50 percent of prospects interviewed will become purchasers.

8. The price at which the Rinse-Away is being offered is not available for a limited time only. nor must the prospect take advantage of such offer immediately or risk foregoing indefinitely such special price.

9. Purchasers do not recover all or a substantial part of the total cost of the disposal unit through the receipt of referral fees.

10. There are no liquidated damages which the purchaser must pay if he cancels his order prior to installation.

11. Respondents do not have a credit department which handles personal credit matters, and they do contemplate the discounting of purchasers' negotiable paper.

Therefore, the representations referred to in Paragraph 4 were, and are, false, misleading and deceptive.

PAR. 6. In the course and conduct of their business, respondents have failed to disclose that in the event of a sale they intended to discount purchasers' negotiable paper. In the absence of such disclosure, prospective purchasers believe that no discounting is intended. In truth and in fact, respondents have promptly discounted purchasers' negotiable paper in the regular course of their business. There is a preference among installment buyers for dealing with vendors who do not discount their customers' negotiable paper. In many cases purchasers of respondents' product would not have entered

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into contracts of sale had they known that their paper was to be discounted. Respondents' failure to reveal the material fact of their intentions or course of business concerning the discounting of purchasers' negotiable paper was, and is, an unfair and deceptive act or practice.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of garbage disposal units of the same general kind and nature as that sold by respondents.

PAR. 8. 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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mrs. Rose W. Sloan and M. David J. Eden supporting the complaint.
No appearance for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

MARCH 12, 1963

The complaint in this proceeding was issued January 3, 1963. It charges respondents with violation of the Federal Trade Commission Act for false, misleading and deceptive statements, representations and practices.

Each respondent was duly served with a copy of the complaint and none filed an answer thereto. Each respondent was also served with a notice that the hearing scheduled in the complaint would be held in Room 747, 1101 Building, 11th Street and Pennsylvania Avenue, N.W., Washington, D.C., on March 11, 1963, at 10:00 a.m. The proceeding was called to order at 10:00 a.m. on that date in that place, and there being no appearance on behalf of any respondent was again called to order at 10:15 a.m. with the same result.

On motion of counsel supporting the complaint, the hearing ex-

aminer duly noted the default, and, pursuant to Rule 4.5 of the Rules of Practice, found the facts to be as alleged in the complaint and adopted the order accompanying the complaint.

By reason of respondents' failure to answer or appear in this proceeding, the hearing examiner is authorized to enter an initial decision based on the facts alleged in the complaint, without further notice.

Accordingly, the following findings are made, conclusion reached and order issued:

FINDINGS OF FACT

1. Respondent Van-R, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business formerly located at 5435 West Diversey Avenue, Chicago, Illinois.

2. Respondent Vanar, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business formerly located at 410 West Creighton Avenue, Fort Wayne, Indiana.

3. Respondent Allen Terson is an officer of the corporate respondents Van-R, Inc., and Vanar, Inc. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is 2111 West Granville Avenue, Chicago, Illinois.

4. For some time last past the respondents have been engaged in the advertising, offering for sale, sale and distribution of "Rinse-Away" garbage disposal units to distributors for resale to the public, or to the public directly.

5. In the course and conduct of their business the respondents have caused their said product, when sold, to be shipped from its place of manufacture in the State of Wisconsin to purchasers thereof located in various other States of the United States, 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.

6. In the course and conduct of their business, and for the purpose of inducing the sale of their garbage disposal units, by means of oral statements of sales representatives, and by means of sales aids, brochures and other literature which sales representatives have employed when soliciting prospective purchasers, respondents have represented, directly or by implication:

a. That appointments with prospective customers are solicited for the purpose of explaining an "advertising plan".

b. That the prospect has been especially "selected" to participate in the plan.

c. That respondents' product will process all waste animal and vegetable matter commonly disposed of through the use of a garbage can, and will thus eliminate the necessity of maintaining and using a garbage can.

d. That the health of the prospect and his family is endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

e. That the Rinse-Away garbage disposal unit is safer, more efficient and quieter than similar models of comparable price.

f. That respondents' business is national in scope; that they employ statisticians and engineers among others; and that they are financially capable of spending many thousands of dollars annually in nationwide advertising media.

g. That current and valid statistics indicate that 50 percent of prospects interviewed will become purchasers.

h. That the price at which the Rinse-Away is being offered is available for a limited time only, and that the prospect must take advantage of such offer immediately, or forego indefinitely such special price.

i. That purchasers will recover all or a substantial part of the total cost of the disposal unit through the receipt of referral fees.

j. That there are liquidated damages which the purchaser must pay if he cancels his order prior to installation.

k. That the respondents have a credit department which handles personal credit matters, and that the respondents do not contemplate the immediate discounting of purchasers' negotiable paper.

7. In truth and in fact:

a. Appointments with prospective customers are not solicited for the purpose of explaining an advertising plan, but for the purpose of selling respondents' product.

b. The prospect has not been especially selected to participate in any plan or sale.

c. Respondents' product will not process all waste animal and vegetable matter commonly disposed of through the use of a garbage can, and will not eliminate the necessity of maintaining and using a garbage can.

d. The health of the prospect or his family is not endangered by the common method of garbage disposal which includes the use of a covered garbage can and a regular collection service.

e. The Rinse-Away garbage disposal unit is neither safer, more efficient, nor quieter than similar models of comparable price.

f. Respondents' business is not national in scope; they do not employ statisticians or engineers; and they are not financially capable of spending many thousands of dollars annually in nationwide advertising media.

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g. There are no current and valid statistics which indicate that 50 percent of prospects interviewed will become purchasers.

h. The price at which the Rinse-Away is being offered is not available for a limited time only, nor must the prospect take advantage of such offer immediately or risk foregoing indefinitely such special price.

i. Purchasers do not recover all or a substantial part of the total cost of the disposal unit through the receipt of referral fees.

j. There are no liquidated damages which the purchaser must pay if he cancels his order prior to installation.

k. Respondents do not have a credit department which handles personal credit matters, and they do contemplate the discounting of purchasers' negotiable paper.

Therefore, the representations referred to in Finding No. 6 were, and are, false, misleading and deceptive.

8. In the course and conduct of their business, respondents have failed to disclose that in the event of a sale they intended to discount purchasers' negotiable paper. In the absence of such disclosure, prospective purchasers believe that no discounting is intended. In truth and in fact, respondents have promptly discounted purchasers' negotiable paper in the regular course of their business. There is a preference among installment buyers for dealing with vendors who do not discount their customers' negotiable paper. In many cases purchasers of respondents' product would not have entered into contracts of sale had they known that their paper was to be discounted. Respondents' failure to reveal the material fact of their intentions or course of business concerning the discounting of purchasers' negotiable paper was, and is, an unfair and deceptive act or practice.

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

10. 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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents were and are all to the prejudice and injury of the public and of respondents' com-

petitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Van-R, Inc., a corporation, its officers, and Vanar, Inc., a corporation, its officers, and Allen Terson, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of garbage disposers or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication,

(a) That an appointment with a prospective customer is solicited for the purpose of explaining an advertising plan or for any purpose other than the concluding of a sale.

(b) That a prospect has been especially selected to participate in any promotional plan or sale.

(c) That respondents' product will process all waste animal or vegetable matter commonly disposed of through the use of a garbage can, or will eliminate the necessity of maintaining or using a garbage can.

(d) That the health of the prospect or his family is endangered by the common method of garbage disposal, which includes the use of a covered garbage can and a regular collection service.

(e) That respondents' product is safer, more efficient or quieter than similar models of comparable price.

(f) That respondents' business is national in scope; that they employ statisticians or engineers; that they are financially capable of spending many thousands of dollars annually in nation-wide advertising media; that the size, scope, or financial capability of their business or the number of their employees is greater than the true size, scope, financial capability or number; or that the qualifications of any of their employees are other than the true qualifications.

(g) That statistics indicate that 50 percent, or any percentage other than the true percentage, of prospects will become purchasers.

(h) That the price at which the respondents' product is

offered is a promotional price, or a reduced price, or is available for a limited time.

(i) That a purchaser will recover all or a substantial part of the total cost of respondents' product through the receipt of referral fees; or that the amount of money or money's worth any purchaser or prospective purchaser will receive, or may reasonably expect to receive, from the submission of names of prospects under respondents' referral program, or otherwise, is greater than the true amount.

(j) That respondents' sales contract contains a provision for liquidated damages or other penalty unless such penalty provision is a legally significant and enforceable obligation of a party thereto.

(k) That the respondents have a credit department which handles personal credit matters, or that the respondents do not contemplate the discounting of a purchaser's negotiable paper.

2. Failing to clearly and adequately inform prospects that respondents contemplate the discounting of purchasers' negotiable paper.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall on the 24th day of April 1963, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MEYERS DEVELOPMENT CORPORATION TRADING AS
FASHION FROCKS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT