

PERMA-LITE RAYBERN MFG. CORP. ET AL.

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

Docket 8486. Complaint, May 21, 1962—Decision, May 2, 1963

Order dismissing, without decision on the merits, complaint charging a Chicago concern with selling its home improvement products through misrepresentation, and directing preparation and submission to the Commission of a new complaint and proposed order.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the said Act, the Federal Trade Commission, having reason to believe that Perma-Lite Raybern Mfg. Corp., a corporation, and Harry E. Swirsky and Raymond Weller, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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, Perma-Lite Raybern Mfg. Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 3333 West Montrose Avenue, Chicago, Illinois.

Respondents, Harry E. Swirsky and Raymond Weller are officers of the corporate respondent. They cooperate and act together in formulating, directing and controlling the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is 3333 West Montrose Avenue, Chicago, Illinois.

Prior to December 30, 1961, Perma-Lite Raybern Corp. was the wholly owned sales subsidiary of the corporate respondent. On that day, Perma-Lite Raybern Corporation was dissolved and all of its assets transferred to the corporate respondent, since which time the selling of respondents' products has been under the control of the corporate respondent.

Whenever it is alleged hereafter that the respondents committed certain acts and practices which are claimed to be false, misleading and deceptive, it is intended to be alleged that the said acts and practices were committed by the individual respondents in conjunction with the corporate respondent and said Perma-Lite Raybern Corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of aluminum storm doors and windows, canopies, patios and fiberglass awnings and in the offering for sale, sale and distribution of water softeners to the public and in the installation of said products.

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 and transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' method of selling is either by door-to-door salesmen or by salesmen who keep appointments made in previous telephone solicitations by other employees of the respondents, operating in the branch office nearest to the prospective customer. Such salesmen or representatives are trained by respondents in respondents' sales techniques and are furnished by respondents with a sales promotion presentation, commonly known as a "canned sales talk", and with

a sales kit containing advertising matter, order blanks and various other materials necessary to promote and to effectuate the sale of respondents' products. Such sales presentations and the material contained in said sales kits are used by respondents' salesmen and representatives in the course of offering for sale and selling respondents' said products and contain many representations respecting respondents' sales program and the prices of their products. Such representations are orally given by respondents' salesmen and representatives in the offering for sale of respondents' products.

PAR. 5. In the course of said solicitations and oral presentations of the sales talk, and by other means, respondents' salesmen or representatives have made many statements or representations, directly or by implication, to prospective purchasers of respondents' products. Typical, but not all inclusive of such statements and representations, are the following:

1. (a) That the respondents' salesmen or representatives are factory representatives dealing directly with the factory thus eliminating a salesman's commission and, therefore, are able to sell respondents' products at a lower price than an ordinary salesman.

(b) That respondents' salesmen or representatives are special representatives from the factory who will present to the prospective customer a "direct factory reference cost plan", thereby implying that said salesmen or representatives will quote a lower or factory price than the usual or regular price.

(c) That by dealing directly with the factory, the installation will be made at just a little more than half of what the same installation would cost if it were made by a representative of the sales department.

(d) That the respondents' salesmen or representatives are bonded and certified to design and advise on all awnings, storm windows and door installations.

(e) That respondents' salesmen or representatives are graduates of an academy, thereby implying that they are specially qualified.

2. (a) That the purpose of respondents' salesmen or representatives making the call on the prospective customer is to introduce respondents' products and to stimulate business in that particular area.

(b) That the persons solicited to purchase the respondents' products have been specially selected to receive the offer.

(c) That the prospective customers are contacted during the "off season" and, therefore, respondents' products are being sold at a reduced price.

(d) That the prospective customer must purchase immediately, on the day of the visit, or the offer will be withdrawn and the price will be higher.

3. That of two or more prices quoted to the customer, the particular salesman or representative will sell at the lowest price if the prospective customer will allow people to view the installation or permit the house to be used as a point of reference.

4. That the water softener sold by respondents is manufactured by Dow Chemical Company and Rheem Manufacturing Company in conjunction with the respondents and that the salesman or representative who will call upon the prospective purchaser of the water softener is a special factory representative.

PAR. 6. In truth and in fact:

1. Respondents' salesmen or representatives are not factory representatives, do not deal directly with the factory and are neither bonded nor certified nor are they graduates of any academy or school which specially qualifies them to design or advise on any awning, storm window or door installations, but on the contrary, are ordinary salesmen working out of a branch office and being paid a commission for each sale.

2. Prospective purchasers are not contacted for the purpose of introducing respondents' products in a particular area, the prospective purchasers have not been specially selected, the purchase price is not reduced because the sale is made in the "off season" and it is not necessary for the purchase to be made at that particular time, but on the contrary, sales are made at the same price at all times and to any person who will pay the price.

3. Respondents did not intend to ask, nor did they ask, other prospective customers to view the installation, and they did not intend to use, nor did they use, the home of any purchaser as a point of reference, this statement being used only as a means to induce hesitant buyers into buying respondents' products 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 these purposes.

4. The water softener sold by the respondents is manufactured by Rheem Manufacturing Company and the respondents have nothing whatsoever to do with its manufacture. Furthermore, the respondents' salesmen or representatives have no connection with the factory of Rheem Manufacturing Company but, on the contrary, are regular salesmen or representatives of the respondents, working out of their local branch offices.

Therefore, the statements and representations set forth in Paragraph 5 were, and are, false, misleading and deceptive.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products 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' products 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 the respondent's 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.

ORDER DISMISSING COMPLAINT

On February 5, 1963, the hearing examiner certified to the Commission the question of whether consent order procedure should be made available to the respondents; and

It appearing that the extensive delays and controversies encountered in this proceeding stem from the action taken by the Commission in a similar, related matter and that further delay and controversy can best be avoided by withdrawing said complaint and proposed order for the purpose of redrafting and eventual reservice pursuant to Part 3 of the Commission's Rules of Practice; and therefore

It is ordered, That the complaint in this matter be, and it hereby is, dismissed without decision on the merits and without prejudice to the Commission's right to summarily issue a new complaint covering the same or substantially similar alleged facts.

It is further ordered, That the Bureau of Deceptive Practices forthwith prepare and submit for Commission consideration a new complaint and proposed order appropriate to the circumstances.

IN THE MATTER OF

NANCYE FLEMING SHOP, INCORPORATED, ET AL.

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