

Docket 8598. Complaint. Sept. 30, 1963—Decision, July 8, 1964

Order requiring Van Nuys, Calif., sellers to distributors of insulation for homes and other buildings to cease making a variety of misrepresentations in

advertising and by oral statements of salesmen as to profits to be derived from ownership of distributor franchises, security of investments, size of their business, national advertising of product, consumers' savings on fuel bills, and use of product in missile research.

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 Insul-Seal Products, Inc., a corporation, and Robert S. Moffett and Morey Selly, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Insul-Seal Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5947 Sepulveda Boulevard, Van Nuys, California.

Respondents Robert S. Moffett and Morey Selly are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of insulation for homes and other buildings to distributors for resale 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 California 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. In the course and conduct of their business and for the purpose of inducing the sale of their insulation, respondents through advertisements in newspapers and other periodicals, sales literature and oral representations by their salesmen, agents and representatives,

have made certain statements and representations, directly or by implication, of which the following are typical, but not all inclusive:

1. That profits to be derived from ownership of distributor franchises to sell respondents' products approximate \$25,000 annually.
2. Franchised factories can sell distributorships for \$12,000 to \$15,000 each.
3. That investment is secured by inventory and equipment.
4. That respondent corporation is a multimillion dollar corporation.
5. That respondents advertise in Life magazine.
6. That consumers of respondents' products realize a saving of 25% or more on fire insurance rates.
7. Consumers save 50% or more on gas bills for heating their homes.
8. That consumers can recover the cost of installation through a referral plan.
9. That respondents' product was used in connection with missile and rocket ablation research.

PAR. 5. In truth and in fact:

1. Owners of distributor franchises of respondents' products cannot realize profits of \$25,000 annually.
2. Respondents' franchise factories cannot sell distributorships for \$12,000 to \$15,000.
3. The investment of a distributor franchise holder is not secured by inventory and the equipment.
4. The respondent corporation is not a multimillion dollar corporation.
5. Respondents do not advertise and have not advertised in Life magazine.
6. Consumers of respondents' products do not realize a saving of 25% on fire insurance rates or any other amount.
7. Consumers do not save 50% or more on gas bills for heating their homes or any other amount.
8. Consumers cannot recover the cost of installation through a referral plan.
9. Respondents' product was not used in connection with missile and rocket ablation research or any other type of research.

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

PAR. 6. 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 insulation 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 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. 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 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.

Mr. Harry E. Middleton, Jr., supporting the complaint.

No appearance for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

MARCH 11, 1964

The Federal Trade Commission issued its complaint in this proceeding on September 30, 1963, charging the respondents hereinabove named with having engaged in unfair methods of competition and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act, by making certain false, misleading and deceptive claims in connection with the sale of insulation by them. The initial hearing, scheduled in the complaint for December 12, 1963, was cancelled by order of the undersigned, on motion of counsel supporting the complaint, due to the inability to obtain service of the complaint on respondents by registered mail. Personal service of the complaint was thereafter made upon said respondents on January 8, 1964. Respondents have failed to file answer to the complaint within thirty (30) days, as required by the Notice served with said complaint, and are now in default under Section 3.5(c) of the Commission's Rules of Practice for Adjudicative Proceedings.

It appearing that respondents are in default in answering the complaint and that, by reason thereof, they have waived their right to appear and contest the allegations of the complaint, this proceeding is now before the undersigned for final consideration on the complaint and the proposed order attached thereto. The undersigned finds that this proceeding is in the interest of the public and that the Federal Trade Commission has jurisdiction over respondents and the subject

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matter of this proceeding and, in accordance with Section 3.5(c) of the Commission's Rules of Practice for Adjudicative Proceedings, makes the following findings of fact, conclusion and order:

FINDINGS OF FACT

1. Respondent Insul-Seal Products, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 5947 Sepulveda Boulevard, Van Nuys, California. Respondents Robert S. Moffett and Morey Selly are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of insulation for homes and other buildings to distributors for resale to the public.

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 California 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.

4. In the course and conduct of their business and for the purpose of inducing the sale of their insulation, respondents through advertisements in newspapers and other periodicals, sales literature and oral representations by their salesmen, agents and representatives, have made certain statements and representations, directly or by implication, of which the following are typical, but not all inclusive:

a. That profits to be derived from ownership of distributor franchises to sell respondents' products approximate \$25,000 annually.

b. Franchised factories can sell distributorships for \$12,000 to \$15,000 each.

c. That investment is secured by inventory and equipment.

d. That respondent corporation is a multimillion dollar corporation.

e. That respondents advertise in Life magazine.

f. That consumers of respondents' products realize a saving of 25% or more on fire insurance rates.

g. Consumers save 50% or more on gas bills for heating their homes.

h. That consumers can recover the cost of installation through a referral plan.

i. That respondents' product was used in connection with missile and rocket ablation research.

5. The statements and representations set forth in paragraph 4 hereof were and are false, misleading and deceptive since, in truth and in fact:

a. Owners of distributor franchises of respondents' products cannot realize profits of \$25,000 annually.

b. Respondents' franchise factories cannot sell distributorships for \$12,000 to \$15,000.

c. The investment of a distributor franchise holder is not secured by inventory and the equipment.

d. The respondent corporation is not a multimillion dollar corporation.

e. Respondents do not advertise and have not advertised in Life magazine.

f. Consumers of respondents' products do not realize a saving of 25% on fire insurance rates or any other amount.

g. Consumers do not save 50% or more on gas bills for heating their homes or any other amount.

h. Consumers cannot recover the cost of installation through a referral plan.

i. Respondents' product was not used in connection with missile and rocket ablation research or any other type of research.

6. 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 insulation of the same general kind and nature as that sold by respondents.

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 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.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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

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and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Insul-Seal Products, Inc., a corporation, and its officers, and Robert S. Moffett, and Morey Selly, individually and as officers 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 insulation or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That owners of distributor franchises of respondents' products realize annual profits of \$25,000, or that they realize profits in any amount which is in excess of the average amounts customarily realized.

2. That owners of respondents' franchised factories can sell distributor franchises for \$12,000 to \$15,000, or any other amount in excess of the average amounts actually realized.

3. That the investment of a distributor franchise owner is secured by the inventory and equipment he acquires from respondents.

4. That respondent corporation is a multi-million dollar corporation, or misrepresenting the size or type of respondents' enterprise in any other manner.

5. That respondents advertise in Life magazine or any other publication, unless respondents in fact currently advertise in such publications.

6. That consumers of respondents' products realize a saving of 25% or any other amount on fire insurance rates, or misrepresenting in any manner the savings on insurance afforded purchasers of respondents' products.

7. That any specific percentage or any specific amount of savings on heating bills will result from the use of respondents' products.

8. That consumers can recover the cost of installing respondents' product through a referral plan, or misrepresenting in any manner the compensation or money recovered by purchasers participating in the respondents' referral plan.

9. That respondents' product has been used in connection with any type of research.

FINAL ORDER

The Commission, on April 14, 1964, having issued an order staying the effective date of the decision herein and, subsequent thereto, having extended the time to and including June 12, 1964, for the filing of an appeal brief by respondents; and

Respondents having failed to perfect their appeal within the time allowed and the Commission now having determined that the case should not be placed on its docket for review:

It is ordered, That the initial decision of the hearing examiner, filed March 11, 1964, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Insul-Seal Products, Inc., a coporation, and Robert S. Moffett and Morey Selly, 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 set forth in the initial decision.