

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1965, TO JUNE 30, 1965

IN THE MATTER OF

ALUMINUM INDUSTRIES, INC., ET AL. DOING BUSINESS AS
SOUTHERN PATIO COMPANY, ETC.

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

Docket 8634. Complaint, Aug. 4, 1964—Decision, Jan. 7, 1965

Order requiring a corporation located in Columbia, S.C., to cease using bait advertising to sell aluminum carports, siding, and patio covers, by such practices as advertising special prices in newspapers which were not bona fide offers for sale, but were made to obtain leads to prospective purchasers who were pressured to buy higher priced merchandise than was advertised.

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 Aluminum Industries, Inc., a corporation, and William N. Bostic, individually and as an officer of said corporation, and as a sole proprietor doing business as Southern Patio Company and as Southern Aluminum Sales, 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 Aluminum Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 1002 Drake Street, in the city of Columbia, State of South Carolina.

Respondent William N. Bostic 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 the same as that of the corporate respondent. Respondent William N. Bostic also is a sole proprietor

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doing business as Southern Patio Company and as Southern Aluminum Sales, both located at 1002 Drake Street, in the city of Columbia, State of South Carolina.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum carports, aluminum patio covers and aluminum siding 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 South Carolina 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 purchase of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers, of which the following are typical and illustrative, but not all inclusive:

FIRST OF YEAR CLEARANCE
TREMENDOUS SAVINGS ON THIS
GIANT SIZE ALUMINUM CARPORT
or patio cover
COMPLETELY INSTALLED!

8 FOOT x 10 FOOT-----	\$79. 00
Big! Big! 8 x 16 Foot-----	89. 00
And Giant 8 x 20 Foot-----	99. 00

* * * * *

THIS OFFER GOOD ANYWHERE IN NORTH
OR SOUTH CAROLINA
ALUMINUM INDUSTRIES, INC., P.O. Box 5056, Charlotte, N.C.

* * * * *

LOOK LADIES
FIRST-OF-YEAR CLEARANCE
ALUMINUM SIDING
COMPLETELY INSTALLED
ANY 5-ROOM HOUSE—\$379
Up to 1,000 Sq. Ft.—Includes Labor and Materials—No Extras

* * * * *

This offer good anywhere in North or South Carolina
SOUTHERN ALUMINUM SALES, P.O. Box 5056, Charlotte, N.C.

* * * * *

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1st OF THE YEAR CLEARANCE
Aluminum CARPORT or Patio
ANY SIZE UP TO GIANT 8 Ft. x 20 Ft.
Buy Now At This Special Price!
Completely Installed—\$99
Large enough to accommodate your car!

* * * * *

This Offer Good ANYWHERE IN NORTH OR SOUTH CAROLINA
SOUTHERN PATIO CO., P.O. Box 5056, Charlotte, N.C.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import not specifically set out herein, respondents represented that they were making a bona fide offer to sell the products advertised at the prices specified in the advertising.

PAR. 6. In truth and in fact, respondents' offers were not bona fide offers to sell the products advertised at the advertised prices but were made for the purpose of obtaining leads and information as to persons interested in the purchase of respondents' products. After obtaining leads through response to said advertisements, respondents' salesmen called upon such persons but made no effort to sell the advertised products at the advertised prices. Instead, they disparaged the advertised products in such a manner as to discourage their purchase and attempted to and frequently did sell much higher priced products. Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof 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 home improvement products and services of the same general kind and nature as those 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 respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and decep-

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

Mr. Sheldon Feldman, Mr. William D. Perry supporting the complaint.

Mr. W. Ray Berry, Fulmer, Barnes and Berry, Columbia, S.C., for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

NOVEMBER 24, 1964

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on August 4, 1964 issued its complaint charging the above-named respondents with violation of Section 5 of the Federal Trade Commission Act in the interstate advertising, offering for sale, sale and distribution to the public of aluminum carports, aluminum patio covers and aluminum siding.

The complaint alleges respondents' newspaper advertisements not to be bona fide offers of sale of the products at specified prices as therein represented, but instead they were caused to have been published by the respondents solely to obtain information and leads to prospective purchasers of such products. Respondents' salesmen, calling on persons answering said advertisements, are alleged to have disparaged the advertised products in such a manner as to discourage their purchase, and in lieu thereof, to have attempted to and frequently sold respondents' much higher priced products. Said alleged false representations and statements by the respondents are charged to be acts and practices to the prejudice and injury of the public and of respondents' competitors and to have constituted and now constitute unfair methods of competition in commerce and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Respondents filed answer to the complaint on September 3, 1964. Following a prehearing conference held pursuant to Section 3.8 of the Rules of Practice for Adjudicative Proceedings on October 5, 1964, and the granting by the Commission on October 13, 1964 of a certificate of necessity to hold a non-continuous hearing in more than one place, a hearing for the purpose of taking testimony and other evidence in support of the allegations of the complaint and in opposition thereto was set to commence in Charlotte, North Carolina on November 3, 1964 and in Columbia, South Carolina on

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November 10, 1964. Order cancelling the above hearing was entered on October 30, 1964 upon the joint request of counsel that an agreement containing a stipulation of facts and agreed order in settlement of the case was being submitted pursuant to Section 2.4(d) of the above Rules of Practice.

Under date of November 12, 1964, this agreement was executed by the parties and subsequently submitted to the Hearing Examiner. The agreement parallels in form the various paragraphs of the complaint, stipulates certain facts, and the agreed order to cease and desist follows the form of order proposed as appropriate of entry herein in the notice appended to the complaint served upon the respondents.

The agreement between the parties provides that the record on which the decisions of the Hearing Examiner and the Federal Trade Commission are to be based shall consist solely of the complaint and said agreement, and respondents waive:

(a) any further procedural steps before the Hearing Examiner and the Commission;

(b) the making of findings of fact and conclusions of law; and

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

Order directing the filing of record of the aforesaid Agreement Containing Stipulation of Facts and Agreed Order and closing the record in this proceeding issued November 16, 1964. Based on the foregoing agreed record, the following Findings of Fact and Conclusions therefrom are made, and the following order is issued.

FINDINGS OF FACT

1. Respondent Aluminum Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Carolina, with its principal office and place of business located at 1002 Drake Street, in the city of Columbia, State of South Carolina.¹

2. Respondent William N. Bostic 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 charged in the complaint. His address is the same as that of the corporate respondent. Respondent William N. Bostic also was a sole proprietor doing business as Southern Patio Company and as Southern Alumi-

¹ Paragraph 1, page 2 of Agreement Containing Stipulation of Facts and Agreed Order filed of record herein under order of the Hearing Examiner dated November 16, 1964.

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num Sales, both located at 1002 Drake Street, in the city of Columbia, State of South Carolina.²

3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum carports, aluminum patio covers and aluminum siding to the public.³

4. In the course and conduct of their business, respondents have in the past caused their said products, when sold, to be shipped from their place of business in the State of South Carolina to purchasers thereof located in the State of North Carolina, and maintained a substantial course of trade in said products in interstate commerce.⁴

5. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers, of which the following are typical and illustrative, but not all inclusive:

FIRST OF YEAR CLEARANCE
TREMENDOUS SAVINGS ON THIS
GIANT SIZE ALUMINUM CARPORT
or patio cover
COMPLETELY INSTALLED!

8 FOOT x 10 FOOT-----	\$79. 00
Big! Big! 8 x 16 Foot-----	89. 00
And Giant 8 x 20 Foot-----	99. 00

* * * * *

THIS OFFER GOOD ANYWHERE IN NORTH
OR SOUTH CAROLINA
ALUMINUM INDUSTRIES, INC., P.O. Box 5056, Charlotte, N.C.

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LOOK LADIES
FIRST-OF-YEAR CLEARANCE
ALUMINUM SIDING
COMPLETELY INSTALLED
ANY 5-ROOM HOUSE—\$379
Up to 1,000 Sq. Ft.—Includes Labor And Materials—No Extras

* * * * *

This offer good anywhere in North or South Carolina
SOUTHERN ALUMINUM SALES, P.O. Box 5056, Charlotte, N.C.

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² Paragraph 2, page 2 of Agreement, *supra*.

³ Paragraph 3, page 2 of Agreement, *supra*.

⁴ Paragraph 4, page 2 of Agreement, *supra*.

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1st OF THE YEAR CLEARANCE
 Aluminum CARPORT or Patio
 ANY SIZE UP TO GIANT 8 Ft. x 20 Ft.
 Buy Now At This Special Price!
 Completely Installed—\$99
 Large enough to accommodate your car!

* * * * *

This Offer Good ANYWHERE IN NORTH OR SOUTH CAROLINA

SOUTHERN PATIO CO., P.O. Box 5056, Charlotte, N.C.⁵

6. By and through the use of the quoted statements and representations set forth in Paragraph 5 herein, and others of similar import not specifically set out herein, respondents represented that they were making a bona fide offer to sell the products advertised at the prices specified in the advertising.⁶

7. If twenty North Carolina residents who were contacted there by respondents and who are available to testify, and also twenty South Carolina residents who were contacted there by respondents and who are available to testify were called as witnesses in this proceeding, they would testify as follows:

Respondents' offers were not bona fide offers to sell the products advertised at the advertised prices but were made for the purpose of obtaining leads and information as to persons interested in the purchase of respondents' products. After obtaining leads through response to said advertisements, respondents' salesmen called upon such persons but made no effort to sell the advertised products at the advertised prices. Instead, they disparaged the advertised products in such a manner as to discourage their purchase and attempted to and frequently did sell much higher priced products.⁷

8. In the conduct of their business, at all times mentioned herein, respondents have in the past been in substantial competition, in commerce, with corporations, firms and individuals in the sale of home improvement products and services of the same general kind and nature as those sold by respondents.⁸

9. 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 sub-

⁵ Paragraph 5, pages 2-4 of Agreement, *supra*.

⁶ Paragraph 6, page 4 of Agreement, *supra*.

⁷ Paragraph 7, pages 4-5 of Agreement, *supra*.

⁸ Paragraph 9, page 5 of Agreement, *supra*.

stantial quantities of respondents' products by reason of said erroneous and mistaken belief.⁹

10. The foregoing stipulated testimony and evidence in this proceeding amply and unequivocally support the allegations and charge of the complaint, that respondents' newspaper-advertised product and price representations and the actions and statements made by the respondents through their salesmen, as hereinbefore related, were and are false, misleading and deceptive acts and practices to the prejudice and injury of the public and of respondents' competitors, and as such, constituted unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

11. If respondent William N. Bostic were called to testify in this proceeding, he would state that none of the respondents are presently engaged in the advertising or sale of their home improvement products outside of the State of South Carolina. Commission counsel have no information to indicate that this statement is not true.¹⁰

The foregoing stipulated testimony by respondent William N. Bostic makes no claim and the record in this proceeding contains no showing of any discontinuance or abandonment by the respondents of the acts and practices set forth in various of the preceding findings herein made.¹¹ Mr. Bostic states only that none of the respondents are presently engaged in the advertising or sale of their home improvement products outside of the State of South Carolina, and the stipulated testimony of the twenty South Carolina witnesses set forth in preceding finding No. 7 would preclude any discontinuance or abandonment in such State by the respondents of the said acts and practices.

12. Discontinuance by the respondents of advertising and sales outside the State of South Carolina does not deprive the Commission of its jurisdiction to effectively prevent the resumption of such acts and practices in commerce, and in the absence of an order to cease and desist herein, there would be nothing to prevent their resumption by the respondents. No assurance has been herein given or is in sight that respondents, if they could shake the Commission's hand from their shoulders, would not continue their former course.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the respondents and the subject matter of this proceeding.

⁹ Findings Nos. 4 and 7, *supra*.

¹⁰ Paragraph 8, page 5 of Agreement, *supra*.

¹¹ Findings Nos. 7 and 9, *supra*.

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Final Order

2. The complaint herein states a cause of action and this proceeding is in the public interest.

3. The acts and practices of the respondents, as found and related in the foregoing Findings of Fact Nos. 1 through 10 were unfair methods of competition in commerce and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and the following agreed order to cease and desist¹² is appropriate in form and should issue in this proceeding.

ORDER

It is ordered, That respondents Aluminum Industries, Inc., a corporation, and its officers, and William N. Bostic, individually and as an officer of said corporation, and doing business as Southern Patio Company, Southern Aluminum Sales, or under any other trade name, 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 aluminum carports, aluminum patio covers, aluminum siding, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, any advertising, sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of products or services.

2. Discouraging the purchase of, or disparaging, any products or services which are advertised or offered for sale.

3. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell such products or services.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 7th day of January 1965, become the decision of the Commission.

¹² Agreed Order, page 5 of Agreement Containing Stipulation of Facts and Agreed Order, *supra*.

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It is further ordered, That Aluminum Industries, Inc., a corporation, and William N. Bostic, individually and as an officer of said corporation, and as a sole proprietor doing business as Southern Patio Company, and as Southern Aluminum Sales, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named