

IN THE MATTER OF
NATIONAL MODERNIZERS, INC., ET AL.

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

Docket C-1012. Complaint, Nov. 5, 1965—Decision, Nov. 5, 1965

Consent order requiring three affiliated sellers of storm-screen windows with places of business in Cranston, R. I., Needham, Mass., and Hartford, Conn., to cease using "bait" advertising to sell their storm-screen windows, in pursuance of which they placed advertisements in newspapers of "UNCLAIMED * * * STORM-SCREEN WINDOWS * * * \$8.50 * * *" which were not bona fide offers to sell at the advertised price

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but were for the purpose of obtaining leads to prospective purchasers who were then called upon by salesmen and pressured into buying other merchandise at higher prices.

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 National Modernizers, Inc., National Modernizers of Massachusetts, Inc., National Modernizers of Connecticut, Inc., corporations, and Eugene Albanese and Donald S. Letts, individually and as officers of said corporations, 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 National Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1732 Cranston Street in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Massachusetts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. It has had its principal place of business in various locations at the times set forth herein, principally at 32-32A Dedham Avenue in the city of Needham, State of Massachusetts and 1732 Cranston Street in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Connecticut, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 453 Wethersfield Avenue in the city of Hartford, State of Connecticut.

Respondents Eugene Albanese and Donald S. Letts are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of respondent National Modernizers, Inc., at 1732 Cranston Street in the city of Cranston, State of Rhode Island.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of storm-screen windows 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 the various places of business of the said corporate respondents, in their respective States of incorporation, to purchasers thereof located in various other States of the United States, and have caused to be mailed, shipped, or delivered by other means, from one corporate respondent to another corporate respondent, various books, documents, checks, letters, advertisements and other writings and papers for use in the matters and things hereinafter alleged and set forth, and maintain and at all times herein mentioned 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 aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made statements in advertisements in newspapers of general circulation. Typical and illustrative, but not all inclusive, of such statements are the following:

UNCLAIMED ALCOA ALUMINUM
TRIPLE ACTION STORM-SCREEN WINDOWS
WHILE THEY LAST!

\$8.50

per window installed any size.

NOT SECONDS—NOT REJECTS BUT BRAND NEW WINDOWS
UNCLAIMED BY OUR CUSTOMERS. MINIMUM 6 WINDOWS

* * * * *

FREE HOME DEMONSTRATION ANYWHERE IN NEW ENGLAND
NATIONAL MODERNIZERS, INC.
32 Dedham Ave., Needham, Mass.

PAR. 5. By and through the use of said above-mentioned statements, and others of similar import not specifically set out herein, the respondents represented, directly or by implication, that they were making a bona fide offer to sell storm-screen windows at the prices specified in the advertising.

PAR. 6. In truth and in fact, respondents' offers were not bona fide offers to sell the said storm-screen windows at the advertised prices but were made for the purpose of obtaining leads and information as to persons interested in the purchase of storm-screen windows. After obtaining leads through response to said advertisements, respondents' salesmen called upon such persons but made no effort to sell said storm-screen windows at the advertised prices. Instead they exhibited samples of the advertised storm-screen windows, or one similar to them, in demonstrating that they were

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manifestly unsuitable for the purpose intended, in addition disparaging the advertised products and using other tactics 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 storm-screen windows 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 deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent National Modernizers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1732 Cranston Street, in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Massachusetts, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. It has had its principal place of business in various locations at the times relevant to this proceeding, principally at 32-32A Dedham Avenue, in the city of Needham, State of Massachusetts and 1732 Cranston Street, in the city of Cranston, State of Rhode Island.

Respondent National Modernizers of Connecticut, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 453 Wethersfield Avenue, in the city of Hartford, State of Connecticut.

Respondents Eugene Albanese and Donald S. Letts are officers of the said corporations, and their address is the same as that of respondent National Modernizers, Inc. at 1732 Cranston Street, in the city of Cranston, State of Rhode Island.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents National Modernizers, Inc., National Modernizers of Massachusetts, Inc., National Modernizers of Connecticut, Inc., corporations, and their officers, and respondents Eugene Albanese and Donald S. Letts, individually and as officers 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 storm-screen windows or 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, a sales plan, scheme or device wherein false, misleading or deceptive statements or represen-

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tations are made in order to obtain leads or prospects for the sale of merchandise or services.

2. Offering for sale, in advertisements or otherwise, merchandise described as "unclaimed" or by any other terms which are designed not to sell that particular merchandise but to sell other merchandise at higher prices.

3. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

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

5. Representing, directly or indirectly, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell said merchandise or services.

6. Offering for sale in advertisements or through out-of-store solicitations any merchandise which is thereafter stated to be not in stock or not readily available for delivery at the advertised or offering price, unless the advertisement states the period of time during which the merchandise will be available at the advertised price and sufficient merchandise is in fact in stock available for sale at that price for that period of time.

It is further 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 this order.

IN THE MATTER OF
FAIRCHILD CAMERA AND INSTRUMENT
CORPORATION ET AL.