

Complaint

IN THE MATTER OF

MODERN BUILDERS, INC., ET AL.

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

Docket C-1130. Complaint, Oct. 14, 1966—Decision, Oct. 14, 1966

Consent order requiring a Winter Park, Fla., home improvement company to cease using deceptive representations to sell its residential aluminum siding and other products.

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 Modern Builders, Inc., a corporation, and James W. Glasser, individually and as an officer 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 Modern Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The principal office and place of business of Modern Builders, Inc., is located at 686 Formosa Drive, in the city of Winter Park, State of Florida.

Respondent James W. Glasser is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of 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 and installation of various items of home improvements, including aluminum siding to the purchasing 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 Florida 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 aforesaid business, and for the purpose of inducing the purchase of their products, in newspaper advertisements, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents now represent, and have represented, directly or by implication, that:

1. Homes of prospective purchasers have been specially selected as model homes for the installation of respondents' products, after installation such homes would be used for demonstration and advertising purposes by respondents; and, as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts or commissions.

2. Respondents are connected or affiliated with the Kaiser Aluminum and Chemical Corporation.

3. Respondents' products are applied by factory trained personnel.

4. Respondents' products will last a lifetime and will not require repainting or repair for the life of the structure on which it is applied.

5. Respondents' products are "unconditionally guaranteed" in every respect without condition or limitation for an unlimited period of time.

6. Prospective purchasers would receive free merchandise or gifts for permitting a representative of respondents to call on them and estimate the cost of improvements to their homes.

PAR. 5. In truth and in fact:

1. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration and advertising purposes by respondents; and purchasers, as a result of agreeing to allow their homes to be used as models, are not granted reduced prices, nor do they receive allowances, discounts or commissions.

2. Respondents are not connected or affiliated with Kaiser Aluminum and Chemical Corporation.

3. Products sold by respondents are not applied by factory trained personnel.

4. Respondents' products will not last a lifetime and will require repainting and repair.

5. Respondents' products are not unconditionally guaranteed

in every respect without conditions or limitations, for an unlimited period of time. Such guarantee as may have been provided was subject to numerous terms, conditions and limitations, and failed to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform thereunder.

6. Respondents do not give gifts or free merchandise to prospective purchasers in accordance with their promises or offers, but use such offers and promises as a means of obtaining names of prospective purchasers of their products.

Therefore, the statements and representations set forth in Paragraph Four hereof 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 various items of home improvements, including aluminum siding of the same general kind and nature as 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.

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 Modern Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 686 Formosa Drive, in the city of Winter Park, State of Florida.

Respondent James W. Glasser is an officer of said corporation and his address is the same as that of said corporation.

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 Modern Builders, Inc., a corporation, and its officers, and James W. Glasser, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with advertising, offering for sale, sale and distribution of residential aluminum siding or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(1) The home of any of respondents' customers, or prospective customers, has been selected to be used as a model home, or otherwise, for advertising purposes;

(2) Any allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model homes or demonstration purposes;

(3) Respondents are connected or affiliated with Kaiser Aluminum and Chemical Corporation, or misrepresenting in any manner the identity of the manufacturer or the source of any of respondents' products;

(4) The products sold by respondents will be installed by factory trained personnel: *Provided, however*, That it shall

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be a defense in any enforcement proceeding instituted hereunder for respondents to establish that said personnel have actually been trained at the factory of the manufacturer of the product;

(5) The products sold by respondents will last a lifetime or will never require painting or maintenance, for the life of the structure on which applied, or misrepresenting in any manner the efficacy, durability or efficiency of respondents' products;

(6) Any of respondents' products or installations are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

(7) Persons will receive a gift of a specified article of merchandise, or anything of value: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the item referred to as a gift was in fact delivered to each eligible person.

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.