

IN THE MATTER OF
FIRST FEDERAL CONSTRUCTION COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1181. Complaint, Mar. 9, 1967—Decision, Mar. 9, 1967

Consent order requiring an Evansville, Indiana, seller of residential aluminum siding to cease misrepresenting through salesmen, connections with large aluminum companies, making false guarantees, fictitious pricing and deceptive savings claims, and deceptively representing that homes of prospective purchasers would be used as model homes.

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 Commission, having reason to believe that First Federal Construction Company, Inc., a corporation, and Theodore B. Conn, Jr., 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. First Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal

office and place of business located at 1011 Grove Street, Evansville, Indiana.

Theodore B. Conn, Jr., 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 2612 N. Court Drive, Evansville, Indiana.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of various items of merchandise for installation in or on private homes, including aluminum siding.

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 Indiana 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, through oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective customers:

1. That respondents' salesmen or representatives are representatives of the Kaiser Aluminum and Chemical Corporation or the Aluminum Company of America.

2. That respondents' products are guaranteed by the Kaiser Aluminum and Chemical Corporation in every respect without condition or limitation for an unlimited period of time.

3. That respondents' products are being offered for sale at a special or reduced price and that savings are thereby afforded purchasers from respondents' regular selling price.

4. That the homes of prospective purchasers have been specially selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by the respondents, and that, as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts, commissions or some other compensation.

PAR. 5. In truth and in fact:

1. Respondents' salesmen or representatives are not representatives of the Kaiser Aluminum and Chemical Corporation or the

Aluminum Company of America, nor are they connected with such organizations.

2. Respondents' materials are not unconditionally guaranteed by the Kaiser Aluminum and Chemical Corporation in every respect without condition or limitation or guaranteed for an unlimited period of time; but on the contrary such guarantee by the Kaiser Aluminum and Chemical Corporation as may be furnished in connection with respondents' products is subject to numerous terms, conditions and limitations and extends only for a specified number of years.

3. Respondents' products are not being offered for sale at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

4. The homes of prospective purchasers are not specially selected as model homes, and respondents do not use purchasers' homes as points of reference for advertising or demonstration purposes. In addition, respondents do not give allowances, discounts, commissions or other compensation to purchasers who agree to have their homes used as models.

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

PAR. 6. In the course of their business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding and other building materials of the same general kind and nature as those 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 hereinafter 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent First Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its offices and principal place of business located at 1011 Grove Street, Evansville, Indiana.

Respondent Theodore B. Conn, Jr., is an officer of said corporation and his address is 2612 N. Court Drive, Evansville, Indiana.

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 First Federal Construction

Company, Inc., a corporation, and its officers, and Theodore B. Conn, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, distribution or installation of residential 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. Representing, directly or by implication, that respondents or their salesmen or representatives are representatives of or are connected or affiliated with the Kaiser Aluminum and Chemical Corporation or the Aluminum Company of America; or misrepresenting, in any manner, the business connections or affiliations of the respondents.

2. Representing, directly or by implication, that any of respondents' products are guaranteed, unless the nature, extent and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

3. Representing, directly or by implication, that any price for respondents' products is a special or reduced price unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business.

4. Misrepresenting, in any manner, savings available to purchasers of respondents' products.

5. Representing, directly or by implication, that the home of any of respondents' customers or prospective customers has been selected as a model home to be used for advertising purposes or will be used for advertising purposes.

6. Representing, directly or by implication, that any allowance, discount, commission or other compensation is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for advertising purposes.

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.

Complaint

71 F.T.C.

IN THE MATTER OF

W. R. GRACE & CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT

Docket C-1182. Complaint, Mar. 9, 1967—Decision, Mar. 9, 1967

Consent order prohibiting a large diversified corporation with headquarters in New York City from acquiring any corporation manufacturing or selling chocolate or cocoa products (SIC 2072), for a period of 10 years without prior approval of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions are applicable:

(a) *Chocolate and cocoa products.* Chocolate and cocoa products are foods prepared in cocoa bean grinding establishments by heating and cracking dried or cured cocoa beans and removing the shell therefrom. This category includes foods prepared in such establishments by further processing of cocoa bean grindings. This definition corresponds to Standard Industrial Classification Industry No. 2072.

(b) *Cocoa Powders.* Cocoa powders are foods prepared by pulverizing the residual material remaining after part of the cocoa fat has been removed from ground cocoa nibs. This product may be packaged for household use or for use by commercial enterprises in flavoring confectionery, bakery, dairy and other food products. This definition corresponds to Bureau of Census Product Code No. 20728 75.

(c) *Chocolate and cocoa coatings.* Chocolate and cocoa coatings are intermediate food products prepared by finely pulverizing the cocoa butter or hard fat and cocoa powders to produce a solid or semiplastic substance suitable for use in coating confectionery, bakery, dairy and other food products. This category includes