

IN THE MATTER OF
SOUTHERN ALUMINUM DISCOUNT COMPANY, INC.,
ET AL.

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

Docket C-1489. Complaint, Feb. 3, 1969—Decision, Feb. 3, 1969

Consent order requiring two affiliated Springfield, Mo., home improvement companies to cease using bait advertisements, false pricing and savings claims, deceptive limited offers, and false guarantees in the sale of their products, and neglecting to disclose that purchasers' sales contracts may be negotiated to third parties.

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 Southern Aluminum Discount Company, Inc., a corporation, and Carpet Discount House, Inc., a corporation, and T. Doyle Mitchell and Bobbie Lou Mitchell, individually and as officers of said cor-

porations, 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 Southern Aluminum Discount Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly being located at 1051 East Lynn, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondent Carpet Discount House, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly being located at 904 North Glenstone, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondents T. Doyle Mitchell and Bobbie Lou Mitchell are individuals and 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 2412 South Marlan, Springfield, Missouri. Respondents have cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding, and various other home improvement products to the public and in the installation thereof.

PAR. 3. In the course and conduct of their business as aforesaid, 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 Missouri 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 residential aluminum siding and other home improvement products, respondents have made numerous statements and representations, through oral statements made to prospective purchasers by their salesmen or

representatives, in newspaper advertisements, and in direct mail advertising circulars and other promotional material, respecting the nature of their offer, price, time limitations, and their guarantee.

Typical and illustrative of respondents' published advertising representations, but not all inclusive thereof, are the following:

SAVE
ON SOUTHERN'S SPECIAL OFFER
This \$488.00 Value NOW ONLY \$288.00
NO EXTRAS
Completely Installed
ENJOY EVERLASTING HOME BEAUTY. Comfortable living and Savings
* * * Now your home can be made into a truly modern home.
CLIP AND MAIL THIS COUPON TODAY
FOR A BONUS GIFT
YOUR CHOICE OF THREE FINE GIFTS
IF YOU ACT PROMPTLY
OFFER GOOD FOR LIMITED TIME ONLY

PAR. 5. By and through the use of the aforesaid statements and representations, and other of similar import and meaning not specifically set out herein, and through oral statements made by their salesmen or representatives, respondents represent, and have represented, directly or by implication, that:

1. The offer set forth in said advertisements is a bona fide offer to sell the advertised products at the prices and on the terms and conditions stated.

2. Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling prices.

3. Respondents' advertised offer is made for a limited time only.

4. Homes of prospective purchasers are specially selected as model homes for installation of respondents' aluminum siding; after installation such homes will be used for demonstration and advertising purposes by respondents and, as a result of allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts or commissions.

5. Respondents' products are guaranteed in every respect without conditions or limitations for a period of twenty years.

6. Respondents' siding will not require repainting.

PAR. 6. In truth and in fact:

1. Respondents' said advertised offers are not genuine or bona fide offers but are made for the purpose of obtaining leads as to

persons interested in the purchase of respondents' products. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, they write a contract calling for the sale of the advertised product and the prospective purchaser is permitted to execute that contract. Immediately thereafter, respondents' salesmen or representatives disparage the advertised product and otherwise discourage the purchase thereof and attempt to void said contract and to sell and frequently do sell a different and more expensive product instead of the product for which the customer originally contracted.

2. Respondents' products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

3. Respondents' advertised offer is not made for a limited time only. Said merchandise is advertised regularly at the represented prices and on the terms and conditions therein stated.

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

5. Respondents' home improvement products are not guaranteed in every respect without conditions or limitations for a period of twenty years or for any other period of time. Such guarantee as may be provided is subject to numerous terms, conditions and limitations respecting the duration of the guarantee and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder.

6. Respondents' siding materials will require repainting.

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 further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of

their residential siding materials and other home improvement products, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

Therefore, the acts and practices as set forth in Paragraph Seven hereof were and are unfair and false, misleading and deceptive acts and practices.

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

PAR. 9. The use by the 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. 10. 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 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 fur-

nished 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of the Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Southern Aluminum Discount Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly located at 1051 East Lynn, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondent Carpet Discount House, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business formerly located at 904 North Glenstone, Springfield, Missouri, and now located at Suite 221 Woodruff Building, Jefferson at St. Louis Streets, Springfield, Missouri.

Respondents T. Doyle Mitchell and Bobbie Lou Mitchell are officers of said corporations and their address is 2412 South Marlan, Springfield, Missouri.

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 Southern Aluminum Discount Company, Inc., a corporation, and Carpet Discount House, Inc., a corporation, and their officers, and T. Doyle Mitchell and Bobbie Lou Mitchell, individually and as officers of said corporations and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution or installation of residential siding, or other home improvement products 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, a 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 other merchandise or services.

2. 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.

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale, either before or after a contract has been signed for the purchase of such merchandise or services.

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

5. 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; or misrepresenting, in any manner, the savings available to purchasers.

6. Representing, directly or by implication, that any offer to sell products is limited as to time or is limited in any other manner: *Provided, however,* That it shall be a defense in any enforcement proceedings instituted hereunder for respondents to establish that any represented limitation as to time or other represented restriction is actually imposed and adhered to by respondents.

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

8. Representing, directly or by implication, that any reduced price, allowance, discount, commission or other compensation is granted by respondents to purchasers in return for permitting or agreeing to allow the premises on which respondents' products are installed to be used for model homes or demonstration purposes.

9. Representing, directly or by implication, that respondents' products will never require repainting, or misrepresenting in any manner, the serviceability or utility of respondents' products.

10. Representing, directly or by implication, that any of respondents' products 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 in immediate conjunction therewith; or making any direct or implied representation that any of respondents' products are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

11. Failing to clearly and conspicuously incorporate the following statement on the face of all negotiable instruments executed by respondents' customers:

"NOTICE"

"Any holder of this note shall take this note subject to all defenses of any party which would be available in an action on a simple contract."

12. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.
