

IN THE MATTER OF

FEDERAL CONSTRUCTION COMPANY, INC., ET AL.

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

Docket C-1493. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a Tulsa, Okla., home improvement company to cease using bait advertising, false pricing and savings claims, deceptive guarantees, falsely alleging connection with manufacturers, failing to disclose all terms of its sales contracts, and other deceptive sales practices.

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 Federal Construction Company, Inc., a corporation, and H. Harold Becko, 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 Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 8178 East 44th Street in the city of Tulsa, State of Oklahoma.

Respondent H. Harold Becko is an individual and 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.

Respondents are now trading, and for some time last past have traded, as:

Federal Construction Company, Lifetime Construction Company, General Construction Company, Kaiser Distributors of Tulsa, Aluminum Products, Sterling Homes, Exterior Design Specialists, Globe Aluminum, Plastic Distributors, Alscos, Federal Coatings.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of residential siding materials to the public.

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 Oklahoma 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, respondents have made, and are now making, numerous statements and representations in advertising circulars and other promotional material and in oral statements made by their salesmen and representatives with respect to the nature of their offer, their prices, time limitations, guarantees and performance of their products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

Save * * * summer special our regular \$499 * * * now only \$299 * * *
offer good next three days only * * *

* * * * *

We warrant in writing for twenty years.

* * * * *

Save up to 30% on air-conditioning and heating bills.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication, that:

1. The offer set forth in said advertisement was a bona fide offer to sell said residential siding material of the kind therein described at the price and on the terms and conditions stated.

2. The offer set forth in said advertisement was for a limited time only.

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

4. All purchasers of respondents' siding material will realize a 30 percent savings in their air-conditioning and heating bills.

5. Siding materials sold by respondents will never require painting or repairing.

6. Respondents' siding materials and installations are unconditionally guaranteed in every respect without condition or limitation for a period of twenty years or more.

7. 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, that as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts or commissions.

8. Purchasers of respondents' siding installations will receive enough commissions from referrals of other prospective purchasers to obtain their installation at little or no cost.

9. Respondents or their salesmen are connected or affiliated with the Kaiser Aluminum and Chemical Corporation or U.S. Steel Corporation.

10. Monthly payments as set forth in the contracts between respondents and their prospective customers include interest and insurance charges.

PAR. 6. In truth and in fact:

1. The offer set forth above was not a genuine or bona fide offer but was made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After obtaining such leads, respondents, their salesmen or representatives would call upon such persons at their homes or wait upon them at respondents' place of business. At such times and places, respondents, their salesmen or representatives would disparage the advertised siding and otherwise discourage the purchase thereof and would attempt to sell, and did sell, different and more expensive residential siding materials.

2. The offer set forth above was not for a limited time only.

Said merchandise was advertised regularly at the represented prices and on the terms and conditions therein stated.

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

4. All purchasers of respondents' residential siding materials will not realize a 30 percent savings in their air-conditioning and heating bills. Few, if any, will achieve such savings.

5. Residential siding materials sold by respondents will require painting and repairing.

6. Respondents' residential siding materials and installations are not unconditionally guaranteed in every respect without conditions or limitations for a period of twenty years. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, 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.

7. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installations 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.

8. Few, if any, purchasers of respondents' residential siding installation received enough referral commissions to obtain their installation at little or no cost and respondents seldom, if ever, pay allowances or commissions in referral sales.

9. Respondents are not connected or affiliated with Kaiser Aluminum and Chemical Corporation or U.S. Steel Corporation.

10. The monthly payments set forth in the contracts between respondents and their prospective customers do not include all the interest and insurance charges. In fact, the finance companies later charge additional insurance and interest charges which were not previously included in the monthly payments; and by virtue of said false, misleading and deceptive representations with respect to terms and condition of sale, respondents thereby secure the execution of partially completed contracts of sale or

other instruments which are later completed to include charges and obligations not agreed to by the purchaser.

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 course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been and now are in substantial competition, in commerce, with corporations, firms and individuals in the sale of residential siding materials and other products of the same general kind and nature as that sold by respondents.

PAR. 8. 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. 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 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 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 its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 8178 East 44th Street, Tulsa, Oklahoma.

Respondent H. Harold Becko is an individual and 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 Federal Construction Company, Inc., a corporation, and its officers, and H. Harold Becko, individually and as an officer of said corporation, trading under said corporate name or under any trade name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of residential siding materials or other home improvement products or services 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 representations are made in order to obtain leads or prospects for the sale of any 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 respondents' offer of products is limited as to time, or is limited in any other manner: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitation as to time or other represented restrictions is actually imposed and in good faith adhered to by respondents.

6. 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, that any savings or a stated amount of savings are available to purchasers.

7. Representing, directly or by implication, that purchasers of respondents' residential siding materials will realize a 30 percent savings or any other percentage or amount of savings in their air-conditioning or heating bills: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that each such purchaser in fact realized the represented savings.

8. Representing, directly or by implication, that residential siding materials sold by respondents will never require painting or repairing; or misrepresenting, in any manner, the durability, performance or quality of respondents' products.

9. Representing, directly or by implication, that any of respondents' products or installations 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.

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

11. Representing, directly or by implication, that 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.

12. Representing, directly or by implication, that purchasers are able to obtain respondents' products at little or no cost as a result of the receipt of commissions or compensation from referrals.

13. Falsely representing that purchasers will receive referral commissions or misrepresenting in any manner the amount of referral commissions that purchasers will receive.

14. Representing, directly or by implication, that respondents are connected or affiliated with Kaiser Aluminum and Chemical Corporation or U.S. Steel Corporation, or misrepresenting, in any manner, the identity of the manufacturer or the source of any of respondents' products or the respondents' business connections or affiliations.

15. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to sign blank or partially completed sale contracts, or any other instruments.

16. Failing or refusing to disclose the exact amount of the total purchase price of merchandise, including all interests, credit or service charges, at the time the contract for the sale of such merchandise is executed by the purchaser or purchasers.

17. 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 corporation shall forthwith distribute a copy of this order to each of its 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.

IN THE MATTER OF

ELGIN NATIONAL WATCH COMPANY

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

Docket C-1494. Complaint, Feb. 20, 1969—Decision, Feb. 20, 1969

Consent order requiring a watch manufacturer in Elgin, Ill., to cease making fictitious pricing claims in the sale of its 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 that Elgin National Watch Company, a corporation, also trading as Helbros Watches, hereinafter referred to as respondent, has 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. Elgin National Watch Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 25 East Washington Street, in the city of Elgin, State of Illinois. It also trades as Helbros Watches, 2 Park Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for sometime last past has been, engaged in manufacturing, assembling, advertising, offering for sale, selling and distributing watches to catalog houses, dealers and retailers for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for sometime last past has caused, its said products, when sold, to be shipped from its places of businesses in the States of Illinois and New York to purchasers thereof located in various other States of the United States other than the State of origination and maintains, and at all times