

Docket C-1750. Complaint, June 5, 1970—Decision, June 5, 1970

Consent order requiring a Chicago, Ill., seller of advisory and managed accounts services in the commodity futures market to cease exaggerating the earnings and profits to be realized by its customers, and failing to disclose the possible losses which may be incurred.

Complaint

77 F.T.C.

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 the Siegel Trading Company, Inc., a corporation, and Joseph E. Siegel, 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. Siegel Trading Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 100 North LaSalle Street in the city of Chicago, State of Illinois.

Respondent Joseph E. Siegel, 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.

PAR. 2. Respondents are now, and for sometime last past have been, engaged in the advertising, offering for sale and sale of advisory and managed accounts services in commerce incident to the purchase and sale of commodity futures.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for sometime last past have caused, monies, contracts and other commercial paper and printed materials in connection with said advisory and managed accounts services, to be sent by United States mail from their place of business in the State of Illinois 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 services 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 said advisory and managed accounts services and into the placing of substantial sums of money with respondents for investment in the commodity futures market, respondents have made and published and caused to be published certain statements, claims and representations in newspapers, circulars, booklets and other materials distributed by them, respecting the

amount and consistency of profits and earnings and the risks of invested capital.

Among and typical of the foregoing, but not all inclusive thereof, are the following:

You gain more leverage for your money than in any other financial situation. For example, in the recent Pork Bellies Market, for every \$1,000 that my customers have invested, they were controlling 30,000 pounds of merchandise—roughly worth \$11,000. (Incidentally we called that market perfectly and that \$1,000 is now worth \$3,000.) Such situations are the rule rather than the exception in our business.

Trades of this type are exceptional in the Stock Market, but situations where large profits can be realized are more often the rule rather than the exception in the commodity markets.

. . . our program is designed to break even, even if we make money on only 4 of every 10 trades. (Our actual batting average is a profit on 70-75% of all trades.)

. . . it is conceivable to generate profits consistently.

the commodity markets are *designed for profits*. . . .

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. That the aforestated profits or earnings and other represented profits or earnings were typical and could be expected in the trading of commodity futures.

2. That commodity trading is without risk and that profits can be generated consistently in the trading of commodity futures.

3. That a profit is realized on a majority of commodity trades.

4. That significant, consistent returns on invested capital can be made in commodity trading without indicating that losses can also be incurred.

PAR. 6. In truth and in fact:

1. The represented profits or earnings were typical and could not be expected in the trading of commodity futures.

2. Commodity trading is not without substantial risk and profits cannot be generated consistently in the trading of commodity futures.

3. A profit is not realized on a majority of commodity trades.

4. Substantial losses can be and are often incurred in the trading of commodity futures.

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

Decision and Order

77 F.T.C.

PAR. 7. In the course and conduct 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 services of the same general kind and nature.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations 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 placing of substantial sums of money with respondents for investment in the commodity futures market and into the purchase of respondents' advisory and managed accounts services by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days and having duly considered the comments filed thereafter pursuant to § 2.34(b) of its Rules now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its

complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Siegel Trading Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 100 North LaSalle Street in the city of Chicago, State of Illinois.

Respondent Joseph E. Siegel is an officer of said corporation and his principal office and place of business is located at the above stated address.

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 Siegel Trading Company, Inc., a corporation, and its officers, and Joseph E. Siegel, 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 advertising, offering for sale, sale or distribution of advisory and managed accounts services incident to the purchase and sale of commodity futures, 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 any stated profits or earnings were or are typical, or could be expected, or would be realized in the trading of commodity futures.

2. Representing, directly or by implication, that commodity trading is without risk; or that profits can be generated consistently in the trading of commodity futures.

3. Representing, directly or by implication, that a profit is realized on a majority of commodity trades.

4. Making any representation, directly or by implication, respecting profits or earnings which have been or may be earned from trading in commodity futures without clearly and conspicuously stating in immediate connection therewith that losses can also be incurred.

5. Misrepresenting in any manner, or by any means, the profits or earnings which have been or may be derived or the degree or extent of the risk of loss incurred by persons placing money with the respondents for investment or making use of respondents' advisory service or managed accounts service.

6. Failing to deliver a copy of this order to cease and desist to all present and future salesmen and other persons engaged in the sale of respondents' product or services and failing to secure from each 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 respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

AMERICAN HOME PRODUCTS CORPORATION

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