

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

Docket C-1775. Complaint, July 31, 1970—Decision, July 31, 1970

Consent order requiring a Des Moines, Iowa, seller of residential siding products to cease conducting misleading contests, making deceptive pricing, guarantee and quality claims, making token installations, and using other unfair tactics.

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 Imperial Builders Supply, Inc., a corporation, and Max Lettween, 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 Imperial Builders Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 1166 20th Street, Des Moines, Iowa.

Respondent Max Lettween 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 business address is the same as that of the corporate respondent.

The aforementioned respondents cooperate and act 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 various items of home improvements, including residential siding products to the general public and 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 Iowa 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. Basically, respondents' sales plan has been to have puzzles published in newspapers, and to request that such puzzles be solved and returned to the company for entry in a "Contest," awarding a Grand Prize of all the siding for the winner's home; a Second Prize of a color television set; in one case, a Third Prize of a Hoover Upright Vacuum Cleaner, and in all cases including the words, "PLUS MANY OTHER PRIZES." All contests include eight rules. Illustrative of the rules are those quoted as follows from an advertisement run in the TV Supplement of the Kansas City Star for the week of September 11-17, 1966:

1. Entrants must be home owners or buying a home and 21 years of age or older.
2. Find the home below that matches the one in the coupon and write its number beneath the one in the coupon. Check every detail . . . the difference could be in the window, chimney, door, etc.
3. All entries will be judged not only on accuracy but on neatness and originality as well.

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4. All entries must be received by midnight, Wednesday, September 21, 1966.

5. All entries must be sent through the mail. Be sure to include your name and address. Mail to Imperial Builders, 3560 Broadway, Kansas City, Mo.

6. The decision of the judges will be final. In case of a tie, names will be drawn.

7. No entries will be returned.

8. Contest winners will be announced in The Kansas City Star Dec. 18, 1966.

After entries are received, and before the date on which contest winners are to be announced, entrants are contacted for the purpose of selling siding on the basis that they are prospective or actual prize winners of a \$400 discount from the regular price of siding.

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, respondent and his salesmen or representatives have represented directly or by implication, in advertising and promotional material and in direct oral solicitations to prospective purchasers, for the purpose of inducing the purchase of their products, that:

1. Through the use of rules, a legitimate contest is being conducted and that there are judges designated who will make a bona fide decision as to the winner thereof.

2. Entrants may win prizes other than those specifically set out as the Grand Prize, Second Prize, or where applicable, Third Prize.

3. Respondents' products are being offered for sale at special savings from the respondents' regular selling prices as a result of the contest.

4. Products sold by respondent will never require repainting or repairing.

5. Respondents' products are everlasting and are made of indestructible materials, being impervious to storm, hail, fire and other elements.

6. Respondents' products and installations are fully guaranteed in every respect, without condition or limitations for the lifetime of the original purchaser.

PAR. 6. In truth and in fact:

1. While winners of the contests are purportedly selected by judges on the basis of accuracy, neatness and/or originality, in fact, they are more frequently selected by respondents at random on the basis of friendship, promotional value of the winner's name, economy of job required by the "winner," or other personal reasons not related to a true contest. Winners have been declared who did not, in fact, enter the contest.

2. No prizes, other than those specifically listed as the Grand Prize, Second Prize or Third Prize are awarded except that respondent advises entrants that they have won \$400 off the price of siding, although respondent normally sells siding to everyone at a discount, with \$400 or more being considered a normal discount, and, therefore, the value of allegedly winning \$400 is illusory.

3. Respondents' products 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 prices at which respondents' said products are sold vary from customer to customer depending on the resistance of the prospective purchasers.

4. Products sold by respondents will require repainting or repairing.

5. Respondents' products are not everlasting and can be destroyed. They are not impervious to storm, hail, fire and other elements.

6. Respondents' siding materials and installations are not unconditionally guaranteed in every respect without condition or limitation for an unlimited period of time or for any other period of time. 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.

Therefore, the statements and representations as set forth in Paragraph 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 siding materials, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. 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.

2. Respondents subsequent to the signing of the contract by the purchaser represent that such contract is noncancellable and initiate token installations within a matter of hours after the execution of the contracts for the purpose of claiming partial performance on their contracts, with the intention of suspending work until it can be completed at respondents' convenience and convincing the customer that the contract is noncancellable, despite the foregoing false and deceptive sales scheme. In a substantial number of instances, the work is not resumed for weeks and even months. This practice is generally known in the trade as "spiking the job."

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 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 siding materials and other products of the same general kind and nature as that 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 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

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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 Imperial Builders Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 1166 20th Street, Des Moines, Iowa.

Respondent Max Lettween is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices under investigation. His address is the same as that of the corporate respondent.

Respondents cooperate and act together in carrying out the acts and practices being investigated.

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 Imperial Builders Supply, Inc., a corporation, and its officers, and Max Lettween, 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 the advertising, offering for sale, sale or distribution or installation of residential siding, or other home improvement products or services 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 names of contest winners are selected on the basis of merit when all of the

names are not selected by merit; or, misrepresenting in any manner the method by which names are selected in any drawing or contest.

2. Representing, directly or by implication, that there are many other prizes in a contest, when, in fact, there are not; representing an alleged discount as a prize, when, in fact, it is offered to all contest entrants, or in any other manner representing that contest entrants have or may win a prize which has not been established by clearly defined, predetermined contest rules.

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

4. Representing, directly or by implication, that respondents' products will never require repainting or repair; or misrepresenting, in any manner, the efficacy, durability, efficiency, composition, or quality of respondents' products.

5. Representing, directly or by implication, that respondents' products are everlasting or are made of indestructible materials.

6. Representing, directly or by implication, that storms, hail, fire or other elements will not damage respondents' products.

7. 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.

8. Failing to incorporate the following statement clearly and conspicuously on the face of all notes or other evidence of indebtedness executed by respondents' customers which, in the hands of any holder would not be subject to all defenses which would be available to the customer in an action by respondent:

"NOTICE"

"Any holder of this instrument takes this instrument subject to all defenses of the maker hereof which would be available to said maker in any action arising out of the

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contract which gave rise to the execution of this instrument if such action had been brought by any party to said contract."

9. Failing within at least three days prior to any performance on any contract, to deliver to the customer a fully executed copy of the contract, together with a separate written statement, clearly and conspicuously advising the customer that there will be no performance on the contract for a designated period which shall in no case be less than three days after receipt by the customer of the aforesaid documents and that such customer may, during this designated period, elect to cancel the contract, without prejudice, by written notice to the other party.

10. 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 respondents notify the Commission at least thirty (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

EVAN-PICONE, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS.
2(d) AND 2(e) OF THE CLAYTON ACT

Docket C-1776. Complaint Aug. 3, 1970—Decision, Aug. 3, 1970

Consent order requiring a New York City manufacturer and distributor of women's dresses to cease discriminating among competing customers in paying promotional allowances and furnishing services or facilities.