

Complaint

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investors in respondents' dealerships would get exclusive territories or be paid if territory was shared, that visits or training at respondents' home office would be paid for by respondents, that a refund would be granted in case dealership discontinued, that taping machines and other equipment would be furnished free, that a dealer needs no prior skill, knowledge or training, that dealer will be furnished free sale literature or that products will be delivered to dealer's job site, and that respondents' products have been approved by an agency of the Federal Government.

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 Century Brick Corporation of America, Century Bonded Products, Inc., Lancer Advertising Agency, Inc., First National Credit Corporation of America, and Associated Leasing Corporation of America, corporations, and Colman J. Seman, David C. Seman, and Frederick P. Seman, individually and as officers or directors of said corporations, 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. Century Brick Corporation of America, Century Bonded Products, Inc., Lancer Advertising Agency, Inc., First National Credit Corporation of America, and Associated Leasing Corporation of America are corporations organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with their principal offices and places of business formerly located at 4506 West 12th Street, in the city of Erie, State of Pennsylvania.

Respondents Colman J. Seman, David C. Seman, and Frederick P. Seman are individuals and are officers and/or directors 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 addresses are as follows: Colman J. Seman and Frederick P. Seman, 802 Wedgewood Drive, Erie, Pennsylvania; and David C. Seman, 640 Brown Avenue, Erie, Pennsylvania.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents for some time last past have been engaged in the advertising, offering for sale, sale, and distribution of simulated brick facing to franchised dealers for resale to the public under

the trade name of "Century Brick." Also the said individual respondents for some time last past have been engaged in the advertising, offering for sale, sale, and distribution of seamless floor-covering material to franchised dealers for resale to the public under the trade name of "Magnalux Seamless Flooring."

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 Pennsylvania to purchasers thereof located in various other States of the United States other than the State of origination, 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, respondents have operated, and continue to operate, a sales plan to market their products by establishing franchised dealerships. Leads to prospective franchised dealers, hereinafter called dealers, are obtained by local and national advertising. Once the name of a prospective dealer is obtained, respondents send a salesman to call on him and attempt to sell him a franchised dealership, hereinafter called a dealership. If a sale is made, respondents send another representative to instruct the new dealer in organizing the business. When this is complete, respondents furnish the dealer with their product materials.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of the dealerships for their products, by and through oral statements and representations of respondents, or their salesmen and representatives, and by means of advertising and other written and printed material, respondents represent, and have represented, directly and by implication, to prospective purchasers of these dealerships, that:

1. That dealership consisted of an exclusive franchise to sell respondents' products within a designated territory and that the owner of such dealership would receive payment from the respondents if additional dealers were permitted to do business within said designated territory.

2. The respondents would pay all expenses for the dealer or an employee of his to visit and receive training at the respondents' home offices.

3. The dealer would receive a refund from the respondents of all or a portion of the dealership fee, if said dealer decided not to continue in the dealership.

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4. Other persons were interested in the particular territory and, therefore, the prospective dealer must make a decision on the dealership immediately.

5. A representative of the respondents would be sent to the new dealer's territory to assist him in hiring and training employees, securing job orders, establishing contacts and credit at local banks and otherwise setting up a fully-operating business.

6. The respondents would provide, free of charge, the taping machines used in the installation of respondents' products.

7. The respondents would provide dealers with sales leads obtained through national advertising.

8. The respondents would provide the dealer with a list of names and addresses of other active dealers.

9. The dealer needed no skill, knowledge, or prior training to operate a successful dealership.

10. The respondents would furnish advice and assistance to the dealer, whenever the need arose.

11. The respondents were building warehouses at various locations, operating or maintaining a marble-crushing plant, and marketing prefabricated homes.

12. The dealers would be provided with free sales literature or literature which would not cost a dealer more than \$10 per thousand.

13. The respondents' products would be delivered to the dealer's job site at a stated cost.

14. The respondents' products were approved by the Federal Housing Administration and the General Services Administration.

15. The respondents had many successful dealers with earnings ranging from \$20,000 per year to over \$50,000 per year.

16. The dealers would be supplied with the respondents' products within a reasonable time after they were ordered.

PAR. 6. In truth and in fact:

1. The dealership did not consist of an exclusive franchise to sell respondents' products within a designated territory and a dealer would not receive any payment from respondents if additional dealers were permitted to do business within such territory.

2. Any expenses that were paid for a dealer or his employees to visit and receive training at the respondents' home office were included in the franchise fee which was paid by the dealer.

3. The dealer did not receive any refund of his dealership fee from the respondents, if he discontinued his dealership.

4. In some cases, there were no other persons interested in the

particular territory and the prospective dealer had no reason to hasten his decision on whether to purchase the dealership.

5. In certain instances the respondents' representatives did not assist the dealer in hiring and training employees, securing job orders, establishing contacts and credit at local banks, and setting up his business.

6. The respondents did not provide dealers with free taping machines.

7. The respondents provided dealers with few, if any, leads obtained through national advertising.

8. The respondents did not provide dealers with the names and addresses of other active dealers.

9. The dealers or authorized representatives of same needed skill, knowledge, and/or prior training in the application of the product to operate a successful dealership.

10. The respondents did not furnish advice and assistance to dealers, whenever the need arose.

11. The respondents were never building warehouses at various locations, operating a marble-crushing plant, or marketing pre-fabricated homes.

12. The dealers did not receive free sales literature from the respondents and what they did receive cost in excess of \$10 per thousand.

13. The respondents' products were, in many cases, delivered to the dealer's job site substantially in excess of the stated cost which was represented to him.

14. The respondents' products are not and were never approved by the Federal Housing Administration, the General Services Administration, or an agency or branch of the United States Government.

15. The respondents have few, if any successful dealers with earnings ranging from \$20,000 per year to over \$50,000 per year.

16. In many cases, the dealers had to wait long periods of time for the respondents' products to be delivered after they were ordered.

Therefore, the statements and representations as set forth in Paragraph 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 franchised dealerships and of products of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations in connection with the

recruitment of franchised dealers to sell their products had had, and now has, the capacity and tendency to mislead prospective franchised dealers into the erroneous and mistaken belief that such statements and representations were, and are, true and to induce a substantial number of them to respond to such advertisements, statements, and representations, and to enter into franchise dealership agreements with respondents and to expend substantial sums of money in reliance on 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 Consumer Protection 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, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, **now in further conformity with the procedure prescribed in Section**

* Excluding David C. Seman who is not named in the order hereinafter set forth.

2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents Century Brick Corporation of America, Century Bonded Products, Inc., Lancer Advertising Agency, Inc., First National Credit Corporation of America, and Associated Leasing Corporation of America are corporations organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with their principal offices and place of business formerly located at 4506 West 12th Street, in the city of Erie, State of Pennsylvania.

Respondents Colman J. Seman, and Fredrick P. Seman are individuals and are officers and/or directors 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 802 Wedgewood Drive, Erie, Pennsylvania.

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 the respondents, Century Brick Corporation of America, Century Bonded Products, Inc., Lancer Advertising Agency, Inc., First National Credit Corporation of America, and Associated Leasing Corporation of America, corporations, and their officers and directors, and Colman J. Seman and Fredrick P. Seman, individually and as officers or directors of said corporations, 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 simulated brick facing, seamless floor-covering material, or any other product, or any franchise, license, or dealership with respect thereto, 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 persons investing in respondents' franchises, dealerships, or other products will be granted an exclusive territory in which to locate and sell products purchased from respondents unless respondents provide in all contracts or purchase agreements with dealers, franchisees, or purchasers of respondents' products, to whom such exclusive territories have been granted, a description of the size and limits

of the territories, and a statement that no other investor, dealer, franchisee, or purchaser of the same products will be granted the same territory or any part thereof and respondents in all instances abide by such provisions.

2. Representing, directly or by implication, that a dealer will receive payment from respondents if additional dealers are permitted to do business within his designated territory, unless such payments are actually made by respondents.

3. Representing, directly or by implication, that any expenses, other than those actually paid by the respondents, for the dealer or his employee to visit and receive training at the respondents' home office or any other place will be paid by the respondents.

4. Representing, directly or by implication, that a dealer will receive any refund of the dealership fee or initial investment from the respondents if the dealer decides not to continue in said dealership, unless such refunds are actually made by the respondents.

5. Falsely representing, directly or by implication, that a representative of the respondents will be sent to assist a new dealer in the hiring and training of employees, securing job orders, establishing contacts and credit at local banks, or to assist or perform any other function or service not actually performed and readily available to such dealers.

6. Representing, directly or by implication, that respondents will provide, free of charge, the taping machines used in the installation of respondents' products, unless such is actually provided on the represented terms and conditions; misrepresenting, in any manner, the machinery, equipment, or supplies furnished or made available to dealers or franchisees or the cost thereof.

7. Representing, directly or by implication, that respondents will provide dealers with sales leads obtained through national advertising or any other means, unless respondents are able to provide to each dealer a significant number of bona fide prospective buyers for respondents' products.

8. Representing, directly or by implication, that respondents will provide the dealer with the names and addresses of other active dealers or that respondents have many successful dealers, unless respondents have current information establishing the success of such dealers and provide such names and addresses as promised.

9. Representing, directly or by implication, that a dealer needs no skill, knowledge, or prior training, or experience to operate a

successful dealership, unless the prospective dealer is fully apprised of all facts and responsibilities of operating such a dealership.

10. Misrepresenting, in any manner, the assistance furnished or made available to the dealer.

11. Falsely representing that respondents are building warehouses at various locations, operating or maintaining a marble-crushing plant or manufacturing and marketing prefabricated homes; or misrepresenting, in any manner, the size or kind of respondents' business organization.

12. Representing, directly or by implication, that respondents will provide dealers with free sales literature, when in fact such sales literature is not free; or misrepresenting, in any manner, the cost of sales literature to dealers.

13. Representing, directly or by implication, that respondents' products will be delivered to the dealer's job site at any cost other than the actual one.

14. Falsely representing, directly or by implication, that respondents' products are approved by the Federal Housing Administration, the General Services Administration, or any agency of the United States Government; or misrepresenting, in any manner, the acceptance or approval of respondents' products.

15. Representing that dealers will earn any stated amount; or representing, in any manner, the past earnings of dealers, unless in fact, the past earnings represented are those of a substantial number of dealers and accurately reflect the average earnings of these dealers under circumstances similar to those of the dealer to whom the representation is made.

16. Representing, directly or by implication, that dealers will be supplied with respondents' products within a reasonable time after they are ordered, unless such is actually the fact.

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' product dealerships and failing to secure from each such salesman or other persons 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 respondents notify the Commission at least thirty (30) days prior to any proposed change in a corporate respondent, such as dissolution, assignment, or sale, resulting in the

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emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in a 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.