

them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

TRI-STATE HOME IMPROVEMENT COMPANY, INC.,
ET AL.

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

Docket C-1877. Complaint Mar. 1, 1971—Decision, Mar. 1, 1971

Consent order requiring Milwaukee, Wisc., sellers and distributors of home improvement products to cease misrepresenting that a prospective customer's home has been specially selected as a model home, that owners of such homes will be granted a discount or that any price is special or reduced, failing to maintain adequate records of its operations for a period of five years, misrepresenting that offers to sell are limited in time, that prize contests are being conducted, that respondents' siding material will last a lifetime, failing to disclose the nature and extent of its guarantees, failing to disclose orally at time of sale the required provisions of Regulation Z of the Truth in Lending Act, and failing to include on the face of all negotiable instruments a notice that all holders of the note are subject to all defense available in an action on a simple contract.

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 Tri-State Home Improvement Company, Inc., a corporation, and George Spector and Howard D. Spector, individually and as officers 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 Tri-State Home Improvement Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 1830 North Third Street, Milwaukee, Wisconsin.

Respondents George Spector and Howard D. Spector are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of home improvements, including residential siding, 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 Wisconsin 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 and their salesmen or representatives have represented, and now represent, directly or by implication, in advertising and promotional material and in oral solicitations to prospective purchasers, that:

1. 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.

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

3. Respondents' offers are made for a limited time only.

4. Respondents have conducted a bona fide contest and individuals have won a valuable prize consisting of a discount from the prices at which the respondents' products are usually and customarily sold.

5. The products of respondents will last a lifetime and will never require repainting or repair; and that the products of respondents are impervious to storm, hail and other elements.

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6. Respondents' siding materials and installations are "guaranteed" thereby representing that said products are unconditionally guaranteed in every respect for an unlimited period of time.

PAR. 5. In truth and in fact:

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

2. Respondents do not have regular selling prices but the prices at which respondents' products or services are sold vary from customer to customer depending on the resistance of the prospective purchaser.

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

4. Respondents do not conduct a bona fide contest. Said contests are schemes to sell respondents' products. Alleged winners of discount as an award or prize have not won a valuable prize. Prizes are valueless since the purported reductions are not from the net prices at which the products of respondents are usually and customarily sold by respondents in the normal course of their business.

5. The products of respondents are not everlasting and in the regular course of use they will require repainting or repair.

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. Furthermore, in a substantial number of cases, respondents or their salesmen fail to furnish any written guarantee to the customer.

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

PAR. 6. In the further course and conduct of their business and in furtherance of a sales program for inducing the purchase of their home improvement products, including residential siding materials, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. Respondents and their salesmen or representatives have failed to disclose the total purchase price of the sales contract, during the negotiation and the consummation of the contract and have informed the purchasers of only the approximate amount of monthly installment payments. In some instances, the purchaser learned the total amount of indebtedness for the first time when contacted by the finance company to which respondents had negotiated or assigned the sales contract and promissory note.

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

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 home improvements, including residential siding 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 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 admis-

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sion 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 Tri-State Home Improvement Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1830 North Third Street, Milwaukee, Wisconsin.

Respondents George Spector and Howard D. Spector are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation. Their business address is the same as that of the corporate respondent.

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 Tri-State Home Improvement Company, Inc., a corporation, and its officers, and George Spector and Howard D. Spector, individually and as officers 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 or installation of home improvements, including residential siding, or any other products or services, 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 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.

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2. 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.

3. Representing, directly or by implication, that any price for home improvements or any other products or services is a special or reduced price, unless such price constitutes a significant reduction from the price at which respondents have in good faith offered for sale or sold substantially similar home improvements or any products or services for a reasonably substantial period of time in the recent regular course of their business.

4. Failing to maintain adequate records:

(a) For a period of five (5) years which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs 2 and 3 of this order.

(b) For a period of five (5) years, with regard to each and every contract hereafter entered into between respondents and their customers, which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges, for materials and for labor, and for those contracts involving siding, or the installation of siding, or both, additional information as to the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, the total amount of money paid to salesmen, agents or representatives for the solicitation of the said contracts, and what each customer was charged exclusive of interest or finance charges per square foot for the performance of the said contract.

(c) For a period of five (5) years invoices, notices for payment and all similar documents which respondents receive in the conduct of their business from suppliers, subcontractors and other persons, and for a period of five (5) years copies of all contracts entered into between respondents and their customers.

5. Representing, directly or by implication, that any offer to sell products is limited as to time, or is limited in any other

manner unless any represented limitation as to time or other represented restriction is actually imposed and in good faith adhered to by respondents.

6. Representing, directly or by implication, that contests to select the winners of prizes or awards are being conducted when all of such winners are not selected on the basis of a bona fide drawing or other competitive elimination.

7. Representing, directly or by implication, that awards or prizes are of a certain value or worth when the recipients thereof are not in fact benefited by or do not save the amount of the stated value or worth of such prizes or awards.

8. Representing, directly or by implication, that respondents' siding materials will last a lifetime or will not require repainting or repair for the life of the structure on which they are applied; or misrepresenting, in any manner, the efficacy, durability, efficiency, composition, or quality of respondents' products.

9. 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; 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.

10. Failing to disclose orally at the time of sale and in writing to each customer who executes a conditional sales contract, promissory note, or other negotiable instrument, with such conspicuousness and clarity as is likely to be read and observed by the customer of all the following items:

- (a) The cash price of the merchandise purchased.
- (b) The sum of any amounts credited as down payment (including any trade-in).
- (c) The difference between the amount referred to in Paragraph (a) and the amount referred to in Paragraph (b).
- (d) All other charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.
- (e) The amount to be financed (the sum of the amount described in Paragraph (c) plus the amount described in Paragraph (d)).

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- (f) The amount of the finance charge.
- (g) The finance charge expressed as an annual percentage rate.
- (h) The total credit price (the sum of the amounts described in Paragraph (e) plus the amount described in Paragraph (f) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price).
- (i) The total amount of charges, penalties or other consequences in the event of any default in payments.
- (j) A description of any security interest held or to be retained or acquired by respondents in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For the purpose of this paragraph, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under Sections 106 and 107 of Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

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 the 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 respondent 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 respondent 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.