

HARRY STROIMAN TRADING AS EMPIRE BUILDERS
COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-1889. Complaint, Apr. 1, 1971—Decision, Apr. 1, 1971

Consent order requiring a Des Moines, Iowa, individual engaged in the sale and distribution of residential aluminum siding products to cease misrepresenting that any price for respondent's products is a special or reduced price, failing to maintain records supporting his savings claims, misrepresenting that a customer's home will be used as a model, failing to disclose the nature and extent of the guarantee, and failing to include on all notes a Notice that "Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby"; and failing to make certain disclosures required by Regulation Z of the Truth in Lending Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Harry Stroiman, an individual trading as Empire Builders Company, hereinafter referred to as respondent, has violated the provisions of said Acts, and of the regulations promulgated under the Truth in Lending 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 Harry Stroiman is an individual trading as Empire Builders Company, with his office and principal place of business located at 4024 Fleur Drive, Des Moines, Iowa.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding products to the general public and in the installation thereof.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of his business as aforesaid, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has 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 his business, and for the purpose of inducing the purchase of his products, respondent and his 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. Respondent's siding materials and installations are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondent's regular selling price.

2. Homes of prospective purchasers have been specially selected as model homes for the installation of the respondent's products; that after installation such homes will be used for demonstration and advertising purposes by respondent.

3. Respondent's siding materials and installations are unconditionally guaranteed in every respect without condition or limitation for a period of 20 years or more.

4. All purchasers of respondent's siding materials and installations will realize a substantial savings on their heating bills.

PAR. 5. In truth and in fact:

1. Respondent's siding materials and installations are not being offered for sale at special or reduced prices, and savings are not thereby afforded respondent's customers because of a reduction from respondent's regular selling prices. In fact, respondent does not have a regular selling price but the prices at which respondent's said products are sold vary from customer to customer depending on the resistance of the prospective purchasers.

2. Homes of prospective purchasers are not specially selected as model homes for the installation of respondent's products; after installation such homes are not used for demonstration and advertising purposes by respondent.

3. Respondent's siding materials and installations are not unconditionally guaranteed in every respect without conditions or limitations for a period of 20 years 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, respondent or his salesmen fail to furnish any written guarantee to the customer.

4. All purchasers of respondent's residential siding materials and installations will not realize a substantial savings on their heating bills.

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 his business, and in furtherance of a sales program for inducing the purchase of his residential siding materials, respondent and his salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of his business, respondent sells and transfers his 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 respondent for his failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

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 his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent 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 such statements and representations were and are true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged were, and are, all to the prejudice and injury of the public and of respondent's 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.

COUNT II

Alleging violations of the Truth in Lending Act and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 10. In the ordinary course and conduct of his business, as aforesaid, respondent regularly extends, and for some time in the past has regularly extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 11. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of his business and in connection with credit sales as "credit sale" is defined in Regulation Z, has caused, and is causing, his customers to enter into retail installment contracts, hereinafter referred to as "the contract."

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PAR. 12. By and through the use of the contract, respondent:

1. Fails to disclose the "unpaid balance," using that term, as required by Section 226.8(c)(5) of Regulation Z.
2. Fails to disclose the date the finance charge begins to accrue when different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.
3. Fails, in some instances, to include the amount of insurance charges which are charged to the customer in the "amount financed," as required by Section 226.8(c)(4) of Regulation Z.
4. Fails to describe the type of security interest in property held, retained or acquired in connection with extensions of credit, as required by Section 226.8(b)(5) of Regulation Z.

PAR. 13. By and through use of the contract referred to in Paragraphs Eleven and Twelve, respondent retains or acquires a security interest in real property which is or is expected to be used as the principal residence of the customer. The customer thereby has the right to rescind the transaction, as provided in Section 226.9(a) of Regulation Z. Having consummated a rescindable consumer credit transaction, respondent includes the following language in the contract:

If this order is countermanded before application, there will be a charge of 25% of the contract price for liquidated damages, and not considered a penalty.

By and through the use of this quoted language, respondent:

1. Represents, directly or by implication, that customers will or may be liable for damages, penalties or any other charges if they exercise the right to rescind provided by Section 226.9 of Regulation Z, contrary to the provisions of Section 226.9(d) of Regulation Z.
2. Supplies additional information not required by Regulation Z, which is stated so as to mislead or confuse the customer concerning his right to rescind the credit transaction provided by Section 226.9 of Regulation Z, contrary to the provisions of Section 226.6(c) of Regulation Z.

PAR. 14. Pursuant to Section 103 of the Truth in Lending Act, respondent's aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondent has thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent

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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, 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 Harry Stroiman is an individual trading as Empire Builders Company, with his office and principal place of business located at 4024 Fleur Drive, Des Moines, Iowa.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That Harry Stroiman, an individual trading as Empire Builders Company, or under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of residential aluminum 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 any price for respondent's products and/or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products and/or services have been sold in substantial quantities by respondent in the

recent regular course of his business; or misrepresenting, in any manner, the savings available to purchasers.

2. Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including special or reduced pricing claims, former pricing claims and comparative value claims, and similar representations of the type described in Paragraph 1 of this order are based, and (b) from which the validity of any savings claims, including special or reduced pricing claims, former pricing claims and comparative value claims, and similar representations of the type described in Paragraph 1 of this order can be determined.

3. Representing, directly or by implication, that the home of any of respondent's customers or prospective customers has been selected to be used or will be used as a model home, or otherwise, for advertising purposes.

4. Representing, directly or by implication, that any of respondent's 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 in immediate conjunction therewith; or making any direct or implied representation that any of respondent's 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 and unless respondent promptly fulfills all of his obligations under the represented terms of such guarantee.

5. Representing, directly or by implication, that purchasers of respondent's residential siding materials will realize a substantial savings on their heating bills; or misrepresenting, in any manner, the amount of savings afforded to respondent's customers on their heating bills.

6. Failing to clearly and conspicuously incorporate the following statement on the face of all sales contracts, all notes or other evidence of indebtedness executed by or on behalf of respondent's customers:

"NOTICE"

"Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby."

II

It is further ordered, That respondent Harry Stroiman, an individual trading as Empire Builders Company, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit, as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 *et. seq.*), do forthwith cease and desist from:

1. Failing to disclose the date on which the finance charge begins to accrue when that date is different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z; or when this date is unknown, failing to estimate that date, pursuant to Section 226.6(f) of Regulation Z.

2. Failing to indicate all charges which are not part of the cash price or the finance charge but are included in the amount financed, and to itemize each such charge individually, as required by Section 226.8(c)(4) of Regulation Z.

3. Providing information to any customer which states, directly or indirectly, that the customer will or may be liable for damages, penalties or any other charges for exercising the right to rescind which is accorded pursuant to Section 226.9(a) of Regulation Z.

4. Providing any information other than that required to be disclosed by Section 226.8 or Section 226.9 of Regulation Z which misleads the customer or which contradicts, obscures or detracts attention from the information concerning the right to rescind required to be disclosed by Regulation Z.

5. Failing, in any consumer credit transaction or advertisement, to make all disclosures in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

III

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondent's products or services, and shall secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

JACOBS BROTHERS INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION, THE WOOL PRODUCTS LABELING AND THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1890. Complaint, Apr. 2, 1971—Decision, Apr. 2, 1971

Consent order requiring South Hackensack, N.J., manufacturers of children's wearing apparel to cease misbranding their wool products and falsely guaranteeing their textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jacobs Brothers Industries, Inc., a corporation, and Bernard Jacobs, David Janco and Robert Jacobs, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification 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 Jacob Brothers Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 11-C Empire Boulevard, South Hackensack, New Jersey.

Respondents Bernard Jacobs, David Janco and Robert Jacobs are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

Respondents are engaged in the manufacturing of children's apparel. They ship and distribute such products to various customers throughout the United States.

PAR. 2. Respondents, now and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and