

Complaint

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IN THE MATTER OF

TIME INCORPORATED, ET AL.

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

Docket C-1919. Complaint, May 13, 1971—Decision, May 13, 1971

Consent order requiring a major New York City magazine publisher and its wholly-owned subsidiary engaged in soliciting magazine subscriptions to cease making various false representations in inducing customers to subscribe to magazines, refusing to cancel a contract on request, failing to reveal all significant details of the subscription contract, harassing customers by phone or otherwise to effect payment of accounts, making sales contracts which are binding before midnight of the third day, and failing to notify purchaser of his right to rescind contract within three days. The order also binds any third party which respondent may engage to solicit subscriptions.

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 Time Incorporated, a corporation, and Family Publications Service, Inc., a 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. Time Incorporated, hereinafter referred to as Time, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the Time Life Building, Rockefeller Center, in the city of New York, State of New York.

Family Publications Service, Inc., hereinafter referred to as Family, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1212 Avenue of the Americas, in the city of New York, State of New York. It is a wholly-owned subsidiary of respondent Time, and operates some thirty-four branch offices located throughout the United States that are managed by employees of Family. The volume of business of said respondent subsidiary corporation in the sale and distribution of magazines and periodicals to the general public is substantial, averaging in excess of \$25,000,000 annually during the period of 1967 through 1969.

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

PAR. 2. Respondent Time, through its various organizational divisions and through its wholly-owned subsidiary corporation Family, publishes, sells and distributes magazines and other periodicals including LIFE, a general interest publication. The magazines and other publications which Family sells nationwide include those published by Time and by others as well. All such products, whether magazines, books or any other printed matter will hereinafter be referred to as "publications."

Subscription sales are made to consumer members of the general public, hereinafter referred to as "customers," "subscribers" or "purchasers;" said subscription contracts generally run from two to five years depending upon the number and type of publications solicited by the customer, and vary in price from approximately \$60 to \$125.

PAR. 3. In the course and conduct of its business of selling said publications pursuant to subscription sales contracts as aforesaid, respondent Time through its subsidiary Family, their agents, salesmen, or other solicitors, hereinafter referred to as "employees," have induced members of the general public to subscribe to LIFE and other publications.

Respondents, through said employees, place into operation and, through various direct and indirect means and devices, control, direct and implement sales methods whereby members of the general public are contacted by telephone calls and door-to-door solicitations, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign subscription contracts purporting to list publications of the purchasers' choice, a stated subscription period for each, and the terms and conditions for payment by installments of the purchase price. The executed subscription contracts are thereafter forwarded by the branch offices to the respondent corporate subsidiary's headquarters for processing in the usual course of respondents' business. This method of selling is referred to in the industry as "Paid-During-Service," (PDS).

Thereafter subscriber makes payments, directly or indirectly, to respondents and respondents accept the revenues flowing from said circulation, sale and distribution of said publications.

In the aforesaid manner, respondent Time dominates and controls, furnishes the means, instrumentalities, services and facilities for, condones and approves, and accepts all the pecuniary and other benefits flowing from the acts, practices and policies of respondent Family and its employees.

PAR. 4. In the course and conduct of their subscription sales busi-

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ness, as aforesaid, respondents now cause, and for more than three years last past have caused said publications, when sold, to be shipped from their place of business or sources of supply by mail to purchasers thereof located in the same and various other States of the United States other than the state of origination, and have transmitted and received in the course of selling, delivering and collecting payment for said publications among and between the several States of the United States, contracts, invoices, checks, collection notices and various other kinds of commercial paper and documents. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in such products and commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business as aforesaid and for the purpose of inducing members of the general public to sign subscription contracts, respondents and their sales employees utilize or display sales promotional materials or other means and instrumentalities furnished, approved or ratified by respondents. In conjunction therewith, they have made certain oral statements and representations concerning the terms and conditions of said subscription contracts, their renewal or cancellation, special offers, the nature and purpose of the solicitation, and the identity of the organization purportedly involved in the solicitation. In the foregoing manner, respondents and their employees have represented, directly or indirectly:

(a) That their offers are being made only to specially selected persons, such as, but not limited to contest winners and those who participated in polls or surveys.

(b) That they represent, or are performing services for bona fide noncommercial or other nonprofit organizations, such as "Welcome Wagon."

(c) That publications or other products will be given free or for the cost of mailing, handling, editing or printing said publications, or at special or reduced prices.

(d) That subscribers will be allowed to cancel the subscriptions if they should decide to do so.

PAR. 6. In truth and in fact:

(a) Respondents' said offers were not being made only to specially selected persons, but, to the contrary, were made to numerous members of the general public through frequent solicitations of broad segments thereof.

(b) Said employees neither represented nor performed services for

bona fide non-commercial or other non-profit organizations such as "Welcome Wagon" but, to the contrary, represented or performed services for respondents in the manner aforesaid.

(c) Publications or other products were not given free, nor solely for the cost of mailing, handling, editing or printing of said publications, nor at special or reduced prices. To the contrary, the subscription contracts provided for payment to cover respondents' regular or prevailing subscription contract prices.

(d) On a substantial number of occasions, subscribers were not allowed to cancel their subscription contracts, or were allowed to do so only after extended delay.

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 their purpose of inducing the purchase of and payment for said publications by the general public, respondents and their employees, directly or indirectly, have engaged in the following additional acts and practices:

(a) In a substantial number of instances, they have stated approximate costs of a subscription contract on a weekly basis, in conjunction with statements of typical subscription periods as, for example, a cost of 45 cents per week and a period of 60 months. Respondents and their employees falsely and deceptively fail to disclose, in connection with such statements, the material fact that their contracts seldom, if ever, provide for weekly installment payments, or for payments spread over 60 months. In truth and in fact, the contracts require monthly installment payments of substantially higher amounts over a substantially shorter period of time than stated during such oral presentations.

(b) In a substantial number of instances they have induced customers to sign contracts by failing to fully inform the customers as to the cost, name and number of issues of each publication, the total cost of the contract, the amount of the down payment, the amount and due date of each payment and the total number of such payments.

(c) In a substantial number of instances, they have induced customers to sign a subscription contract by falsely and deceptively representing it to be a preference list, a guarantee, a route slip, for a document of an import or nature other than subscription contract.

(d) In their efforts to collect what respondents elect to treat as delinquent accounts of customers who have been induced to sign subscription contracts, they have unfairly, falsely and deceptively represented, directly or indirectly:

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(1) That the general or public credit rating or standing of any such customer will be adversely affected unless payment is made.

(2) That the failure of a customer to remit money to respondents will result in the institution of legal action to effect payment.

In truth and in fact, respondents seldom if ever take any action, including legal action, which adversely affects the general or public credit rating of such subscribers.

Therefore, respondents' statements, representation, acts and practices, and their failure to reveal material facts, as set forth herein were, and are, unfair, false, misleading and deceptive acts.

PAR. 8. In addition to the foregoing statements, representations, acts and practices, respondents have engaged in door-to-door solicitations of the aforesaid subscriptions, either without prior invitations to solicit such sales from prospective purchasers or by using one or more of the deceptive means and methods aforesaid to gain access to prospective purchasers at times and under circumstances when such prospective purchasers were not otherwise considering the purchase of magazines or other publications, and without either;

(a) affirmatively stating and affording such purchasers the right to cancel any resulting subscription contracts for a period of not less than 72 hours following such solicitations, or

(b) by refusing to honor any such right purportedly given either orally or in writing, or thwarting the exercise of any right so given.

The solicitation of subscription sales without permitting cancellation within a reasonable period of time constitutes an unfair, false, misleading and deceptive practice where such sale involves long-term obligations on the part of the subscriber and where it is made under the conditions and circumstances herein alleged.

PAR. 9. By and through the use of the aforesaid acts and practices, respondents place in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 10. In the course and conduct of their 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 products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by respondents of the aforesaid unfair and false, misleading and deceptive statements, representations and practices, and their failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said state-

ments and representations were and are true and complete, and into the purchase of substantial quantities of said products by reason of said erroneous and mistaken belief and unfairly into the assumption of debts and obligations and the payment of monies which they might otherwise not have incurred.

PAR. 12. 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 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, 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 Time Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the Time-Life Building, Rockefeller Center, in the city of New York, State of New York.

Respondent Family Publications Service, Inc., is a corporation organized, existing and doing business under and by virtue of the

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laws of the State of Delaware, with its office and principal place of business located at 1212 Avenue of the Americas, in the city of New York, State of New York.

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, Time Incorporated, a corporation and its officers, Family Publications Service Inc., a corporation and its officers, and their successors or assigns, and respondents' respective representatives, employees, salesmen, agents or solicitors, in connection with the advertising, offering for sale, sale or distribution of magazines or any other publications (hereinafter sometimes referred to as products or services) by subscriptions to purchase any such products or services through a "paid-during-service" plan, or through a "cash sale" plan (as "cash sale" is hereinafter defined) or in the collection or attempted collection of any delinquent paid-during-service or cash sale subscription account obtained through door-to-door, mail or telephone solicitation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that any employee or other person calling upon a customer or prospective customer for the purpose or with the result of inducing or securing a subscription to, order for, or the purchase or agreement to purchase any products or services:

(a) Is making such offer to specially selected persons; or misrepresenting, in any manner, the type or class of persons to whom such offers are being made.

(b) Represents, or is performing services for "Welcome Wagon" or any educational, charitable, social or other organization, or any individual or firm other than one engaged in soliciting business; or misrepresenting, in any manner, the identity of the solicitor or of his firm and of the business they are engaged in.

(c) Will give any product or service free or as a gift or without cost or charge, or that any product or service can be obtained free or as a gift or without cost or charge, in connection with the purchase of, or agreement to purchase any product or service, unless the stated price of the product or service required to be purchased in order to

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obtain such free product or gift is the same or less than the customary and usual price at which such product or service required to be purchased has been sold separately from such free or gift item, and in the same combination if more than one item is required to be purchased, for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

2. Failing, clearly, emphatically and unqualifiedly to reveal, at the outset of the initial contact and all subsequent sales solicitations of purchasers or prospective purchasers, whether directly or indirectly, or by telephone, written or printed communication, or person-to-person that the purpose of such contact or solicitation is to sell products or services as the case may be, which shall be identified with particularity at the time of each such contact or solicitation.

3. Representing, directly or indirectly, that any price for any product or service covers only the cost of mailing, handling, editing, printing, or any other element of cost, or is at or below cost; or that any price is a special or reduced price unless it constitutes a significant reduction from an established selling price at which such product or service has been sold in substantial quantities by respondents in the same combination of items in the recent and regular course of their business; or misrepresenting, in any manner, the savings which will be accorded or made available to purchasers.

4. Representing, directly or indirectly that any subscription contract or other purchase agreement can be cancelled at the purchaser's option, or that the right to cancel will be accorded to any purchasers, when there is no provision in such contract or agreement for cancellation on the terms and conditions represented, and unless cancellation is in fact granted on such terms and conditions.

5. Refusing or failing upon request to cancel a contract when the representation has been made directly or indirectly that the contract will be cancellable.

6. Making any reference to a sum of money or a period of time such as "45¢ a week" or "60 months" or any other similar references to the terms of a subscription contract which are not the actual terms and conditions of sale prior to notifying the customer or prospective customer clearly and precisely of the exact terms and conditions of sale, including but not limited to the actual total dollar amount of the contract involved, the

dollar amount of the down payment, and of each subsequent payment and the interval and number of such payments or misrepresenting in any manner the terms, conditions, methods, rate or time of payment actually made available to purchasers or prospective purchasers.

7. Failing to clearly reveal orally prior to the time the subscription contract is signed by the customer:

(a) The name, the exact number of issues, and the exact number of months of service of each publication covered by the contract;

(b) The total price to the subscriber of all the publications covered by the contract; and

(c) The down payment required and the number, amount, and due dates of all subsequent payments.

8. Representing, directly or indirectly, that a subscription contract or other purchase agreement which is presented to the purchaser during the course of the solicitation is a "preference list," "guarantee," "route slip" or any kind of document other than a contract or agreement; or misrepresenting, in any manner, the nature, kind or characteristics of any document.

9. Failing, clearly, emphatically and unqualifiedly to disclose orally and in writing to each purchaser or prospective purchaser before execution, the identity, nature and import of any document he is requested or required to execute in connection with the purchase of any product or service.

10. Harassing customers in order to effect payment of any account by any means, including the following:

(a) Repeated telephone calls within the same day or week, abusive telephone calls, or telephone calls at unreasonable hours.

(b) The use of forms or any other items of printed or written matter purporting to be legal documents or process.

(c) Representatives, direct or indirect, that in the event of non-payment or delinquency of any account or alleged debt arising from any subscription contract or other purchase agreement, the general or public credit rating or standing of any person may be adversely affected, unless respondents refer the information concerning such delinquency to a bona fide credit reporting agency.

(d) Representing that legal action may be instituted unless it is intended in good faith that such legal action be instituted; or misrepresenting in any manner the action

to be taken or results of any action which may be taken to effect payment of any such account or alleged debt.

11. Cancelling a subscription contract for any reason other than a breach by the subscriber without either arranging for the delivery of publications already paid for or promptly refunding money on a pro rata basis for all undelivered issues of publications for which payment has been made in advance.

12. Contracting for any sale in the form of a subscription contract or other purchase agreement which shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the date of notification of acceptance as provided in Paragraph 15.

13. Failing to disclose to the purchaser in writing on any subscription contract or other purchase agreement signed by the purchaser with such conspicuousness and clarity as likely to be understood by such purchaser, that the purchaser may rescind or cancel the sale by mailing a notice of cancellation to the address specified by the agency or respondent subsidiary prior to midnight of the third day, excluding Sundays and legal holidays, after the date upon which the purchaser signed such subscription contract.

14. Failing to furnish each subscriber at the time of his signing of the subscription contract a duplicate original of the contract showing date signed by the customer and name of salesman together with his agency's address and telephone number and showing on the same side of the page, above or adjacent to the place for the customer's signature, the exact number and name of the publications being subscribed for; the number of issues for each; the down payment required; the number, dollar amount and due dates of each subsequent payment; amount and rate of finance charge, if any; the charge, if any, for late payment and the conditions under which such charge shall be assessed and the total price to the subscriber for all such publications.

15. Failing to provide at the time the customer is notified of the acceptance of the contract a clearly understandable form showing the magazines or other publications covered by the contract, inviting specific attention to the variations therein, if any, from the purchase agreement signed by the purchaser; the price to the subscriber ascribed by the respondents for each publication for the term of the contract and the total price to the subscriber of all such publications covered by the contract, and

the name and address of the agency or respondent subsidiary which the purchaser may use as a notice of cancellation at any time prior to midnight of the third day, excluding Sundays and legal holidays, after the date of receipt thereof; and such form shall advise such purchaser of his right so to cancel.

16. In the event of the discontinuance of publication, or other unavailability, of any magazines subscribed for, at any time during the life of the contract, failing to offer the subscriber the right to substitute one or more magazines or other publications, or the extension of subscription periods of magazines already selected.

17. Failing or refusing to cancel, at the subscriber's request, all or any remaining portion of a subscription contract whenever any misrepresentation prohibited by this order has been made to such subscriber.

18. Furnishing or otherwise placing in the hands of employees or other authorized representatives the means and instrumentalities, such as sales pitches, instruction sheets, collection or advertising materials by and through which the public may be misled or deceived in the manner or as to things prohibited by this order.

It is further ordered, That Time Incorporated, directly or indirectly through Family Publications Service, Inc., or any other present or future subsidiary or controlled affiliate of respondents:

(a) Deliver by registered mail or by hand a copy of this Decision and Order to each of their present and future dealers or franchisees, if any, representatives, licensees, employees, salesmen, agents, solicitors, independent contractors, or other authorized representatives who, as described in the main preamble to this order, are engaged, in the promotion, offering for sale, sale or distribution of the products or services included in this order by means of paid-during-service or cash sale plans employing door-to-door, mail or telephone solicitation of subscription contracts: *Provided, however*, That the provisions of this Paragraph (a) shall not apply to those who are merely engaged in the physical distribution of magazines or other products included in this order;

(b) Provide each person so described in Paragraph (a) above with a form to be signed by such person clearly stating his intention to conform his business practices to the requirements of this order;

(c) Inform each person so described in Paragraph (a) above

that the respondents shall not use any third party, or the service of any third party for the solicitation of magazine subscriptions unless such third party agrees to conform to the provisions contained in this order;

(d) If any such third party will not agree to conform to the provisions of the order, the respondents shall not use such third party, or the services of such third party to solicit subscriptions;

(e) So inform each person so described in Paragraph (a) above that the respondents are obligated by this order to discontinue dealing with those persons who continue on their own the deceptive acts or practices prohibited by this order;

(f) Institute a program of continuing surveillance adequate to reveal whether the business operations of each person so described in Paragraph (a) above conform to the requirements of this order; and

(g) Discontinue dealing with the persons revealed by the aforesaid program of surveillance to be continuing on their own deceptive acts or practices prohibited by this order.

It is further ordered, That respondents herein shall notify the Commission at least thirty (30) days prior to any proposed change in the structure of either of the corporate respondents 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 respective corporations which may affect the compliance obligations arising out of this order.

It is further ordered, That 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.

As used in this order, the term "cash sale" shall mean the sale of products or services by a subscription contract by that category of sales personnel referred to in the trade as "field representatives" or "traveling crews" who sell subscriptions during the course of door-to-door solicitations to one or a few products in consideration of one immediate full payment or few payments as contrasted with the more numerous products and payments involved in paid-during-service plans.

As used in this order the phrase "door to door, mail or telephone solicitation" of subscription contracts relates only to such solicitation used to initiate or effect sales or collections pursuant to a paid-during-service plan or a cash sale plan.

By the Commission, with Chairman Kirkpatrick not participating, and Commissioner Jones dissenting.

IN THE MATTER OF

EVERETT EUGENE MILLER TRADING AS
MIDWESTERN CONSTRUCTION AND SUPPLY COMPANY

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

Docket C-1920. Complaint, May 13, 1971—Decision, May 13, 1971

Consent order requiring a Tulsa, Okla., individual engaged in the sale and distribution of residential aluminum siding to cease misrepresenting that the price of his products is special or reduced, failing to disclose the details of his guarantees, misrepresenting certain of his customers' homes as model homes, failing to disclose to purchasers that their notes may be negotiated to third parties, 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 Everett Eugene Miller, an individual trading as Midwestern Construction and Supply 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 Everett Eugene Miller is an individual trading as Midwestern Construction and Supply Company, with his office and principal place of business located at 2323 East 71st Street, Tulsa, Oklahoma.

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,