

## 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,

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 Oklahoma 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 aforesaid 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 customers that:

1. Respondent's siding materials and/or installations are being offered for sale at special or reduced prices.

2. Respondent's siding materials and/or installations are unconditionally guaranteed in every respect without condition or limitation for a lifetime.

3. 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; and, that as a result of allowing their homes to be used as models, purchasers will be granted reduced prices or will receive allowances, discounts or commissions.

4. Respondent's salesmen are connected or affiliated with the manufacturer of respondent's products and in many cases specifically deny that they are salesmen or sales representatives of respondent.

PAR. 5. In truth and in fact:

1. Respondent's siding materials and/or 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 and/or installations are sold vary from customer to customer depending on the resistance of the prospective purchasers.

2. Respondent's siding materials and/or installations are not unconditionally guaranteed in every respect without conditions or limitations for a lifetime 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.

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3. Homes of prospective purchasers are not specially selected as model homes for the installation of respondent's products, after installations such homes are not used for demonstration and advertising purposes by respondent; and purchasers as a result of allowing or agreeing to allow their homes to be used as models are not granted reduced prices nor do they receive allowances, discounts or commissions.

4. Respondent's salesmen are not connected or affiliated with the manufacturer of respondent's products and are in fact sales representatives for respondent.

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:

1. 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.

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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 violation of Section 5 of the Federal Trade Commission Act.

## COUNT II

Alleging violation 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 last 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 execute retail installment contracts, hereinafter referred to as the contract.

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

(a) In a number of instances fails to disclose the annual percentage rate to the nearest quarter of one percent, as required by Section 226.5(b)(1) of Regulation Z.

(b) Fails to disclose the date on which the finance charge begins to accrue, that date being different from the date of the transaction, as required by Section 226.8(b)(1) of Regulation Z.

PAR. 13. By and through the use of respondent's contract to perform various home improvements, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is used or expected to be used as the principal residence of the respondent's customers. Respondent's retention or acquisition of such security interest in said real property thereby entitles his credit customers to be given the right to rescind that transaction until midnight of the third business day following the consummation of the transaction or the day of delivery of all the disclosures required by Regulation Z, whichever is later.

Respondent has failed in a number of instances to disclose to the

customer the date by which the customer may give notice of cancellation, as required by Section 226.9(b) of Regulation Z.

Respondent has caused the following additional information and clause to appear in the contract:

Owners agree(s) that in the event of cancellation of this contract by owner(s) before work is started, owner(s) shall pay to contractor on demand twenty five (25%) of the contract price as its stipulated damages for the breach.

By and through the use of the above-quoted additional information and clause, respondent has and is representing to his customers that they are liable for damages in the event that these customers exercise their right to rescind, thereby violating Section 226.9(d) of Regulation Z. And, said additional information is stated and utilized so as to mislead or confuse the customer and contradicts, obscures and detracts attention from the information required by Regulation Z to be disclosed, thereby violating Section 226.6(c) of Regulation Z.

PAR. 14. Pursuant to Section 105 of the Truth in Lending Act, respondent's aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof, respondent 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, 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.

Respondent Everett Eugene Miller formulates, directs and controls the policies, acts and practices of said company.

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

*It is ordered*, That Everett Eugene Miller, an individual trading as Midwestern Construction and Supply 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 installations is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products and/or installations 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. Representing, directly or by implication, that any of respondent's products and/or installations 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 representations that any of respondent's products and/or installations are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

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 reduced price, allowance, discount, commission or other compensation is

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granted by respondent to purchasers in return for permitting or agreeing to allow the premises on which respondent's products are installed to be used for model homes or demonstration purposes.

5. Representing, directly or by implication, that respondent's salesmen or sales representatives are connected or affiliated with the manufacturer of respondent's products, or misrepresenting the business connections or affiliations of respondent or his salesmen or sales representatives.

6. Failing to disclose prior to the time of sale in writing on any conditional sales contract or other similar instrument executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

"Any such instrument, at respondent's option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to whom the purchaser will thereafter be indebted and against whom the purchaser's claims or defenses will not be available."

## II

*It is further ordered,* That respondent Everett Eugene Miller, an individual trading as Midwestern Construction and Supply Company, or trading or doing business 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 consumer credit sale of home improvement products or services, or any other products or services, as "credit sale" 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.*), forthwith cease and desist from:

1. Failing to disclose the annual percentage rate, where and when required by Regulation Z to be used, to the nearest quarter of one percent, in accordance with Section 226.5(b)(1) of Regulation Z.

2. 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.

3. Failing to disclose to the customer the date by which the customer may give notice of cancellation of the transaction, that date being not earlier than the third business day following the date of the transaction, in accordance with Section 226.9(b) of Regulation Z.

4. Representing, directly or by implication, on retail installment contracts, promissory notes, or on any written document, or orally, that customers will or may be liable for damages, penalties or any other charges for exercising their right to rescind that is provided by Section 226.9 of Regulation Z.

5. Supplying any additional information, contract clause or other statement about the customer's liability or obligations in the event that the customer exercises his right to rescind except that information furnished in accordance with Section 226.9 of Regulation Z.

6. Supplying any additional information, in writing or orally, that is stated, utilized or placed so as to mislead or confuse the customer or that contradicts, obscures or detracts attention from the information that is required to be disclosed by Regulation Z.

7. Engaging in any consumer credit transaction within the meaning of Regulation Z of the Truth in Lending Act without making all disclosures that are required by Sections 226.8 and 226.9 of Regulation Z in the amount, manner and form therein specified.

### 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.

### IN THE MATTER OF

### THE STANLEY WORKS

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

*Docket 8760. Complaint, Apr. 30, 1968—Decision, May 17, 1971*

Order requiring a New Britain, Conn., manufacturer and seller of power tools and hardware products to divest itself of all assets of a Rockford, Ill., manufacturer of certain hardware products, and not to acquire for a period of ten (10) years any firm engaged in the manufacture and sale of cabinet hardware without prior approval of the Federal Trade Commission.