

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

Docket C-1940. Complaint, June 7, 1971—Decision, June 7, 1971

Consent order requiring three related respondents manufacturing and distributing various types of concrete well casings located in Catawba, N.C., Stoney Creek, Va., and Watkinsville, Ga., to cease harassing and coercing purchasers of their products, refusing to sell to parties who have purchased from competitors, requiring that purchasers not deal with other suppliers, and requiring that respondent furnish their customers with copies of this order.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 45) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the above-captioned corporations and individuals, more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act,

Complaint

78 F.T.C.

and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby names the above-captioned corporations and individuals as respondents herein, and issues its complaint against the named parties stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Smith Setzer and Sons, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina with an office and plant located at Catawba, North Carolina. Respondent Smith Setzer and Sons of Virginia, Incorporated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia with an office and plant located at Stony Creek, Virginia. Respondent Smith Setzer & Sons, Inc., of Georgia is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia with an office and plant located at Watkinsville, Georgia.

PAR. 2. Respondents Ted L. Setzer, W. Neil Setzer, and Jerry Setzer are individuals and are officers 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 Catawba, North Carolina.

PAR. 3. Respondents manufacture and distribute various types of concrete products. The combined annual volume of sales of all corporate respondents is approximately \$600,000.

PAR. 4. The principal product manufactured and sold by respondents is concrete well casings. These concrete well casings are usually sold to persons engaged in the business of boring wells. Respondents' sale and distribution of concrete well casings are generally confined to the Piedmont areas of Virginia, North Carolina, South Carolina, Georgia, and Alabama; that is, the nonmountainous and noncoastal plain areas of said states. Within this territory, wells are the only source of water for household or agricultural use available to persons residing outside of counties, towns, or municipalities which have public water systems. Wells constitute an expensive home improvement, usually costing several hundred dollars to construct.

Within the mentioned geographical area, concrete well casings are the only practical means for lining most of the holes which are dug for wells. Well casings make up the principal item of materials costs in boring wells.

PAR. 5. Respondents manufacture concrete well casings at plants located in Catawba, North Carolina; Watkinsville, Georgia; and Stony Creek, Virginia; and cause said products to be shipped to cus-

tomers at various locations within the States of Virginia, North Carolina, South Carolina, Georgia, and Alabama. There has been, and is now, a pattern and course of interstate commerce in concrete well casings by respondents within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondents are engaged in competition on a limited basis with a few small firms engaged in the manufacture and sale of concrete well casings in various trading areas within respondents' marketing territory, and would be in substantial competition in the manufacture and sale of such products except for certain unfair methods of competition and unfair acts or practices of the respondents as hereinafter set forth.

PAR. 7. In the course and conduct of their business in commerce as above described, respondents have engaged in, and are now engaging in, certain unfair methods of competition and unfair acts or practices in the sale and distribution of concrete well casings. Among the acts or practices which have been employed, and are now being employed, by respondents, but not limited thereto, are the use of intimidation, threats, coercion, and harassment directed at purchasers of concrete well casings to induce them to purchase all, or substantially all, of their concrete well casing requirements from respondents.

PAR. 8. Examples of unfair acts or practices engaged in by respondents, but not limited thereto, are the following:

(A) Respondents have established a procedure to inform themselves of any sales made by competitors to well-borer customers of respondents, requiring respondents' truck drivers to report the presence of any competing concrete well casings observed in the course of making deliveries. Respondents have also maintained surveillance of deliveries of such products leaving the plants of competing manufacturers.

(B) Respondents contacted well borers who purchased competitive concrete well casings and expressed their disapproval of such purchases. When such preliminary contacts proved unsuccessful in obtaining discontinuance of such purchases, respondent Ted L. Setzer contacted such well borers and threatened that if they did not discontinue such purchases, respondents would drive them out of business or cause them economic harm. These threats had the capacity to coerce and intimidate the threatened well borers because they had learned of, or were advised by respondents of, previous incidents wherein such threats had been carried out by respondents.

(C) Additional threats were made by respondents that well borers would not be permitted to purchase concrete well casings from re-

spondents if they did not purchase all of their requirements of such products from respondents. Such threats also had the capacity to coerce and intimidate well borers because alternative sources of supply of concrete well casings were, and are, practically unavailable or severely limited.

PAR. 9. The acts and practices of respondents, as herein alleged, have had, and do have, the effect of hindering, lessening, restricting, restraining, and eliminating competition in the production, sale and distribution of concrete well casings; deny to purchasers of such products the opportunity to buy from suppliers of their choice; are to the detriment of actual or potential competitors of respondents and to the public; and constitute each and all unfair methods of competition and unfair acts or practices in commerce within the intent 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 the 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 Section 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 Smith Setzer and Sons, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina with an office and plant located at Catawba, North Carolina. Respondent Smith Setzer and Sons of Virginia, Incorporated, is a corporation organized, existing, and

doing business under and by virtue of the laws of the State of Virginia with an office and plant located at Stony Creek, Virginia. Respondent Smith Setzer & Sons, Inc., of Georgia is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia with an office and plant located at Watkinsville, Georgia.

Respondents Ted L. Setzer, W. Neil Setzer, and Jerry Setzer are officers of the corporate respondents. They formulate, direct, and control the policies, acts and practices of the corporate respondents. Their address is Catawba, North Carolina.

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 Smith Setzer and Sons, Inc., Smith Setzer and Sons of Virginia, Incorporated, and Smith Setzer & Sons, Inc. of Georgia, corporations, their officers, representatives, agents and employees, successors and assigns, directly or through any corporate or other device, and Ted L. Setzer, W. Neil Setzer, and Jerry Setzer, individually and as officers of said corporations, in connection with the manufacture, sale, or distribution of concrete well casings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

(A) Inducing, or attempting to induce, the purchase of such products by harassing, threatening, coercing, or intimidating purchasers, or prospective purchasers thereof, including but not limited to, making threats to purchasers, or prospective purchasers, to run them out of business, or to cause them harm, financial, economic, or otherwise, or from taking affirmative steps to carry out such threats.

(B) Boycotting or refusing to sell to purchasers or prospective purchasers who have purchased any of their requirement of such products from competitors.

(C) Selling or making any contract, agreement, or understanding for the sale of such products on the condition, agreement, or understanding that the purchaser thereof shall not use, deal in, sell, or distribute products supplied by any other seller.

(D) Enforcing, or continuing in operation or effect, any requirement, condition, agreement, or understanding with any purchaser which is to the effect that such purchaser shall not use, deal in, sell, or distribute such products supplied by any other seller.

Decision and Order

78 F.T.C.

It is further ordered, That respondents notify all customers of concrete well casings, both present customers as well as others who have made purchases from respondents within the past three (3) years (or have communicated with respondents for that purpose), that they are free to purchase such products from respondents or from any other supplier, in any proportion or proportions they see fit, by means of a letter of notice enclosing a copy of this order and the decision relating thereto and containing the following wording, and, apart from the address of the customer and the signature of respondents, only such wording:

(Date)

Dear Sir:

The Federal Trade Commission has reason to believe that Smith Setzer & Sons, Inc. has denied to purchasers of concrete well casings the opportunity to buy such products from suppliers of their choice. While we do not admit that we have engaged in these activities, we have entered into a consent decree with the Commission.

As part of this decree, we have been directed to notify you that your firm is free to purchase concrete well casings from Smith Setzer & Sons, Inc., *or from any other supplier*, as you see fit. We stand ready to supply you whether or not you purchase all of your requirements from our firm. Any previous agreement or understanding to the contrary is hereby cancelled.

We are sending you this notice by order of the Federal Trade Commission. We are also enclosing a copy of the Commission's Decision and Order concerning this matter.

Any violation of this Order which is reported by anyone to the Federal Trade Commission, 6th & Pennsylvania Avenue, N.W., Washington, D.C., 20580, will result in prompt corrective action by the Commission.

Signed

(Respondents)

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in any 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 any corporation which may affect compliance obligations arising out of the order.

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

Complaint

IN THE MATTER OF

NORTH AMERICAN PHILIPS CORPORATION

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

Docket C-1941. Complaint, June 8, 1971—Decision, June 8, 1971.

Consent order requiring a New York City manufacturer and distributor of transistorized radios to cease overstating the number of transistors in its transistorized radios.

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 North American Philips Corporation, a corporation, hereinafter referred to as respondent, has engaged in acts and practices contrary to the Commission's Trade Regulation Rule relating to Deception as to Transistor Count in Radio Receiving Sets, Including Transceivers (16 CFR 414) and by this and other means has violated the provisions of the Federal Trade Commission 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 North American Philips Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 East 42nd Street, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing of transistorized radios and distributing these radios to wholesale and retail purchasers for resale to the purchasing public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its products, when sold, to be shipped from its place of business in the State of New York 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 its business, respondent has