

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

ALLIED BUILDERS CORPORATION, ET AL.

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

Docket C-1950. Complaint, June 28, 1971—Decision, June 28, 1971

Consent order requiring two Los Angeles, Calif., sellers of home remodeling and other home improvements to cease misrepresenting that they are the largest and oldest home improvement firms in the country, that they can pass on savings to their customers, failing to disclose that work will be done by subcontractors, and making false claims in regard to respondents' franchisees and licensees.

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 Allied Builders Corporation, a corporation, Construction Design-Allied Builders Systems, Inc., a corporation, doing business as Allied Builders Systems, and Harold Hammerman, individually and as an officer of said corporations, hereinafter referred to as the 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 Allied Builders Corporation is a corporation, incorporated under the laws of the State of California, with its principal office and place of business at 451 North La Cienega Boulevard, Los Angeles, California. The aforesaid company was originally incorporated and did business at the above address as Construction Design, Inc.

Respondent Construction Design-Allied Builders Systems, Inc., is a corporation, incorporated under the laws of the State of Califor-

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nia and doing business as Allied Builders Systems, with its principal office and place of business located at 451 North La Cienega Boulevard, Los Angeles, California.

Respondent Harold Hammerman is the principal officer of the corporate respondents. He formulates, directs, and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time past have been, engaged in advertising, offering for sale and sale of home remodeling, room additions and other home improvements to the general public, and engaged in advertising, offering for sale and sale of franchises and licenses to various other individuals and corporations for the purpose of selling home improvements as described above.

PAR. 3. In the course and conduct of said business, respondents now cause, and for some time last past have caused advertisements for the sale and construction of home improvements and for the sale of franchises and licenses to be placed in magazines and newspapers of general circulation in States of the United States.

In the further course and conduct of said business, respondents now cause, and for some time last past have caused promotional material, training manuals, contracts and other business materials and documents to be shipped and transmitted from their place of business in the State of California to franchisees and licensees thereof located in various other States of the United States other than the state of origination.

Respondents have engaged in all the aforesaid acts and practices in the course and conduct of their business and all such acts and practices have a close and substantial relationship to the interstate flow of respondents' business. Respondents have maintained, and at all times mentioned herein have maintained, a substantial course of trade in said sales of home improvements, franchises and licenses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the aforesaid business, and for the purpose of inducing the purchase of home improvements, franchises and licenses, the respondents have made numerous representations through oral statements made to prospective purchasers by their salesmen, representatives, franchisees or licensees and in newspapers and magazine advertisements and other promotional material, respecting the price and quality of their home improvements and the nature and quality of their business.

Typical and illustrative of said statements and representations made orally and in advertising and promotional material, but not all inclusive thereof, are the following:

Allied, the nation's largest home remodeling contractor offers a complete 1-stop service on remodeling modern kitchens and room additions.

* * * * *

SAVE ON ROOM ADDITIONS—REMODELING! HERE'S HOW: Allied Builders with offices coast to coast are the nation's largest home remodeling contractors. . . .

* * * * *

Allied, the nation's largest home remodeling contractors' huge buying power allows them to buy materials at tremendous discounts. These savings are passed on to you.

* * * * *

Allied Builders System Room Additions Home Remodeling is our ONLY business. Since 1903 Allied's family's only business has been home remodeling.

* * * * *

The man with you now is not a salesman; he's not in your home to sell you anything.

* * * * *

BECAUSE ALLIED BUILDERS, ONE OF THE NATION'S LARGEST HOME REMODELING CONTRACTORS, ARE PRESENT WORKING IN YOUR NEIGHBORHOOD, WE ARE ENCLOSING A FRIEND-MAKING PRESENT. IT'S A CHECK IN THE AMOUNT OF \$250.00 TO USE IF YOU'VE BEEN SERIOUSLY CONSIDERING ADDING THAT MUCH NEEDED EXTRA BEDROOM, FAMILY ROOM, BATHROOM OR ANY ADDITIONAL REMODELING FOR YOUR HOME.

ALLIED BUILDERS, AWARD WINNING REMODELERS, CAN OFFER YOU THIS TREMENDOUS SAVINGS BECAUSE WE CAN SAVE MONEY ON A PER JOB BASIS WHEN WORKING IN THE SAME NEIGHBORHOOD. YOU SEE, OUR MEN EARN A REGULAR HOURLY WAGE, WHETHER OR NOT THEY ARE ACTUALLY WORKING ON A JOB, OR JUST TRAVELING FROM ONE JOB TO ANOTHER. THE MORE JOBS WE CAN SCHEDULE IN THE SAME AREA, THE MORE SAVINGS WE CAN PASS ON TO YOU.

* * * * *

The Allied Builders remodeling contracting business can show how you, as others are doing now, can earn \$40,000 the first year of operating as a franchisee. We project a minimum of \$200,000 in business in order to net this earnings of \$40,000, and with a working capital of only \$6,000 to \$8,000 in your business.

PAR. 5. By and through use of the above-quoted statements and representations, and others of similar import and meaning not specifically set out herein, and through oral statements made by respondents' salesmen, counselors, franchisees, licensees and other representatives, respondents have represented directly or by implication, that:

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1. Respondents are the largest home remodeling contractors in the Nation;
2. Respondents are the oldest home remodeling contractors in the Nation;
3. Respondents have been in business for over sixty years;
4. Respondents' buying power allows them to buy building materials at tremendous discounts and pass the savings on to the customer;
5. Respondents' representatives are "counselors" and not salesmen, and are not there to sell the prospective purchaser anything;
6. Respondents' work is performed exclusively by their own employees and, therefore, can be done cheaper than other contractors, who rely on subcontractors;
7. Prospective purchasers can save \$250, or some other amount, because respondents achieve substantial savings if two or more jobs can be scheduled in the same neighborhood;
8. Respondents' franchisees and licensees are financially stable and enjoy the financial backing of the franchisor or licensor and that the prospective purchaser enjoys an advantage by dealing with one of respondents' franchisees or licensees that he would not have in dealing with a local contractor;
9. Respondents' representatives are salesmen for another company, not connected with respondents, to induce the belief in a prospective customer, who has already turned down a home improvement proposal by respondents, that he has an alternate bid from a different company; and
10. Franchisees or licensees can earn \$40,000, the first year of operation or at any time thereafter as a franchisee or licensee of respondents.

PAR. 6. In truth and in fact:

1. Respondents are not the largest home remodeling contractors in the Nation;
2. Respondents are not the oldest home remodeling contractors in the Nation;
3. Respondents have not been in business for over sixty years;
4. Respondents and their franchisees and licensees purchase building materials on an individual basis and do not enjoy any price advantage over independent, local contractors and, therefore, there are no savings to be passed on to the customer;
5. Respondents' representatives are salesmen paid on a commission basis and are in the prospective purchaser's home to sell a contract for home remodeling, room addition, or some other home improvement;

6. Respondents' work is not performed exclusively by their own employees but is performed mainly by subcontractors, and therefore, cannot be done more cheaply than work of other contractors who rely on subcontractors;

7. Substantial savings can not be achieved by respondents if two or more jobs can be scheduled in the neighborhood;

8. Respondents do not stand behind their franchisees or licensees financially, and the franchise or license agreement specifically requires the franchisee or licensee to hold harmless the franchisor or licensor and to indemnify the franchisor or licensor against any and all claims or legal actions;

9. Said representatives of respondents, who claim that they are working for another company, are working for respondents, and are privy to the exact price that was quoted to the prospective customer by another representative of respondents in the first instance.

10. Franchisees and licensees typically earn substantially less than \$40,000 in their first year of operation or at any time thereafter as a franchisee or licensee of respondents.

PAR. 7. Through the granting of licenses or franchises to corporations, partnerships and individuals using respondents' advertising materials and methods of doing business, respondents have placed in the hands of others the means and instrumentalities by and through which they mislead and deceive the public.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents, directly and through their franchisees and licensees have been, and now are, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of products and services of the same general kind and nature as those sold by respondents.

PAR. 9. The use by 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 to induce a substantial number thereof to buy and purchase said home remodeling, room addition and home improvement contracts, franchises and licenses.

PAR. 10. 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 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 Los Angeles Field Office 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 admission 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 procedures prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Allied Builders Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 451 North La Cienega Boulevard, Los Angeles, California.

Respondent Construction Design-Allied Builders Systems, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of California and doing business as Allied Builders Systems, with its principal office and place of business located at 451 North La Cienega Boulevard, Los Angeles, California.

Respondent Harold Hammerman is an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

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 Allied Builders Corporation, a corporation, and its officers, Construction Design-Allied Builders Systems, Inc., a corporation, doing business as Allied Builders Systems or any other trade name or names, and its officers, and Harold Hammerman, individually and as an officer of said corporations, and respondents' representatives, agents, employees, franchisees, and licensees directly or through any corporate or other device, in connection with the advertising, offering for sale, or sale of contracts for home improvements or any other products or services in commerce, and the advertising, offering for sale or sale of franchises and licenses in connection therewith in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

(1) Respondents are the largest home remodeling contractor in the Nation or misrepresenting in any manner the size of respondents' business;

(2) Respondents are the oldest home remodeling contractor in the Nation or misrepresenting in any manner the date of organization of the corporate respondents or the length of time any of the respondents have been in the home remodeling business;

(3) Respondents have been in business for over sixty years or misrepresenting in any manner the age of respondents' business;

(4) Respondents' buying power allows them to buy materials at tremendous discounts or representing in any manner that respondents are able to purchase building materials or supplies for less than competitors;

(5) Respondents are able to pass savings on to the customers because they have buying power enabling them to buy materials at tremendous discounts or representing in any manner that respondents are able to pass savings, discounts or any other benefits on to their customers by virtue of their ability to purchase building materials or supplies for less than their competitors;

(6) Respondents' representatives are not salesmen or misrepresenting their position or function with respondents in any other manner;

(7) Respondents' representatives are not in a prospective customer's home to sell the purchaser anything or misrepresenting in any manner the purpose for which respondents' representatives are in the prospective customer's home;

(8) Respondents' representatives are not on a commission basis;

(9) Work is performed exclusively or mainly by their own employees and not by subcontractors or failing to disclose to prospective purchasers whether the work to be done will be performed by employees of respondents or by independent subcontractors;

(10) Prospective purchasers can save \$250, or any other amount, because two or more jobs are scheduled in the same neighborhood or misrepresenting in any manner the savings available to purchasers of respondents' goods or services;

(11) Respondents' franchisees and licensees are financially backed by the franchisor or licensor;

(12) Purchasers will enjoy a financial advantage that they would not otherwise enjoy by dealing with one of respondents' franchisees or licensees;

(13) Respondents' representatives are connected with another company and not affiliated with respondents' company and failing to reveal that salesmen calling upon prospective purchasers are in fact employees, representatives or salesmen of respondents;

(14) Respondents' franchisees or licensees will, or potentially will, earn or profit from the operation of one of respondents' franchises or licenses amounts in excess of those which have been regularly and customarily earned by respondents' other franchisees or licensees.

B. Placing in the hands of others the means of instrumentalities whereby they may mislead customers or prospective customers as to any of the matters or things prohibited by this order.

C. Failing to serve a copy of this order upon each present and every future licensee or franchisee and failing to obtain written acknowledgment of the receipt thereof; and from failing to obtain from each present and every future licensee or franchisee an agreement in writing (1) to abide by the terms of this order, and (2) to cancellation of their license or franchise for failure to so agree in writing.

It is further ordered, That the respondent corporations shall

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forthwith distribute a copy of this order to each of their operating divisions.

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

It is further ordered, That the 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.

IN THE MATTER OF

PHYLLIS ANN NOVELTY COMPANY, ET AL.