

IN THE MATTER OF

ELLIS STEWART COMPANY, INC., ET AL.

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

Docket C-2021. Complaint, Aug. 30, 1971—Decision, Aug. 30, 1971

Consent order requiring a Danville, Va., seller and distributor of residential aluminum siding, swimming pools and other home improvements to cease using bait advertising, failing to support its savings claims, misrepresenting that any offer to sell is limited or that the respondent manufactures any of its products, misrepresenting that any home is being used as a model, misrepresenting affiliations with other companies, making deceptive guarantees, misrepresenting the size or extent of respondent's business, assigning notes of purchasers without also transferring defenses valid against respondent, failing to include a notice on each contract that holders take this instrument subject to all terms and conditions, and failing to maintain for 5 years all contractual documents and all records of its dealings involving the installation of siding.

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 Ellis Stewart Company, Inc., a corporation, and Ellis Stewart Halperin, individually and as an officer of said corporation, hereinafter referred to as re-

spondents, 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 Ellis Stewart Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 330 North Floyd Street, in the city of Danville, State of Virginia.

Respondent Ellis Stewart Halperin is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, distribution and installation of residential aluminum siding, swimming pools and other home improvement products to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Virginia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have 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 their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made, and are now making, directly and by implication, numerous statements and representations in advertisements published in newspapers, in advertising circulars and other promotional material and in oral statements made by respondents' sales representatives with respect to the nature of the offer being made, the prices at which respondents' products are being offered, the savings afforded to purchasers of respondents' products, the guarantees being offered and other matters.

Among and typical of such statements and representations, but not all inclusive thereof, are the following:

1. Respondents are making a good faith offer to sell up to 1,000 square feet of aluminum siding, completely installed, for \$199.

2. Respondents' siding materials are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular selling prices.

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3. The offer to sell aluminum siding for \$199 was a limited one.
4. Respondents manufacture the products they sell.
5. Siding materials sold by respondents will never require painting or repairing.
6. Homes of prospective purchasers will be used as model homes for the installation of respondents' products; that, after installation, such homes will be used for demonstration and advertising purposes by respondents; 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.
7. Respondents or their sales representatives represent or have some connection with the Kaiser Aluminum & Chemical Corporation, a well-known manufacturer of aluminum siding.
8. Purchasers of aluminum siding will receive as a bonus a free gift of tableware or a camera.
9. The aluminum siding sold by respondents is unconditionally guaranteed.
10. Respondents operate business offices in Martinsville, Virginia and in North Carolina at the following places: Elizabeth City, Roanoke Rapids, Mount Airy, Mooresville, Statesville, Lexington, Concord and Asheboro.

PAR. 5. In truth and in fact:

1. The offer to sell 1,000 square feet of aluminum siding, completely installed, for \$199 is not a genuine or good faith offer to sell said siding at the advertised price but is made for the purpose of obtaining leads to persons interested in purchasing respondents' products. After obtaining such leads, respondents or their sales representatives call upon such persons at their homes or places of business. At such times and places, respondents or their sales representatives disparage the siding offered for \$199 and otherwise discourage the purchase thereof and attempt to sell, and do sell, different and more expensive siding materials to such persons.
2. Respondents' siding materials are not being offered for sale at special or reduced prices, and savings are not thereby afforded respondents' customers because of a reduction from respondents' regular selling prices. In fact, respondents do not have a regular selling price because the price at which respondents' products are sold varies from customer to customer depending on the sales resistance of the prospective customer.
3. The offer to sell aluminum siding was not a limited one and is respondents' regular offer.
4. Respondents do not manufacture any of the products they sell.

5. The siding materials sold by respondents will eventually require painting and repairing.

6. Homes of prospective purchasers are not selected as model homes for the installation of respondents' products; after installation of siding, such homes are not used for demonstration and advertising purposes by respondents; and purchasers as a result of allowing or agreeing to allow the use of their homes as models are not granted discounts, allowances or commissions.

7. Respondents or their sales representatives do not represent the Kaiser Aluminum & Chemical Corporation. Respondents' only such connection is that of a purchaser of products of that company.

8. Respondents do not, in every instance, deliver the free gift promised as a bonus to all customers.

9. The aluminium siding sold by respondents is not unconditionally guaranteed. Such guarantees as are available are subject to numerous substantial conditions and limitations.

10. Respondents do not operate business offices in Martinsville, Virginia or in Elizabeth City, Roanoke Rapids, Mount Airy, Mooresville, Statesville, Lexington, Concord or Asheboro, North Carolina.

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 their aforesaid business, respondents, when contracting with customers, have engaged in the following unfair acts and practices:

1. Respondents have accepted false certificates or writings to the effect that contracted details of home improvement had been completed.

2. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair or 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 that customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts or practices.

Therefore, the acts and practices as set forth in Paragraph Six were, and are, unfair and false, misleading and deceptive acts and practices.

PAR. 7. In the course and conduct of their aforesaid 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.

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PAR. 8. The use by respondents of the aforesaid unfair and 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 into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. 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 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 procedure prescribed in Section 2.34(b) of its rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ellis Stewart Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business

located at 330 North Floyd Street, in the city of Danville, State of Virginia.

Respondent Ellis Stewart Halperin is an officer of said corporation and his office and principal place of business is located at the above-stated address.

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 Ellis Stewart Company, Inc., a corporation, and its officers, and Ellis Stewart Halperin, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of aluminum siding or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. (a) Representing, directly or by implication, that any product or service is offered for sale when such offer is not a good faith offer to sell said product or service.

(b) Using any advertising, sales plan or promotional scheme involving the use of false, misleading or deceptive statements or representations to obtain leads or prospects for the sale of any product.

(c) Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise.

(d) Disparaging, in any manner, or discouraging the purchase of any product advertised.

2. (a) Representing, directly or by implication, that any price for respondents' 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 respondents in the recent regular course of their business; or misrepresenting, in any manner, the savings available to purchasers.

(b) Failing to maintain adequate records (1) which disclose the facts upon which any savings claims, including special, reduced or former pricing claims, and comparative value claims, and similar misrepresentations of the type described in Paragraph 2

(a) of this order are based, and (2) from which the validity of any savings claims, including special, reduced or former pricing claims and comparative value claims, and similar representations of the type described in Paragraph 2 (a) of this order can be determined.

3. Representing, directly or by implication, that any offer to sell any product or service is limited as to time or is limited in any other manner unless respondents, in good faith impose and adhere to such limitations.

4. Representing, directly or by implication, that respondents manufacture any of the products that they sell; misrepresenting, in any manner, the nature or scope of respondents' business.

5. Representing, directly or by implication, that siding materials sold by respondents will never need painting or repairing; misrepresenting, in any manner, the durability of any product sold by respondents.

6. (a) Representing, directly or by implication, that the home of any of respondents' customers, or prospective customers has been selected to be used or will be used as a model home, or otherwise, for advertising or sales purposes.

(b) Representing, directly or by implication, that any allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed or services performed to be used for model homes or demonstration purposes.

7. Representing, directly or by implication, that respondents have any connection with Kaiser Aluminum & Chemical Corporation other than that of a purchaser of home improvement products produced by that company; misrepresenting, in any manner, respondents' connection or affiliation with any other company.

8. Failing or refusing to furnish free merchandise to purchasers, irrespective of a prior request therefor, upon fulfillment of the terms and conditions of any advertised offer.

9. Representing, directly or by implication, that any of respondents' products or services 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 respondents' products or services are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

10. Representing, directly or by implication, that respondents operate or maintain business offices in Martinsville, Virginia or Elizabeth City, Roanoke Rapids, Mount Airy, Mooresville, Statesville, Lexington, Concord or Asheboro, North Carolina, or any other locality where such offices are not actually open and fully operative; or misrepresenting, in any manner, the size or extent of respondents' business.

11. Accepting certificates or other writings to the effect that contracted details of home improvement had been completed, if such writings were false when accepted; or otherwise misrepresenting, in any manner, the true nature and effect of any document.

12. Assigning, selling or otherwise transferring respondents' notes, contracts or other documents evidencing a purchaser's indebtedness, unless any rights or defenses which the purchaser has and may assert against respondents are preserved and may be asserted against any assignee or subsequent holder of such note, contract or other document evidencing the indebtedness.

13. Failing to include the following statement clearly and conspicuously on the face of any note, contract or other instrument of indebtedness executed by or on behalf of respondents' customers:

"Notice"

"Any holder takes this instrument subject to the terms and conditions of the contract which gave rise to the debt evidenced hereby, any contractual provision or other agreement to the contrary notwithstanding."

14. (a) Failing to maintain for a period of five (5) years, invoices, notices for payment and all similar documents which respondents receive in the conduct of their business from suppliers, subcontractors, and other persons; and failing to maintain for a period of five (5) years copies of all contracts entered into between respondents and their customers.

(b) Failing to maintain for a period of five (5) years, with regard to each and every contract hereafter entered into between respondents and their customers, adequate records which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges for materials and labor. And failing to maintain for the same period, with regard to each contract hereafter entered into between respondents and their customers involving siding, or the installation of siding, or both, additional records which further disclose the quantity of siding and other materials installed or delivered to the customer; the type and

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grade of said siding and other material; a description of the installation performed; the total amount of money paid to salesmen, agents or representatives for the solicitation of said contract, and what each customer was charged, exclusive of interest or finance charges, per square foot for the performance of the said contract.

It is further ordered, That:

a. The respondent corporation shall distribute a copy of this order to each of its operating divisions.

b. Respondents shall deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, or sale of any product or in any aspect of preparation, creation, or placing of advertising, and that respondents shall secure a signed statement acknowledging receipt of said order from each such person.

c. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the 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 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

INTERNATIONAL SAFE-T-TRAC, INC., ET AL.

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

Docket 8823. Complaint, Nov. 12, 1970—Decision, Sept. 1, 1971

Consent order requiring a Cincinnati, Ohio, seller and distributor of Safe-T-Trac, auto stabilizers, to distributors and to the public to cease misrepresenting that its device will prevent skidding, help save lives, and functions as a shock