

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

Docket C-2217. Complaint, May 12, 1972—Decision, May 12, 1972

Consent order requiring three Chicago, Ill., sellers and distributors of residential applied vinyl siding to cease misrepresenting that their vinyl siding will keep its freshly painted look permanently, that it will protect the home against such things as insects, hail, moisture, heat, etc., that the siding will save customers on their painting, repair, and maintenance bills, deceptively guaranteeing their products, misrepresenting that they

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have research relations with the B. F. Goodrich Company, misusing the term "mfg." or any term implying they are manufacturers, misusing the term "free," offering gift merchandise to certain persons, transferring customers' notes to other parties without also transferring the defenses, and failing to include on the face of each contract a notice that holders of the instrument take it subject to all conditions of the contract.

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 Brolan Manufacturing Co., a corporation, American Veneer, Inc., a corporation, American Home Exteriors, Inc., a corporation, and Lawrence S. Brown individually and as an officer of said corporations, 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. Respondent Brolan Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2945 West Peterson Avenue, Chicago, Illinois.

Respondent American Veneer, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2945 West Peterson Avenue, Chicago, Illinois.

Respondent American Home Exteriors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2945 West Peterson Avenue, Chicago, Illinois.

Respondent Lawrence S. Brown is an individual and is an officer of Brolan Manufacturing Co., American Veneer, Inc., and American Home Exteriors, Inc. He formulates, directs and controls the 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.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of residential applied vinyl siding and other products to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said prod-

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ucts, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintains, and at all times 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 business, and for the purpose of inducing the purchase of their products, respondents have, by statements and representations in advertisements in various publications, in direct mail advertising, and by direct oral solicitations made by respondents or their salesmen or representatives, represented directly or by implication that:

(1) Vinyl siding sold by respondents will keep its freshly painted look forever and will never need painting.

(2) Respondents' vinyl storm doors and storm windows will eliminate condensation and sweating.

(3) Vinyl siding sold by respondents "won't scratch," "won't split," "won't stain!" and "won't dent!"

(4) Vinyl siding sold by respondents is "SOLID VINYL WOOD-GRAIN SIDING * * *."

(5) Vinyl siding sold by respondents will eliminate such forces against the home as "insects, rain, hail, moisture, dirt, heat, dryness, denting with bikes, ladders and baseballs, etc. * * *."

(6) Vinyl siding once applied to the home will eliminate costly repairs and maintenance.

(7) Purchasers of respondents' vinyl siding will save more than one half of what they have been spending on painting and repairs year after year.

(8) Respondents' vinyl siding materials are entirely new and revolutionary and differ substantially from other vinyl siding materials on the market.

(9) Respondents' vinyl siding materials are applied to homes in a unique method of application which differs substantially from the methods used by competitors.

(10) Respondents' products and the application or installation of them, are unconditionally guaranteed.

(11) Free merchandise or gifts will be given to persons who mail in their name and address to respondents.

PAR. 5. In truth and in fact:

(1) Respondents' siding materials will not keep their freshly painted look forever and may require painting as the color of vinyl siding fades away.

(2) Respondents' vinyl storm doors and storm windows will not eliminate condensation and sweating.

(3) Respondents' siding materials will scratch, split, stain and dent under certain conditions.

(4) Vinyl siding sold by respondents is not solid vinyl woodgrain siding; in fact, respondents' vinyl siding may not contain any woodgrain in its composition.

(5) Vinyl siding sold by respondents will not eliminate such forces against the home as "insects, rain, hail, moisture, dirt, heat, dryness, denting with bikes, ladders and baseballs, etc."

(6) Respondents' vinyl siding will not eliminate costly repairs and maintenance to the home, since such materials do not cover the entire house and cannot prevent the effects of weather on the internal structure of the home, particularly if the installation is faulty.

(7) Purchasers of respondents' vinyl siding materials will not save more than one half of what they have been spending on painting and repairs, particularly where said purchaser has been doing his own painting and maintenance work.

(8) Respondents' siding materials are neither new or revolutionary nor do they substantially differ from other vinyl siding materials available on the market.

(9) Respondents' vinyl siding is not applied to homes by a unique method of application which differs substantially from the methods used by competitors.

(10) Respondents' guarantee is not unconditional and it fails to set forth the full nature and extent of the guarantee.

(11) Respondents do not give free gifts or merchandise to persons who mail in their names and addresses in accordance with their promises or offers, but condition the giving of such gifts or merchandise on certain conditions, such as listening to a salesman, purchasing a vinyl siding job, or the like and use such promises and offers as a means of obtaining names of prospective purchasers of their products.

Therefore, the statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 6. Further in the course and conduct of their business, respondents have made certain use of the B. F. Goodrich trademark and company name to substantiate statements and representations with respect to their products in newspaper advertising. Among and typical of such statements and representations are the following:

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Special Offer

Now B. F. Goodrich introduces low cost, Solid Vinyl Combination Storm Windows and Storm Doors!

2 great companies—B. F. Goodrich (trademark) and Brolan Mfg. Co. have achieved the most important Exclusive Breakthrough in Creating the *ULTIMATE* house Siding.

From the laboratories of B. F. Goodrich comes solid vinyl wood-grain house siding to give your home * * *

PAR. 7. Through the use of the aforementioned statements, and others similar thereto, not specifically set out herein, respondents have represented, directly or by implication that:

1. B. F. Goodrich Company was making a special offer to the public by introducing low cost solid vinyl combination storm doors and storm windows.

2. Vinyl siding materials sold by respondents were the result of extensive research and development by the combined efforts of respondents and the B. F. Goodrich Company.

3. Quality and durability claims made by respondents were made with the approval and backing of the B. F. Goodrich Company.

PAR. 8. In truth and in fact:

1. B. F. Goodrich Company was not making any special offer to the public by introducing low cost solid vinyl combination storm doors and storm windows and merely manufactured the component parts for such products.

2. Vinyl siding materials sold by respondents were not the result of extensive research and development by the combined efforts of respondent and the B. F. Goodrich Company; in fact, B. F. Goodrich Company by itself developed the product "Geon" which is used by other companies to manufacture a number of products, of which siding is only one.

3. Quality and durability claims made by respondents were not made with the approval and backing of the B. F. Goodrich Company.

Therefore, the statements and representations set forth in Paragraphs Six and Seven are false, misleading and deceptive.

PAR. 9. Further in the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents in their trade name and on their letterheads and in advertising and promotional material state they are a manufacturing company.

PAR. 10. Through the use of the aforesaid statement and representation and others similar thereto, but not expressly set out herein, respondents have represented, and are now representing, that they own, operate or control a factory or factories wherein their said

products are manufactured, and that they are the manufacturers of said products.

PAR. 11. In truth and in fact, said respondents do not own, operate or control a factory or factories wherein said products are manufactured, and do not manufacture any of the products sold by them.

Therefore, the statements and representations as set forth in Paragraphs Nine and Ten hereof, were and are false, misleading and deceptive.

PAR. 12. In the further course and conduct of their business, and in furtherance of a sales program for inducing the purchase of their products, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' conditional sales contracts, promissory notes or other instruments of indebtedness to various financial institutions. In any subsequent legal action to collect on such instruments, 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 respondents for their 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 Twelve hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 13. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of residential applied siding, and other products, of the same general kind and nature as that sold by respondents.

PAR. 14. 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 into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 15. 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,

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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 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 Chicago Regional 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 procedure 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 Brolan Manufacturing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2945 West Peterson Avenue, Chicago, Illinois.

Respondent American Veneer, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2945 West Peterson Avenue, Chicago, Illinois.

Respondent American Home Exteriors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2945 West Peterson Avenue, Chicago, Illinois.

Respondent Lawrence S. Brown is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his principal office and 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 Brolan Manufacturing Co., a corporation, American Veneer, Inc., a corporation, American Home Exteriors, Inc., a corporation, their successors and assigns, and Lawrence S. Brown, individually and as an officer of said corporations, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of residential siding, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that vinyl siding sold by respondents will keep its freshly painted look forever without requiring painting or maintenance, or misrepresenting the efficacy, durability or efficiency of respondents' products.

2. Representing, directly or indirectly, that vinyl siding sold by respondents contains woodgrain or any other ingredients that are not actually used in the manufacture of respondents' products.

3. Representing, directly or indirectly, that vinyl siding sold by respondents will eliminate such forces against the home as insects, rain, hail, moisture, dirt, heat dryness or denting by other objects or misrepresenting the properties, qualities and merits of respondents' products.

4. Representing, directly or indirectly, that purchasers of respondents' residential siding materials will realize a substantial savings on their painting, repair and maintenance bills; or misrepresenting, in any manner, the savings available to purchasers of respondents' merchandise.

5. Representing, directly or indirectly, that respondents' vinyl siding materials are entirely new or revolutionary or differ substantially from other siding materials available on the market.

6. Representing, directly or indirectly, that respondents' method of application of siding materials to homes of customers

is unique or differs substantially from the methods of application employed by respondents' competitors.

7. Representing, directly or indirectly, that any of respondents' products and 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; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such guarantee.

8. Representing, directly or indirectly, that respondents' vinyl siding materials were the result of extensive research and development by the combined efforts of respondents and the B. F. Goodrich Company.

9. Representing, directly or indirectly, that B. F. Goodrich Company was making a special offer to the public by introducing respondents' products into the market.

10. Representing, directly or indirectly that the claims of quality and durability of respondents' products were made with the approval of the B. F. Goodrich Company or any other supplier; or misrepresenting, in any manner, the B. F. Goodrich trademark or company name or the trademark and company name of any other supplier.

11. Using the term "Manufacturer," "manufacturing" or "mfg." in their trade name; or otherwise representing, directly or indirectly, that respondents own, operate or control a factory or other manufacturing facility or facilities in connection with the sale of products which are not manufactured by respondents.

12. Using the word "free" or any other word or words of similar import or meaning in connection with the sale, offering for sale or distribution of respondents' products or services, in advertisements or other offers to the public, as descriptive of an article of merchandise or service:

(a) When all the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer might be misunderstood.

(b) When, with respect to any article of merchandise or service required to be purchased in order to obtain the

"free" article or service, the offerer either (i) increases the ordinary and usual price of such merchandise or service or (ii) reduces the quality or size thereof.

13. Using, in any manner a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of other merchandise or services.

14. Offering gift merchandise to persons complying with certain conditions unless, in every instance, such merchandise is given to the persons complying with such conditions.

15. 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 documents evidencing the indebtedness.

16. 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.

It is further ordered, That respondents shall forthwith 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 respondents' products or services, in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating divisions and employees.

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 corporations which may affect compliance obligations arising out of the order.

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It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order file with the