

Complaint

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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 Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

FOUR STATES ENTERPRISES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
TRUTH IN LENDING AND THE FEDERAL TRADE COMMISSION ACTS

Docket C-2218. Complaint, May 15, 1972—Decision, May 15, 1972

Consent order requiring three affiliated Camden, New Jersey, home improvement firms to cease representing their products or services were for sale, when in fact they were not; representing prices as being "sale prices" when in fact they were not; misrepresenting products as being everlasting or indestructable; failing to furnish free merchandise as advertised; misrepresenting company personnel as being specially trained; and to cease violating the Truth in Lending Act by failing to disclose the annual percentage rate, the total payments required and other disclosures required by Regulation Z of the said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Four States Enterprises, Inc., Four State Enterprises, Inc., and Regency Builders, Inc., corporations, and Jack Scolnick and Ellis Myers, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Four States Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 716 Federal Street, Camden, New Jersey.

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Respondents Four State Enterprises, Inc., and Regency Builders, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with their offices and principal places of business located at 716 Federal Street, Camden, New Jersey.

Respondent Jack Scolnick is the president and respondent Ellis Myers is secretary-treasurer, of the respondents Four States Enterprises, Inc., Four State Enterprises, Inc., and Regency Builders, Inc. The business address for these individuals is 716 Federal Street, Camden, New Jersey. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

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 aluminum and stone siding, storm windows, storm doors, swimming pools, awnings, and various other home improvement products at retail to the 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 herein.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time past have caused, their said merchandise, advertising and promotional material, contracts and other business papers and documents to be shipped and transmitted into the State of New Jersey and from their place of business in said state, and to prospective purchasers and purchasers thereof located in various States of the United States other than New Jersey, 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 business and for the purpose of inducing the purchase of their home improvement products, respondents have made numerous statements and representations, in newspaper advertisements, in direct mail advertising circulars and other promotional material, and through oral statements to prospective purchasers by salesmen or representatives, respecting the respondents' offers, prices and time limitations and respecting the qualities of the respondents' merchandise.

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Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

STONE and ALUMINUM SIDING SALE!

REG. \$499.00

VALUE

\$299.00

on FOUR STATE'S

SPECIAL OFFER

Completely Installed!

Includes all labor

and materials

ENJOY EVERLASTING HOME BEAUTY.

Comfortable Living and Savings

700 SQ. FT. OF ALUMINUM SIDING

Plus 300 Sq. Ft. of Genuine

Quarry Ribbon Stone

BONUS

with your order A * * * TV SET

SPECIAL BONUS

LIMITED TIME ONLY! JUST FOR YOU!

NEW * * * FUN * * * 3 QUART MODEL

POP CORN POPPER

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents have represented, directly or by implication that:

1. The offer set forth in said advertisements is an offer in good faith to sell the advertised products at the prices and on the terms and conditions stated.

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

3. Respondents' aluminum siding is everlastingly beautiful.

4. Respondents' advertised offer is made for a limited time only.

5. Electrical appliances and other items will be given as a bonus to purchasers.

PAR. 6. In truth and in fact:

1. Respondents' said advertised offers are not genuine or good faith offers. Such offers are made for the purpose of obtaining leads as to persons interested in the purchase of respondents' products. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes, and according to their established

mode of operation, they often show samples of the advertised products, which are flimsy or otherwise undesirable and also orally disparage the advertised product. They then attempt to sell and frequently do sell more expensive products and in greater amounts than the advertised products.

2. Respondents' products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

3. Respondents' products are not everlasting and can be destroyed. They are not impervious to storm, hail, fire and other elements.

4. Respondents' advertised offer is not made for a limited time only. Said merchandise is advertised regularly at the represented prices and on the terms and conditions therein stated.

5. Respondents' electric appliances and other items offered as a bonus to buyers of respondents' products are not readily available and often are not distributed to such buyers.

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

PAR. 7. In the further course and conduct of their aforesaid business, respondents have represented to prospective purchasers that their homes had been selected as models for installation of respondents' siding; that after such installations, their homes would be used for demonstration, and advertising purposes by respondents, and that, as a result of allowing their homes to be used as models, such purchasers would be granted reduced prices.

In truth and in fact, homes of prospective purchasers are not specially selected as model homes for installation of respondents' siding; after installation such homes are not used for demonstration or advertising purposes by respondents; and such purchasers are not granted reduced prices.

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

PAR. 8. In the further course and conduct of their aforesaid business, respondents have represented to prospective purchasers that respondents' representatives were trained at and affiliated with a factory or other large company.

In truth and in fact, respondents and their salesmen are not affiliated with a factory or other large company. Respondents' connec-

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tion with a factory consists only of buying products of or from a factory.

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

PAR. 9. In the course and conduct of their aforesaid business, respondents, when contracting with customers, have accepted false certificates or writings to the effect that contracted details of home improvements had been completed.

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

PAR. 10. In the course and conduct of respondents' business as aforesaid, and in connection with credit transactions involving their retail installment contracts, respondents unfairly induce their customers to execute blank promissory notes, the terms of which respondents complete at a later time.

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

PAR. 11. In the usual course and conduct of their aforesaid business, respondents, when contracting with customers, have in a substantial number of instances, sold and transferred 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 Eleven were, and are, unfair.

PAR. 12. In the course and conduct of their business, at all times mentioned herein, respondents have been 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.

PAR. 13. The use by the respondents of the aforesaid unfair, 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

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

PAR. 14. 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.

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 herein.

PAR. 15. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend, and for some time last past have 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. 16. Since July 1, 1969, respondents in the ordinary course and conduct of their business and in connection with credit sales, as "credit sales" is defined in Regulation Z, have caused and induced, and are causing and inducing, their customers to execute retail installment contracts, hereinafter referred to as the contract.

PAR. 17. By and through the use of the contract respondents:

(a) fail 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) fail to disclose the sum of the payments scheduled to repay the indebtedness, and to designate the sum as "total of payments," as required by Section 226.8(b)(3) of Regulation Z; and

(c) fail to make all of the disclosures required by Section 226.8 of Regulation Z before consummation of the credit transaction, in violation of Section 226.8(a) of Regulation Z.

PAR. 18. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act, and pursuant to Section 108 thereof, respondents thereby violated the Federal Trade Commission Act.

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DECISION AND ORDER

The Federal Trade Commission having initiated an inquiry as to 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 Washington, D. C. 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 Truth in Lending Act; and

The respondents and their attorney 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 Acts, and that complaint should issue stating its charges in those respects, 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 Four States Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 716 Federal Street, Camden, New Jersey.

Respondent Four State Enterprises, Inc., and Regency Builders, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with their offices and principal places of business located at 716 Federal Street, Camden, New Jersey.

Respondent Jack Scolnick is the president and respondent Ellis Myers is secretary-treasurer, of the respondents Four States Enterprises, Inc., Four State Enterprises, Inc., and Regency Builders, Inc. The business address for these individuals is 716 Federal Street, Camden, New Jersey. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth.

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

I

It is ordered, That the respondents Four States Enterprises, Inc., Four State Enterprises, Inc., Regency Builders, Inc., corporations, their successors and assigns and their officers, and Jack Scolnick and Ellis Myers, individually and as officers of said corporations, and respondents' 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 siding or any other article of merchandise 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 representations of the type described in Paragraph Two (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 representa-

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tions of the type described in Paragraph Two (a) of this order can be determined.

3. Representing, directly or by implication, that respondents products are everlasting, indestructible, or will not be damaged by storms, hail, fire or other elements.

4. 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.

5. 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.

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' officers, agents, representatives or employees are factory trained or have any other training, qualification or affiliation when, in fact, they do not have such training, qualification or affiliation.

8. 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.

9. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to sign blank or partially completed promissory notes or any other contractual instruments.

10. 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.

11. 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.

12. (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 material 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 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 the said contract, and what each customer was charged, exclusive of interest or finance charges, per square foot for the performance of the said contract.

II

It is further ordered, That the respondents Four States Enterprises, Inc., Four State Enterprises, Inc., Regency Builders, Inc., corporations, their successors and assigns and their officers, and Jack Scolnick and Ellis Myers, individually and as officers of said corporations, and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with any consumer credit sale as "credit sale" is defined in Regulation Z (15 U.S.C. 1601 *et seq.*), or in connection with any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit as "advertisement" and "consumer credit" are defined in Regulation Z, do 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.

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2. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to designate it as "total of payments" in accordance with Section 226.8(b) (3) of Regulation Z.

3. Failing to make all of the disclosures required by Section 226.8 of Regulation Z before consummation of the credit transaction in accordance with Section 226.8(a) of Regulation Z.

4. Failing to make all the disclosures required by Regulation Z to be made in connection with any consumer credit transaction or advertisement, in accordance with Sections 226.5, 226.6, 226.8, 226.9 and 226.10 of Regulation Z.

III

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents 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 secure a signed statement acknowledging receipt of said order from each such person.

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.

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 this order.

IN THE MATTER OF

ASSOCIATED CLAIMS, INC., ET AL.

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

Docket C-2219. Complaint, May 16, 1972—Decision, May 16, 1972

Consent order requiring a Silver Spring, Maryland, collection agency to cease misrepresenting that respondents have instructed attorneys to begin legal