

SHANGRI-LA INDUSTRIES, ETC.

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

Docket C-2301, Complaint, Oct. 6, 1972—Decision, Oct. 6, 1972.

Consent order requiring a retailer of swimming pools and other articles of merchandise, whose last known place of business was in Akron, Ohio, among other things to cease misrepresenting his stock on hand and willingness to perform advertised services; disparaging or refusing to sell any products or services advertised; using deceptive or misleading representations to

596

Complaint

obtain prospective customers; misrepresenting prices as usual or customary unless the representation is true; and failing to disclose to customers such information as is required by Regulation Z of the Truth in Lending Act. Respondent is also required to include on the face of its notes a notice that a subsequent holder may take over the note and the customer may still be required to pay the instrument of indebtedness even if the purchase contract is not fulfilled.

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 Sanford Levinson, also known as Morris Cohen, Stanley Lewis, and other assumed names, doing business as Shangri-La Industries, Modern Decorators, American Distributors and Decorators, and other trade names, hereinafter referred to as respondent, has 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 Sanford Levinson, also known as Morris Cohen, Stanley Lewis, and other assumed names, is an individual trading and doing business as Shangri-La Industries, Modern Decorators, American Distributors and Decorators, and other trade names, with his last known office and principal place of business located at 2858 West Market Street in the city of Akron, State of Ohio.

PAR. 2. Respondent is now, and for sometime last past has been, engaged in the advertising, offering for sale, and sale of swimming pools and other articles of merchandise to the public.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations in Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of his business, as aforesaid, respondent now causes, and for sometime last past has caused, his said product, when sold, to be shipped from the place of manufacture in the State of Connecticut to purchasers thereof located in various other States of the United States other than the state of origination; has engaged in sales and advertising practices and activities in several states including, but not limited to, the States of Ohio and Indiana; 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.

Complaint

81 F.T.C.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his swimming pools and other merchandise, respondent has made, and is now making, numerous statements and representations in advertisements inserted in newspapers and magazines of general circulation and in oral sales presentations with respect to availability, quality, price, and the terms and conditions of sale.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

Fabulous Savings on the Sensational 1970 Americana Swimming Pool, \$795.00 Full Price Completely Installed.

* * * * *
We Pledge That This Pool Can Be Delivered to Your Home and Completely Installed for Your Swimming Pleasure! Your Complete Satisfaction is Assured.

* * * * *
Pre-Season Pool Spectacular! Big Pool—Big Savings! A Giant 28' x 20' Outside Dimension 22' x 15' Swim Area, 4' Deep \$895.00 Full Price, Completely Installed.

* * * * *
The Shangri-La Pool Full Price Completely Installed \$795.00.

* * * * *
All Pools Include: Filter and Pump, Pool Ladder, Steel Bracing, Sun Decks, Vacuum Cleaner, Set-In Vinyl Liner, Safety Fence and Stairs.

* * * * *
Order Now! Immediate Installation Guaranteed!

* * * * *
Special Three Day Sale, Save an Extra \$100.00 Now! A Giant 28' x 20' Outside Dimension, 22' x 15' x 4' Deep Swim Area, Three Days Only, \$795.00 Full Price, The Shangri-La Pool, Full Price, Three Days Only \$695.00.

* * * * *
Larger and Smaller Pools Proportionately Low Priced.

* * * * *
Exclusive Optional Deck at Additional Cost.

* * * * *
Any Time Any Weather This Versatile Deck Can Be Enjoyed as a Unique Family Room Detached From the House * * *

* * * * *
Wanted! Five Residential Home Sites to Display Our New Advanced 1970 Swimming Pool.

* * * * *
We Believe That Good Business To Sacrifice on Five Homes in an Area To Gain The Volume We Require So Home Selected Will Have a Swimming Pool Installed at a Fantastic Price Consideration.

* * * * *
Special Three Day Sale—A Giant 28' x 20' Outside Dimension, 22' x 15' Swim Area, Now Only \$685.00.

* * * * *

We're Over Stocked! Bad Weather and a Late Sales Start Forces Us To Slash Prices To The Bone.

* * * * *

Select-A-Pool Choose From Our Complete Line of Pools Ranging In Price From \$695.00 For The "400" to \$2,995.00 For The "Suburban" And \$4,995.00 For The Pool Of The Century—The New AquaMate.

* * * * *

The Shape of Things To Come In Swimming Pools, The Magnificent New AquaMate Redwood Swim Club, \$4,995.00 Completely Installed, No Extras.

* * * * *

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not expressly set out herein, separately and in connection with oral statements and representations of his salesmen and representatives, respondent has represented, and is now representing, directly or by implication:

1. That the advertised swimming pools, in different price ranges, are available for sale and can be purchased from respondent's salesmen or representatives.

2. That the special swimming pool decks which are advertised are available for sale from respondent's salesmen or representatives.

3. That the Aquamate Swimming Pool is nationally advertised in magazines of general circulation.

4. That respondent regularly sells the Aquamate Swimming Pool for \$4,995.

5. That the customer can purchase the Aquamate Swimming Pool at a special or reduced price if the customer agrees to allow the installed pool to be used as a model for demonstration purposes.

6. That the special or reduced price is available to the customer only at the time it is initially offered.

7. That the buyer of an Aquamate Swimming Pool will receive some form of commission or remuneration in the form of cash or pool accessories, for each Aquamate Swimming pool which is sold to a customer who is shown the buyer's model pool.

8. That the Aquamate Swimming Pool is maintenance-free.

9. That the Aquamate Swimming Pool is suitable to be used as an ice skating pond during the winter months.

10. That respondent gives a 20-year guarantee on the Aquamate Swimming Pool liner.

11. That respondent will honor the guarantee by providing service for any defects in the swimming pool or its related equipment.

12. That respondent will move the swimming pool cost-free if the customer moves anywhere within the continental United States.

PAR. 6. In truth and in fact:

Complaint

81 F.T.C.

1. The advertised swimming pools, in different price ranges, are usually not available for sale and cannot be purchased from respondent's salesmen or representatives. In fact, respondent usually sells only the "non-advertised" Aquamate Swimming Pool, after having discouraged customers from purchasing the advertised pool(s) by disparaging the quality of the pool(s). Moreover, respondent has failed to deliver advertised swimming pool models in instances where the customers have specifically ordered such models.

2. The swimming pool decks advertised in newspapers and magazines are usually not available for purchase from respondent.

3. The Aquamate Swimming Pool is not nationally advertised in magazines of general circulation. Moreover, the circulation of the magazines which contained the advertisement shown to many of respondent's customers was confined to a localized market area.

4. Respondent does not regularly sell the Aquamate Swimming Pool for \$4,995. In fact, respondent sells the Aquamate Pool at prices which are significantly lower than \$4,995.

5. The customer does not purchase the pool at a special or reduced price, and the installed pool is not used as a model for demonstration purposes.

6. The special or reduced price can be made available at times subsequent to the initial offer.

7. Respondent's customers usually do not receive the commission or remuneration which is promised them for each Aquamate Swimming Pool sold to a customer who is shown the buyer's pool.

8. The Aquamate Swimming Pool is not maintenance-free. In fact, it requires such maintenance as is usual and customary for swimming pools of this type.

9. The Aquamate Swimming Pool is not suitable to be used as an ice skating pond during the winter. In fact, there is the possibility of tearing or otherwise destroying the swimming pool liner if the pool is used as an ice skating pond.

10. Respondent does not give a 20-year guarantee on the Aquamate Swimming Pool liner. Moreover, the manufacturer's guarantee is for 10 years.

11. In a substantial number of instances, respondent has not performed under the guarantee and has failed to provide service for defects in the swimming pool or related equipment.

12. In a substantial number of instances, respondent has failed to honor the promise to move the swimming pool cost-free to anywhere within the continental United States.

PAR. 7. Respondent, many times in the ordinary course of his business, negotiates to third parties installment sales contracts or other

instruments of indebtedness executed in connection with credit purchases.

PAR. 8. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and is now, 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 respondent.

PAR. 9. By the aforesaid practices, respondent places, and has placed, in the hands of salesmen the means and instrumentalities by and through which the respondent may mislead and deceive the public and in the manner and as to the things herein alleged.

PAR. 10. The use by respondent of 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

Alleging violations 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 verbatim.

PAR. 12. In the ordinary course and conduct of his business as aforesaid, respondent regularly extends, and for sometime last past has 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. 13. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of his business, and in connection with credit sales, as "credit sale" is defined in Regulation Z, has caused and induced, and is causing and inducing, customers to execute retail installment contracts, hereinafter referred to as the "contract."

PAR. 14. By and through the use of the contract, respondent has:

1. Failed to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as prescribed by Section 226.8(b) (1) of Regulation Z.

2. Failed to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as prescribed by Section 226.8(b) (2) of Regulation Z.

3. Failed to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as prescribed by Section 226.8(c) (2) of Regulation Z.

4. Failed to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c) (3) of Regulation Z.

5. Failed to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as prescribed by Section 226.8(c) (8) (i) of Regulation Z.

6. Failed to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as prescribed by Section 226.8(c) (8) (ii) of Regulation Z.

7. Failed to obtain a specifically dated and separately signed, affirmative, written statement from the customer indicating his desire to obtain insurance coverage, after the customer received written disclosure of the cost of such insurance, as prescribed by Section 226.4(a) (5) (ii) of Regulation Z.

8. Failed to give notice of the customer's right to rescind the transaction by furnishing the customer with two copies of the Notice in the form as set forth in Section 226.9(b) of Regulation Z, as prescribed by Section 226.9 of Regulation Z.

9. Failed to delay performance of the subject matter of the transaction, as prescribed by Section 226.9(c) (4) of Regulation Z.

PAR. 15. Pursuant to Section 103(q) of the Truth In Lending Act, respondent's aforesaid failure to comply with Regulation Z constitutes a violation of that Act, and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Cleveland Regional Office

proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, 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 Sanford Levinson, also known as Morris Cohen, Stanley Lewis, and other assumed names, is an individual trading and doing business as Shangri-La Industries, Modern Decorators, American Distributors and Decorators, and other trade names, with his last known office and principal place of business located at 7777 Exchange Street, in the village of Valley View, State of Ohio (shown in the complaint and consent order agreement as 2858 West Market Street, in the city of Akron, State of Ohio.

Respondent is now, and for sometime last past has been, engaged in the advertising, offering for sale, and sale of swimming pools and other articles of merchandise to the public.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

Count I

It is ordered, That respondent Sanford Levinson, also known as Morris Cohen, Stanley Lewis, or any other assumed name or names, an individual trading and doing business as Shangri-La Industries,

Modern Decorators, American Distributors and Decorators, or any other trade name or names, and respondent's agents, representatives, and employees, directly or indirectly, orally or in writing, or through any corporate or other device in connection with the advertising, offering for sale, sale, distribution and installation of swimming pools 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. Advertising or offering any swimming pools or any other products or services for sale for the purpose of obtaining leads or prospects for the sale of different products or services, unless respondent maintains an adequate and readily available stock of said products or is ready, willing and able to perform said services.
2. Disparaging, in any manner, or refusing to sell, any swimming pool or any other products or services advertised by respondent.
3. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of swimming pools or any other product or service.
4. Representing that any swimming pools or other products or services are offered for sale when such offer is not a bona fide offer to sell said swimming pools or other products or services.
5. Representing that the special swimming pool decks which are advertised are available for sale from respondent's salesmen.
6. Representing that the swimming pools, or any other products or services are nationally advertised in leading magazines, unless magazine advertisements featuring such products are circulated to a national market.
7. Representing that any amount is respondent's usual and customary retail price of swimming pools or any other product or service, unless the amount is the price at which the merchandise has been usually sold at retail by respondent in the regular course of business.
8. Representing that the swimming pools, or any other products are maintenance free, or words of similar meaning and import.
9. Representing that the Aquamate Swimming Pool can be used as an ice skating pond during the winter months, or that any product can be used for other than its primary purpose, unless the respondent fully discloses all problems related to such secondary uses.

10. Representing that the home of any of respondent's customers or prospective customers for swimming pools or other products or services has been selected to be used or will be used as a "model home" or otherwise for advertising or sales purposes.

11. Representing that any allowance, discount or commission, in the form of cash, merchandise or services, is granted by respondent to purchasers of swimming pools or any other product or service in return for permitting the premises on which respondent's products are installed or services are performed to be used for "model home" or demonstration purposes.

12. Using the term "guarantee" or any term of similar import or meaning in any advertising or sales presentation for swimming pools or other products or services, unless the purchaser of such swimming pool or other products or services is accorded full satisfaction including the right to cancel the contract and obtain a full refund for failure to honor the guarantee.

13. Representing that any of respondent's 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 fully and conspicuously disclosed in immediate conjunction therewith; or making any direct or implied representation that any of respondent's products or installations are guaranteed unless, in each instance, a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations, and unless respondent promptly fulfills all of his obligations under the represented terms of such guarantee.

14. Representing that respondent will honor the guarantee by providing service for any defects in the swimming pool or its related equipment, or any other product or service unless respondent has provided for the manpower, tools, equipment and other facilities necessary to honor such guarantees, and unless respondent does, in fact, honor such guarantees.

15. Failing to incorporate the following statement on the face of all sales contracts, all notes, or other instruments of indebtedness executed by or on behalf of respondent's customers with such conspicuousness and clarity as is likely to be read and understood by the purchaser:

NOTICE

If you are obtaining credit in connection with this purchase, you will be required to sign a promissory note, a sales contract or other instrument of indebtedness which may be purchased from the seller by a bank, finance company or any other third party. If such is the case, you will be required

FEDERAL TRADE COMMISSION DECISIONS

81 F.T.C.

Decision and Order

to make your payments to someone other than the seller. You should be aware that if this happens you may have to pay the note, contract, or other instrument of indebtedness in full to its new owner even if your purchase contract is not fulfilled.

It is further ordered, That respondent devote twenty-five percent (25%) of all advertising in newspapers, magazines and other such media as may be used to advertise swimming pools or any other product or service, to a statement that the Federal Trade Commission has questioned respondent's advertising practices, such statement to appear in all advertising for one year after the effective date of this order.

Count II

It is ordered, That respondent Sanford Levinson, also known as Morris Cohen, Stanley Lewis, or any other assumed name or names, an individual trading and doing business as Shangri-La Industries, Modern Decorators, American Distributors and Decorators, or any other trade name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device in connection with the extension of consumer credit or advertisement to aid, promote or assist, directly or indirectly, in any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 C.F.R. § 226) of the Truth In Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the date on which the finance charge begins to accrue if different from the date of the transaction, as prescribed by Section 226.8(b)(1) of Regulation Z.
2. Failing to disclose the annual percentage rate, computed in accordance with Section 226.5 of Regulation Z, as prescribed by Section 226.8(b)(2) of Regulation Z.
3. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as prescribed by Section 226.8(c)(2) of Regulation Z.
4. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as prescribed by Section 226.8(c)(3) of Regulation Z.
5. Failing to use the term "finance charge" to describe the sum of all charges required by Section 226.4 of Regulation Z to be included therein, as prescribed by Section 226.8(c)(8)(i) of Regulation Z.
6. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum

as the "deferred payment price," as prescribed by Section 226.8 (b) (8) (ii) of Regulation Z.

7. Failing to obtain a specifically dated and separately signed, affirmative, written statement from the customer indicating his desire to obtain insurance coverage, after the customer received written disclosure of the cost of such insurance, as prescribed by Section 226.4(a) (5) (ii) of Regulation Z.

8. Failing to give notice of the customer's right to rescind the transaction by furnishing the customer with two copies of the Notice in the form as set forth in Section 226.9(b) of Regulation Z, as prescribed by Section 226.9 of Regulation Z.

9. Failing to delay performance of the subject matter of the transaction, as prescribed by Section 226.9(c) (4) of Regulation Z.

10. Failing, in any consumer credit transaction or advertising, to make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form and amount prescribed by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel engaged in the offering for sale or sale of swimming pools, swimming pool accessories, services, or other products, and in the consummation of any extension of consumer credit, or in any aspect of preparation, creation or placing of advertising, and that respondent secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

It is further ordered, That respondent shall, within 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 the order to cease and desist contained herein.

IN THE MATTER OF

U.S. HOMES, INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2302. Complaint, Oct. 11, 1972—Decision, Oct. 11, 1972.*

Consent order requiring a Des Moines, Iowa, firm selling custom-built homes and/or "package homes," among other things to cease representing that its products are guaranteed unless the nature, extent and duration of the guarantee and the identity of and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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 U.S. Homes, Incorporated, a corporation, and Robert G. Sandler, individually and as an officer of said corporation, 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. U.S. Homes, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business located at 5390 Second Avenue, Des Moines, Iowa.

Respondent Robert G. Sandler, 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 or distribution of custom built homes and/or "package homes" to the consuming 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 products, when sold, to be shipped from their place of business in the State of Iowa to purchasers thereof located in various other States in the United States and maintain, and at all times mentioned herein maintained, a substantial course of trade in said products in com-