

IN THE MATTER OF
CITY INVESTING COMPANY, ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2478. Complaint, Dec. 3, 1973—Decision, Dec. 3, 1973

Consent order requiring a New York City holding company and one of its enterprises engaged in the manufacture and sale of residential central air conditioning equipment, among other things to cease misrepresenting the comparative qualities or properties of their products; making statements as to their products' performance characteristics without substantiation backing-up such representations; and failing to maintain accurate records. Further, respondents are required to maintain documenting records for a three-year period following future performance characteristics claims.

Appearances

For the Commission: *James P. Carty and Kermit C. Morrison.*

For the respondents: *Daniel H. Brown, New York, N.Y.*

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 City Investing Company, a

corporation and Rheem Manufacturing Company, a 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. Respondent City Investing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal offices and place of business located at 767 Fifth Avenue, New York, N.Y.

Respondent Rheem Manufacturing Company, is a wholly-owned corporate subsidiary of City Investing Company, and is organized, existing, and doing business under and by virtue of the laws of the State of California with its principal offices and place of business located at 400 Park Avenue, New York, N.Y.

The aforesaid respondents cooperate and act together in carrying out the acts and practices herein set forth.

PAR. 2. Respondent City Investing Company, is now, and for some time last past has been, engaged in holding diversified industrial and real estate enterprises, including, but not limited to, Rheem Manufacturing Company.

Respondent Rheem Manufacturing Company, is now, and for some time last past has been, engaged in the manufacturing, advertising, sale, and distribution of, among other items, Corsaire and Rheemaire brand residential central air conditioning equipment.

PAR. 3. Respondents City Investing Company and Rheem Manufacturing Company cause the said products, when sold to be transported from their place of business in various States of the United States to purchasers located in various other States of the United States and in the District of Columbia. Respondents 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. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents City Investing Company and Rheem Manufacturing Company have been and now are in substantial competition in commerce, with corporations, firms, and individuals in the sale of products of the same kind and nature as that sold by said respondents.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of Corsaire and Rheemaire residential central air conditioning equipment, the respondents have made,

and are now making, numerous statements and representations in advertisements and commercials with respect to said products.

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

(1) And because it's Rheem you know you're getting the * * * most efficient central cooling you can get.

(2) The revolutionary cooling * * * system that reconditions and refreshes inside air every second.

(3) And because it's Rheem, you know you're getting the quietest * * * central cooling you can get.

PAR. 6. Through the use of said advertisements, and others not specifically set out herein, respondents have represented and are now representing, directly or by implication, that:

(1) Rheem Manufacturing Company residential central air conditioning systems are the most efficient central cooling systems one can buy;

(2) Rheem Manufacturing Company residential central air conditioning systems are revolutionary cooling * * * systems that recondition and refresh inside air every second, making Rheem systems more advanced than other systems available to consumers.

PAR. 7. In truth and in fact:

(1) Rheem Manufacturing Company residential central air conditioning systems are not the most efficient central cooling systems one can buy;

(2) Rheem Manufacturing Company residential central air conditioning systems are not revolutionary cooling systems, but are similar to other systems available to consumers.

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

PAR. 8. Through the use of said advertisements, and others not specifically set out herein, respondents have also represented and are now representing, directly or by implication, that:

(1) Rheem residential central air conditioning systems are the quietest systems available to consumers, in comparison with like systems made by other manufacturers;

(2) At the time they made the representation set forth in Section (1) of this paragraph, they had a reasonable basis from which to conclude that Rheem residential central air conditioning systems were the quietest systems available to consumers, in comparison with like systems made by other manufacturers.

PAR. 9. In truth and in fact, at the time the representation set forth in Section (1) of Paragraph Eight was made, respondents had no reasonable basis from which to conclude that Rheem residential central air conditioning systems were the quietest systems available to con-

sumers, in comparison with like systems made by other manufacturers.

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

PAR. 10. Furthermore, the making of the representation that Rheem Manufacturing Company residential central air conditioning systems are the quietest systems available to consumers, without a reasonable basis for making such representation, is in itself an unfair act or practice in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 11. The use by respondents of the aforesaid false, misleading, and deceptive acts or practices and the heretofore described unfair act or practice 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 said products by reason of said erroneous and mistaken belief.

PAR. 12. 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 or deceptive acts and practices and unfair methods of competition 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 hereto 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, a statement that solely for the purpose of the consent agreement and order the respondents shall not contest the jurisdictional facts set forth in Paragraphs 1, 2, 3, 4, and 12 of the 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed 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

in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent City Investing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 767 Fifth Avenue in the city of New York, State of New York.

Respondent Rheem Manufacturing Company is a wholly-owned corporate subsidiary of City Investing Company, and is organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 400 Park Avenue, in the city of New York, State of New York.

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 City Investing Company and Rheem Manufacturing Company, their successors and assigns, and their 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 Rheem Manufacturing Company residential air conditioning products or systems, do forthwith cease and desist from:

1. Representing, directly or by implication, that Rheem Manufacturing Company residential air conditioning products or systems are:

(a) The most efficient cooling products or systems available unless, at the time such representation is made, respondents have a reasonable basis for such representation, which shall consist of competent scientific tests, or industry-wide standards based on such tests established by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc. or other standards for comparing the efficiency of residential air conditioning products promulgated by similar organizations and based on competent scientific tests.

(b) Revolutionary or more advanced products or systems as compared to those offered by competitors because they recondition and refresh inside air every second; or representing in any manner that any such products or systems are revolutionary or more advanced than other products or systems in any respect unless the characteristics which actually render the products or systems more revolutionary or more advanced

are clearly and conspicuously disclosed in immediate conjunction therewith.

2. Representing, directly or by implication, that Rheem Manufacturing Company residential air conditioning products or systems are the quietest such products or systems available to consumers unless, at the time such representation is made, respondents have a reasonable basis for such representation, which shall consist of competent scientific tests, or industry-wide standards based on such tests established by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc. or other standards for comparing sound or noise levels of residential air conditioning products promulgated by similar organizations and based on competent scientific tests.

3. Making, directly or by implication, any other statements or representations as to the performance characteristics of any residential air conditioning products or systems unless, at the time of such representations or statements, respondents have a reasonable basis for making such representations or statements which shall consist of competent scientific, engineering, or other similar objective material.

4. Failing to maintain accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which consist of documentation to support any and all claims made after the effective date of this order in advertising or sales promotion material concerning the performance characteristics of any and all residential air conditioning products or systems;

(b) Which provided the basis upon which respondents relied as of the time those claims were made; and

(c) Which shall be maintained by respondents for a period of three years from the date such advertising or sales promotion material was last disseminated.

It is further ordered, That each respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions involved in the advertising promotion, distribution, or sale of Rheem residential air conditioning products or systems.

It is further ordered, That respondents shall notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

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Complaint

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