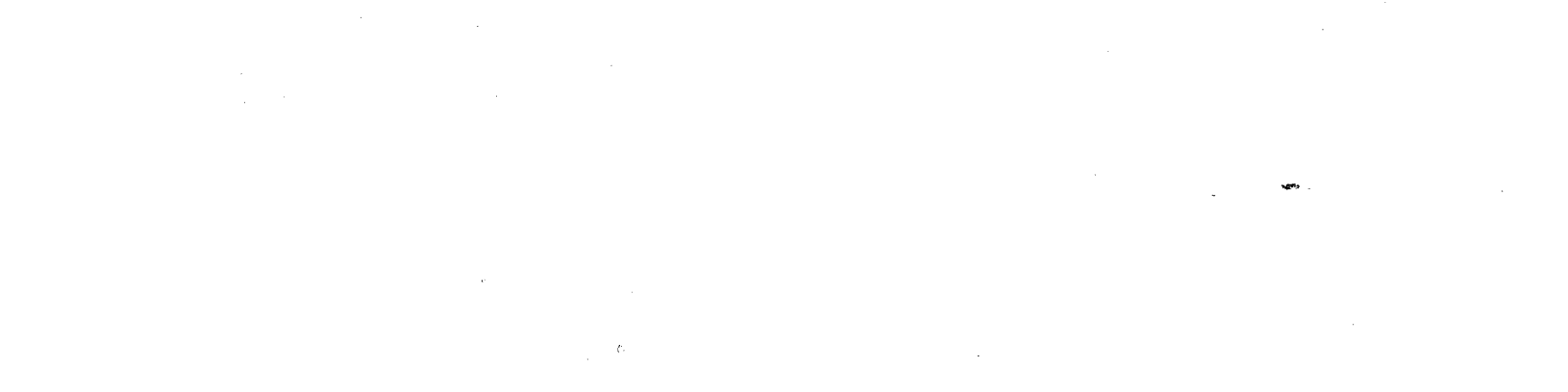




Consent order requiring a Wildwood, Ga., seller and distributor of residential siding and other products, among other things to cease misrepresenting the amount, type and extent of the credit terms arranged for purchases; that products, installations or services are guaranteed; prices or savings, and offers are limited or restricted as to time; failing to maintain adequate records; using schemes or devices to obtain leads or prospects for the sale of products or services; and discouraging the purchase of or disparaging its advertised products.

Appearances

For the Commission: *Edward J. Carnot.*

For the respondents: *Roger R. Auman, Auman and Miller, Trenton, Ga.*

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 Tri-State Aluminum, a corporation and A.E. Whitworth and William M. Townsend, individually and as officers 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. Tri-State Aluminum is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Box 125, in the city of Wildwood, State of Georgia.

Respondents A.E. Whitworth and William M. Townsend are individuals and the principal officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business 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 and distribution of residential 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 products, when sold, to be shipped from their place of business in the State of Georgia to purchasers thereof located in Tennessee, 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, as aforesaid, and for the purpose of inducing the purchase and installation of aluminum

siding material, respondents and their salesmen have made numerous statements and representations in their advertising and promotion material and through oral statements and representations with respect to their purchasers' savings and the durability of their products.

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

EZ Terms-Bank Rates
100% Guaranteed Genuine Aluminum Siding
Limited Offer
Time Limit on this Offer is Five Days
\$488.00 Completely Installed-No Extras

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, separately and in connection with oral statements and representations of their salesmen or representatives, respondents have represented, and are now representing, directly or by implication, that:

1. Purchasers of their products and installations are granted easy credit terms, without regard to their financial status or their ability to pay by financial institutions with which respondents deal;
2. Certain of respondents' home improvement products are unconditionally guaranteed or guaranteed for life;
3. Their home improvement products and installations are being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of reductions from respondents' regular selling price;
4. Respondents' advertised offer is made for a limited period of time;
5. The offers set out in their advertisements are bona fide offers to sell home improvements products and installations of the kind therein described at the price and on the terms and conditions stated.

PAR. 6. In truth and in fact:

1. Purchasers of respondents' products are not granted easy credit terms without regard to their financial status or their ability to pay by financial institutions with which respondents deal;
2. Respondents' home improvement products are not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided is subject to numerous terms, conditions and limitations respecting the duration of the guarantee and the extent and manner of performance thereunder;
3. Respondents' products are not being offered for sale at special or reduced prices and savings are not afforded purchasers because of reductions from respondents' regular selling prices;
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' said advertised offers are not genuine or bona fide offers, but 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, respondents' salesmen or representatives disparage the advertised product and otherwise discourage the purchase thereof and attempt to sell and frequently do sell a different and more expensive product instead of the advertised product for which the customer was originally solicited.

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 course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding.

PAR. 8. 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 were and are true, and into the purchase of substantial quantities of respondents' aluminum siding.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Atlanta 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, and 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 Tri-State Aluminum is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at Box 125, city of Wildwood, State of Georgia.

Respondents A.E. Whitworth and William M. Townsend are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their 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 Tri-State Aluminum, a corporation, and A.E. Whitworth and William M. Townsend, individually and as officers of said corporation, and respondents' agents, representatives and employees, and their successors and assigns, directly or through any corporate or other device or under any other name or names, in connection with the advertising, offering for sale, sale and distribution of home improvement materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication that purchasers of respondents' products, installations or services are granted easy or assured credit terms by financial institutions with which respondents deal; or misrepresenting in any manner the amount, type, extent or any other facet of the credit terms respondents arrange or may arrange for their purchasers;

2. Representing, directly or by implication, that any of respondents' products, installations or services are warranted or

guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented, under the terms of each such warranty or guarantee;

3. Representing, directly or by implication, that any price for respondents' products, installations or services is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products, installations or services have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, their prices or the savings available to their purchasers;

4. Representing, directly or by implication, that any of respondents' offers to sell products, installations or services are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually in force and in good faith adhered to;

5. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims of the type discussed in Paragraphs Three and Four of this order are based; and (b) from which the validity of any savings claim, including former pricing claims and similar representations of the type described in Paragraphs Three and Four of this order can be determined;

6. 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 products, installations or services;

7. Making representations purporting to offer products, installations or services for sale when the purpose of such representations are not to sell the offered products, installations or services but to obtain leads or prospects for the sale of other products, installations or services at higher prices;

8. Discouraging the purchase of or disparaging any product, installation or service which is advertised or offered for sale by respondents.

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 or

1408 FEDERAL TRADE COMMISSION DECISIONS

Complaint

83 F.T.C.

employment in which he is engaged as well as a description of his duties and responsibilities.

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

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF