

Complaint

84 F.T.C.

IN THE MATTER OF

NU-PRIME MARKETING SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2594. Complaint, Nov. 4, 1974—Decision, Nov. 4, 1974*

Consent order requiring a St. Petersburg, Fla., retailer and wholesale distributor of aluminum replacement windows and other aluminum siding products, among other things to cease misrepresenting the savings or benefits to be derived from their products and misrepresenting their guarantees.

Appearances

For the Commission: *David E. Krischer.*

For the respondents: *Thomas K. Riden*, St. Petersburg, Fla.

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 Nu-Prime Marketing Systems, Inc., a corporation, and Herbert Anderson, individually and as an officer of said corporation, hereinafter sometimes 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 Nu-Prime Marketing Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and principal place of business located at 10590 Oak Street, N.E., St. Petersburg, Fla.

Respondent Herbert Anderson is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of 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 engaged in the advertising, offering for sale, sale and distribution of aluminum replacement windows and other aluminum siding products to consumers through a retail outlet. In addition, respondents are now, and for some time last past have been engaged in the sale and distribution of aluminum replacement windows and other aluminum siding products

to distributors. Said distributors purchase respondents' aluminum products under a distribution agreement whereby respondents agree to provide perpetual sales, management and technical assistance to distributors, and distributors agree to sell minimum quotas of respondents' aluminum products.

PAR. 3. In the course and conduct of their business, as aforesaid, 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 Florida to purchasers thereof located in other States of the United States and have sent and received sales, advertising and training aids to and from their distributors and thereby maintain and at all times mentioned herein have maintained, substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of aluminum window replacements and other aluminum siding products, respondents have made numerous statements and representations in newspapers and promotional materials. Typical and illustrative of such statements and representations, but not all inclusive thereof, are the following:

* * * * *

NUPRIME stops loss of heating and cooling dollars.

* * * * *

They save up to 30 percent of your heating and cooling costs.

* * * * *

They pay for themselves in reduced fuel costs alone.

* * * * *

Make no mistake, NUPRIME replacement windows *will cut your fuel expenses considerably*; make your home more comfortable; and more attractive, too.

* * * * *

On a NUPRIME replacement window, you save up to 40 percent over wood replacement windows * * * and 20-30 percent less than other types. Here's an investment which pays for itself in savings and maintenance, heating and air conditioning costs.

* * * * *

NU PRIME is the only replacement window built of such high standards that it's guaranteed for 15 years.

* * * * *

They never need painting, are easy to clean and will make your house look years younger.

* * * * *

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 the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented and are now representing directly or by implication that:

1. Installation of replacement windows sold by respondents will cut fuel expenses considerably and in fact will reduce fuel costs by up to thirty (30) percent.

2. Respondents' replacement windows and their installation are fully or unconditionally guaranteed for 15 years.

3. Respondent is the guarantor of said guarantee.

4. Replacement windows sold by respondent will never need repainting.

PAR. 6. In truth and in fact:

1. Respondents cannot predict in advance any precise percentage of savings in fuel costs that might be expected to result from the installation of their replacement windows. Since such savings will depend on the quality of construction and age of each home and since no installation will be alike, fuel savings are indeterminable.

2. Respondents' 15 year guarantee is not unconditional nor does it cover installation. Said guarantee is limited and restricted in certain respects which limitations and restrictions were not disclosed in many of respondents' advertisements.

3. Respondent is not the guarantor of said guarantee.

4. Replacement windows sold by respondents will require painting.

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, respondents have disseminated the aforesaid statements and representations to their distributors.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition in commerce with corporations, firms and individuals in the sale of aluminum replacement windows and other aluminum siding products of the same kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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 complete and into the

Decision and Order

purchase of substantial quantities of respondents' products and services by reasons of said erroneous and mistaken belief.

PAR. 10. 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint making the following jurisdictional findings, and enters the following order:

1. Respondent Nu-Prime Marketing Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 10590 Oak Street, N.E., St. Petersburg, Fla.

Respondent Herbert Anderson is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of the corporate respondent.

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 Nu-Prime Marketing Systems, Inc., a corporation, its successors and assigns, and its officers, and Herbert Anderson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, divisions or other device, or through its distributors, in connection with the advertising, offering for sale, sale or distribution of aluminum replacement windows, aluminum siding, and any other products or services in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That any specific percentage or any specific amount of savings in fuel bills will result from the installation of respondents' replacement aluminum windows, or misrepresenting in any manner the savings or benefits to be derived from the purchase of respondents' products.
2. That respondents' products and installation thereof are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.
3. That aluminum replacement windows sold by respondents will never need painting; or misrepresenting in any manner, the painting or other maintenance required for respondents' products.

It is further ordered, That respondents no longer disseminate suggested advertisements, promotional materials or any other materials containing statements or representations prohibited by this order, to its distributors or to any other aluminum replacement window dealers for whom respondents have been providing sales, management or technical assistance.

It is further ordered, That respondents maintain files containing all inquiries or complaints made after the effective date of this order from any source relating to acts or practices prohibited by this order for a period of two (2) years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

Complaint

1253

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future employees, agents and representatives engaged in the offering for sale or sale of respondents' products 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 respondents deliver a copy of this order to cease and desist to all present and future distributors and that respondents secure a signed statement from each said distributor wherein each said distributor agrees to abide by the terms of said order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and 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 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 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.

IN THE MATTER OF

THE SOCIETY OF THE PLASTICS INDUSTRY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2596. Complaint, Nov. 4, 1974—Decision, Nov. 4, 1974

Consent order requiring a trade association and 25 manufacturers of certain plastics products, among other things to alert users of cellular (or foamed) plastics products to the serious hazards these products may present in case of fire; to cease using descriptive terms which could mislead users as to the performance of the products and to establish a \$5 million public research program