

Consent order requiring a Union, N. J., home improvement firm, among other things to cease making false statements concerning its guarantees and violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act.

Appearances

For the Commission: *Phyllis L. Kaye.*

For the respondents: *Paul Seligman*, West Caldwell, N. J.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act, and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jaymor Builders, Inc., a corporation, and Morton Brett, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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 Jaymor Builders, 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 1400 Stuyvesant Avenue, Union, N. J.

Respondent Morton Brett is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale, distribution and installation of home improvement products, including residential siding to the public.

COUNT I

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 I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents regularly extend or arrange for the extension of consumer credit, as "consumer credit" and "arrange for the extension of credit" are defined in Sections 226.2 (k) and 226.2(f), respectively, of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, in the ordinary course and conduct of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Section 226.2 (n) of Regulation Z, respondents have caused and are causing their customers to enter into contracts for the sale of merchandise and services. On these contracts,

hereinafter referred to as "the contract," respondents provide certain consumer credit cost information. Respondents do not provide any other consumer credit information.

PAR. 5. By and through the use of the contract referred to in PARAGRAPH FOUR, respondents sell home improvements which become part of the customers' real property under applicable state law. As a result of these credit sales and respondents' arrangements for the extension of credit, a security interest, as "security interest" is defined in Section 226.2(z) of Regulation Z, is or will be retained or acquired in real property which is or is expected to be used as the principal residence of respondents' customers. The retention or acquisition of such security interest in said real property thereby entitles customers to be given the right to rescind the transaction until midnight of the third business day following the consummation of the transaction. Having consummated such rescindable credit transactions, respondents, in some instances, have:

1. Failed to notify the buyer of said buyer's right to rescind the contract, as provided for by Section 226.9 of Regulation Z.

2. Failed to provide each buyer who has the right to rescind with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that Section.

3. Failed to honor a customer's right to rescind the contract when such election is made and notice of rescission is properly given as prescribed by Section 226.9(a) of Regulation Z, and hence failed to give full effect to the customer's rescission, in violation of Section 226.9(d) of Regulation Z.

4. Performed work or services for or taken other actions with regard to customers who have a right of rescission under Section 226.9(a) of Regulation Z, prior to the expiration of the three day rescission period, in violation of Section 226.9(c) of Regulation Z.

PAR. 6. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitutes a violation of that Act, and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

COUNT II

Alleging violation of Section 5 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. 7. In the course and conduct of their business, as aforesaid, respondents have purchased, and are purchasing building supplies and

materials, including residential siding, from suppliers and manufacturers in various other states of the United States and respondents distribute the guarantees of said manufacturers to their customers. Respondents have also caused and now cause advertisements which are designed and intended to induce customers to purchase merchandise and services to appear in newspapers of interstate circulation, including, but not limited to the Star-Ledger, the Newark News, and the New York Daily News. Accordingly, respondents maintain, and at all times mentioned herein have maintained, a substantial course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business and for the purpose of inducing the purchase of merchandise and services, respondents and their agents have made certain statements and representations with respect thereto in advertisements appearing in newspapers of interstate circulation.

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

30-Year guarantee transferable.

Guaranteed for 30 years against cracking, chipping, crazing or erosion, blistering, flaking or peeling.

10-year guarantee.

15-year guarantee.

25-year guarantee.

Guarantee, We will replace any faulty material including labor for the life of your guarantee.

PAR. 9. By and through the use of the aforementioned statements and representations, and others of similar import and meaning but not specifically set out herein, respondents represent, directly or by implication, that:

Respondents' siding materials and installations are guaranteed for various periods of time, thereby representing that said products are unconditionally guaranteed in every respect for the stated periods of time.

PAR. 10. In truth and in fact: Respondents' siding materials and installations are not unconditionally guaranteed in every respect without condition or limitation for the stated periods of time. Such guarantee as may be provided is subject to pro-rata provisions, terms, conditions and limitations.

Therefore, the statements and representations as set forth in Para-

graphs Eight and Nine hereof were and are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of home improvement products, including residential siding of the same general kind and nature as sold by respondents.

PAR. 12. 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 and representations were and are true and into the purchase of substantial quantities of merchandise and services sold by respondents by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents were and are 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 New York 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 regulation promulgated thereunder; 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 Acts, 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Jaymor Builders, 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 1400 Stuyvesant Avenue, Union, N. J.

Respondent Morton Brett is an individual and an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his 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

PART I

It is ordered, That respondents Jaymor Builders, Inc., a corporation, its successors and assigns and its officers, and Morton Brett, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with any extension of or arrangement for consumer credit, or any advertisement to aid, promote or assist, directly or indirectly any extension of or arrangement for 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 notify the buyer of said buyer's right to rescind the contract, as provided for by Section 226.9 of Regulation Z.

2. Failing to provide each buyer who has the right to rescind with two copies of the notice prescribed by Section 226.9(b) of Regulation Z, as required by that Section.

3. Failing to honor a customer's right to rescind the contract when such election is made and notice of rescission is properly given as prescribed by Section 226.9(a) of Regulation Z, and in such a case, failing to give full effect to the customer's rescission, as required by Section 226.9(d) of Regulation Z.

4. Performing work or services or undertaking any of the actions proscribed by Section 226.9(c) of Regulation Z for customers who have a right of rescission under Section 226.9(a) of Regulation Z prior to the expiration of the three day rescission period.

5. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.7, 226.8, 226.9 and 226.10 of Regulation Z.

6. Failing, in any transaction in which respondents retain or acquire a security interest in real property which is used or expected to be used as the principal residence of the customer, to comply with all requirements regarding the right of rescission set forth in Section 226.9 of Regulation Z.

PART II

It is further ordered, That respondents Jaymor Builders, Inc., a corporation, its successors and assigns and its officers, and Morton Brett, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, offering for sale, sale, distribution or installation of any merchandise or services, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, orally, visually or in writing, directly or by implication, that any product or service is 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 clearly and conspicuously disclosed; and respondents deliver to each purchaser, prior to the signing of the sales contract, a written guarantee clearly setting forth all of the terms, conditions and limitations of the guarantee fully equal to the representations, orally, visually or in writing, directly or by implication, made to each such purchaser, and unless respondents promptly and fully perform all of their obligations and requirements under the terms of each such guarantee.

PART III

It is further ordered, That respondents distribute a copy of this order to all operating divisions of the corporate respondent and also distribute a copy of this order to all personnel, agents or representatives of respondents responsible for the sale or offering for sale of merchandise

or services, or concerned with the consummation of any extension of consumer credit, 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 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 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 no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

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

M & W ELECTRONICS, INC., ET AL.

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

Docket C-2598. Complaint, Nov. 11, 1974—Decision, Nov. 11, 1974

Consent order requiring a Dallas, Tex., retailer and repairer of hearing aids, audiometers and other hearing accessories, among other things to cease misrepresenting the usual and customary retail price of its merchandise.