

IN THE MATTER OF
TRU-VIEW PLASTICS, INC., ET AL.

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

Docket C-2603. Complaint, Nov. 19, 1974 -- Decision, Nov. 19, 1974

Consent order requiring a Brooklyn, N. Y., retailer and distributor of plastic slip covers, among other things to cease using misleading sales plans; misrepresenting guarantees; disparaging advertised merchandise and using bait and switch tactics.

Appearances

For the Commission: *Carol H. Katz.*

For the Respondents: *Arthur Teichberg*, 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 Tru-View Plastics, Inc., a corporation, and Martin Simon and Dennis Simon, 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. Respondent Tru-View Plastics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 5606 Church Avenue, Brooklyn, N. Y.

Respondents Martin Simon and Dennis Simon are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 plastic slip covers to members of the purchasing public at retail.

PAR. 3. Respondents, in the course and conduct of their business, as aforesaid, have caused and now cause the dissemination of certain advertisements concerning their products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers of interstate circulation for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their merchandise by residents of New Jersey and other surrounding states.

PAR. 4. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of plastic slip covers to members of the purchasing public at retail in the metropolitan New York-New Jersey area.

PAR. 5. In the course and conduct of their business, as aforesaid, respondents' sales representatives call upon prospective customers at their places of residence in the States of New York and New Jersey and thereat have engaged in the offering for sale and sale of respondents' merchandise.

PAR. 6. In the further course and conduct of their business, respondents have caused their merchandise when sold to be delivered to residents in the States of New York and New Jersey.

PAR. 7. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation and by oral statements and representations of their sales representatives and agents with respect to said merchandise and services.

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

SPECIAL OFFER!-3 PIECE SECTIONAL OR SOFA & 2 CHAIRS-29.95
10 YEAR WEAR GUARANTEE
10 YEAR GUARANTEE-SEAMS AND WORKMANSHIP WARRANTED
10 YR WRITTEN GUARANTEE
10 YEAR WRITTEN GUARANTEE ON WORKMANSHIP

PAR. 9. By and through the use of said above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents have represented and are now representing directly or by implication that:

1. Respondents are making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements.

2. Respondents' merchandise is unconditionally guaranteed for various periods of time, such as ten (10) years.

PAR. 10. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell said merchandise at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of plastic slip covers. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen who make little or no effort to sell to the prospective customer the advertised merchandise. Instead, they exhibit what they represent to be the advertised merchandise which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced merchandise of superior quality is thereupon exhibited, which by comparison disparages and demeans the advertised merchandise. By these and other tactics, purchase of the advertised merchandise is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced merchandise.

2. Respondents' plastic slip covers are not unconditionally guaranteed for the period of time represented in respondents advertisements or as orally represented by the respondents' salesmen. To the contrary, such written guarantees, as they have provided to their customers, are subject to conditions and limitations not disclosed in respondents' advertisements or in respondents' representatives' oral representations.

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

PAR. 11. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and now are, 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 merchandise of the same general kind and nature as the aforesaid merchandise sold by respondents.

PAR. 12. 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 such advertisements and representations were and are true, and into the purchase of substantial quantities of respondents' said merchandise by reason of said erroneous and mistaken beliefs.

PAR. 13. 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 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tru-View Plastics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 5606 Church Avenue, Brooklyn, N. Y.

Respondents Martin Simon and Dennis Simon 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 Tru-View Plastics, Inc., a corporation, its successors and assigns, and its officers, and Martin Simon and Dennis Simon, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale and distribution of plastic slip covers or other merchandise to the public at retail, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. 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 plastic slip covers or other merchandise or services.

2. Making representations, directly or indirectly, orally, visually, or in writing, purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. The cost of publishing each advertisement including the preparation and dissemination thereof;
- b. The volume of sales made of the advertised product or service at the advertised price; and
- c. A computation of the net profit from the sales of each advertised product or service at the advertised price.

6. Representing, orally 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 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.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of plastic slip covers and other merchandise, or utilized in the advertising, promotion or sale of plastic slip covers and other merchandise.

It is further ordered, That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of plastic slip covers and other merchandise, with a copy of the Commission's News Release setting forth the terms of this order.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents who are engaged in the offering for sale and 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 and that respondents distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents maintain full and complete records of all complaints and correspondence received from customers,

or any memoranda in connection therewith, for a period of two years after receipt.

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 respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business addresses and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That no provision of the 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.

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Certification of Record and Recommendations on Order

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY

ORDER AND OPINION IN REGARD TO SHOW CAUSE PROCEEDING TO
EXTEND FOR A FIVE-YEAR PERIOD THE CEASE AND DESIST ORDER
ISSUED UNDER THE FEDERAL TRADE COMMISSION ACT AND SEC. 7
OF THE CLAYTON ACT

Docket 7880.

Order to Show Cause, Dec. 12, 1973-Order & Opinion, Nov. 26, 1974

Order dismissing an Order to Show Cause why the proceeding should not be reopened and the cease-and-desist order issued against Continental Baking Company May 11, 1962, 60 F.T.C. 1183, be extended for an additional five years to prohibit respondent from acquiring any firm engaged in the production and sale of bread and bread-type rolls without prior permission of the Commission. The order to show cause was found not to be in the public interest.

Appearances

For the Commission: *Rafe H. Cloe, James E. Corkey, Stephen Miller, Edward W. Abramowitz and Robert W. Rosen.*

For the respondent: *Roy M. Anderson, Rye, N. Y. for ITT Continental Baking Company. John H. Schafer and David J. Cynamon, Covington & Burling, Wash., D.C.*

CERTIFICATION OF RECORD AND RECOMMENDATIONS ON ORDER TO
SHOW CAUSE BY ALVIN L. BERMAN, ADMINISTRATIVE LAW JUDGE

DECEMBER 12, 1973

PRELIMINARY STATEMENT

On May 11, 1962, the Commission issued a consent order against Continental Baking Company ("Continental") requiring, *inter alia*, that for a period of ten years, it not acquire any interest in, or the assets of, any concern engaged in the production and sale of bread and bread-type rolls.¹ On Sept. 13, 1968, Continental was merged into a successor corporation, ITT Continental Baking Company ("ITT Continental"), a newly incorporated, wholly-owned subsidiary of International Tele-

¹ The pertinent portion of the order (Section III) reads as follows: *It is further ordered*, That for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission.