

IN THE MATTER OF

MARJO SYSTEMS, INC. T/A THERMAL-GARD, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2791. Complaint, Feb. 19, 1976—Decision, Feb. 19, 1976*

Consent order requiring a Rahway, N.J., seller and distributor of thermal replacement windows, with and without burglar alarms, among other things to cease misrepresenting the qualities of their products; misrepresenting that usage of their windows will result in specific fuel cost savings; misrepresenting that their windows contain an electric system making them burglar-proof; and misrepresenting that their windows cannot be jimmied.

Appearances

For the Commission: *Phyllis Kane.*

For the respondents: *Kaplowitz & Wise*, Linden, N.J.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Marjo Systems Inc., a corporation, formerly named Weather-Shield Enterprises, Inc., d/b/a Thermal-Gard, and Joseph Di Giacomo and Martin L. Waldman, Sr., individually and as officers 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 Marjo Systems 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 1401 Witherspoon St., Rahway, New Jersey. Said corporation does business under the name Thermal-Gard.

Respondents Joseph Di Giacomo and Martin L. Waldman, Sr. are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including the policies, 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 purchasing, advertising, offering for sale, sale and

distribution of thermal replacement windows and thermal replacement windows equipped with burglar alarms to the public at retail.

PAR. 3. In the course and conduct of their business as aforesaid, respondents regularly sell and offer to sell said products to residents of the States of New York, New Jersey and various other States of the United States.

Respondents, in the course and conduct of their business as aforesaid, disseminate or cause to be disseminated advertisements in newspapers and other media for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of thermal replacement windows and electronic burglar alarm systems by residents of several states.

Respondents' volume of business is substantial and its acts and practices, as hereinafter set forth, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of the products offered for sale, respondents have made, and are now making, numerous statements and representations in said advertisements with respect to said products.

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

* * * world's warmest window * * *

Save up to 30% on fuel costs.

Lower fuel bills summer and winter

* * * substantial savings on fuel, up to 32%.

Over an extended period of time the savings you'll experience will pay you back—with interest.

Now, exclusively in Thermal-Gard windows * * * an additional electronic system that makes the window virtually burglar proof.

All Thermal-Gard replacement windows are equipped with a double-lock security system. When locked the window is impossible to jimmy.

PAR. 5. By and through the use of the statements and representations set forth in Paragraph Four above 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. The thermal replacement windows sold by respondents are the world's warmest windows.

2. Purchasers of the thermal replacement windows sold by respondents will substantially lower their consumption of fuel and thereby realize fuel cost savings of up to 32 percent.

3. The thermal replacement windows sold by respondents contain an electronic system that makes the window burglar proof.

4. The thermal replacement windows sold by respondents are equipped with a double-lock security system which, when locked, prevents the window from being jimmied.

PAR. 6. In truth and in fact:

1. The thermal replacement windows sold by respondents are not the world's warmest windows.

2. Purchasers of the thermal replacement windows sold by respondents do not substantially lower their fuel consumption and do not realize fuel cost savings of up to 32 percent.

3. The thermal replacement windows sold by respondents are not burglar proof.

4. The thermal replacement windows sold by respondents can be jimmied even though double-locked.

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

PAR. 7. 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 or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, with corporations, firms and individuals engaged in the sale of thermal replacement windows of the same general kind and nature as sold by respondents.

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 such advertisements and representations were and are true, and into the purchase of substantial quantities of the products sold by respondents by reason of said erroneous and mistaken belief.

PAR. 9. The 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 or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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, as amended; 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Marjo Systems 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 1401 Witherspoon St., Rahway, New Jersey. Said corporation does business under the name Thermal-Gard.

Respondents Joseph Di Giacomo and Martin L. Waldman, Sr. are individuals and officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent, 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 Marjo Systems Inc., a corporation, formerly named Weather-Shield Enterprises, Inc., d/b/a Thermal-Gard or under any other name, its successors and assigns, and its officers, and Joseph Di Giacomo and Martin L. Waldman, Sr., individually and as officers 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, solicitation, offering for sale, sale, distribution or installation of thermal replacement windows, or any other products or services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, in any manner, that the thermal replacement windows sold by respondents are the world's warmest windows; or misrepresenting in any manner the qualities of the thermal replacement windows sold by respondents.

2. Representing, in any manner, that the purchasers of the thermal replacement windows sold by respondents will realize fuel cost savings of any specific percentage or any specific amount as the result of installing said windows; or misrepresenting in any manner the amount of savings to be realized by utilizing the windows sold by respondents.

3. Representing, in any manner, that the thermal replacement windows sold by respondents contain an electronic system that makes the window burglar proof.

4. Representing, in any manner, that the thermal replacement windows sold by respondents cannot be jimmied.

It is further ordered, That respondents shall forthwith deliver a copy of this order to cease and desist, and a copy of the Commission's news release setting forth the terms of the order, to each advertising agency and advertising medium, such as newspaper publishing company, radio station or television station, presently utilized or utilized subsequent to the effective date of this order to create, prepare or place respondents' advertisements.

It is further ordered, That respondents shall deliver a copy of this order to cease and desist to each of their agents, representatives and employees engaged in the offering for sale or sale of respondents' merchandise or services and respondents shall also deliver a copy of this order to each new employee at the time such employee is hired. Respondents shall secure from each such person a signed statement acknowledging receipt of said order and shall retain said statements to be produced for examination upon request of the Federal Trade Commission or its staff.

It is further ordered, That the corporate respondent shall distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least 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 each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with any 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

BILL J. ROBERTSON, ET AL. T/A ROBERTSON
PRODUCTSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2792. Complaint, Feb. 20, 1976—Decision, Feb. 20, 1976

Consent order requiring a Texarkana, Ark., manufacturer and door-to-door seller of cleaning products, among other things to cease using exaggerated earnings claims; misrepresenting the terms and conditions of employment; failing to disclose full job particulars prior to hiring sales agents; fining or using threats or physical force on them; and making false and unsubstantiated claims for their products or services. The order further requires that eligible consumers be given three days to cancel their contracts in accordance with the F.T.C.'s Trade Regulation Rule governing door-to-door sales.

Appearances

For the Commission: *Richard H. Gateley and Paul W. Turley.*
For the respondents: *Winford L. Dunn, Jr.,* Texarkana, Ark.

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 Bill J. Robertson and Patricia M. Robertson individuals trading and doing business as Robertson Products, hereinafter sometimes referred to as respondents, have violated the provisions of said Act and, it appearing to the Commission that the 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. Respondents, Bill J. Robertson and Patricia M. Robertson, are individuals trading and doing business as Robertson Products, a proprietorship, with its office and principal place of business located at Route 8, Box 212, Texarkana, Arkansas.

PAR. 2. Respondents are now, and for some time have been engaged in the business of manufacturing and selling a cleaning product to the public, advertising that product and offering business opportunities through advertisements in newspapers of general circulation for persons to become associated with respondents as sales agents.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time have caused, the dissemination of advertisements in newspapers of general circulation offering