

IN THE MATTER OF

MUTUAL CONSTRUCTION COMPANY, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9022. Complaint, Mar. 25, 1975—Final Order, Mar. 30, 1976*

Order requiring a Birmingham, Ala., seller and installer of home improvement products, including residential siding, among other things to cease using bait and switch tactics; using deceptive or misleading sales plans to obtain leads or sales prospects; disparaging products; misrepresenting sales as bona fide; misrepresenting time limitations or restricted offers; misrepresenting prices as reduced or special; failing to maintain adequate records; misrepresenting guarantees or warranties; misrepresenting durability, quality and maintenance of its products; and misrepresenting that purchasers' homes will be used for advertising or for demonstration purposes.

Appearances

For the Commission: *W. Roland Campbell and T. Douglas Wilson, Jr.*

For the respondents: *Gary P. Smith, Najjar, Najjar, Vincent & Smith, Birmingham, Ala.*

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 Mutual Construction Company, Inc., a corporation, and Joseph L. Cameron, individually and as an officer 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 Mutual Construction Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 742 Valley Rd., in the city of Birmingham, State of Alabama.

Respondent Joseph L. Cameron is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate

respondent. His home address is 3465 Birch Tree Dr., in the city of Birmingham, State of Alabama.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including, but not limited to, residential siding, and in the installation thereof.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said products to be sold in various States of the United States and when sold, to be shipped from their place of business in the State of Alabama to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting 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 and installation of their home improvement products, respondents and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty, the durability of their products and the availability of their advertised product and installation thereof.

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

ALL-ALUMINUM SIDING SALE

THIS IS A LIMITED OFFER

SPECIAL OFFER

MAIL THIS CARD TODAY

One lifetime installation protects forever!

100% Guaranteed Genuine Aluminum Siding

Since this is an advertising promotion, the
time limit on this offer is five days

\$499

COMPLETELY INSTALLED

If your serial number, located at the top of this page, appears in group #1, you will get \$100 off the regular price. If your serial number appears in group #2, you will get \$150 off the regular price. If your serial number appears in the GRAND PRIZE group #3, you will received \$280 off the regular price.

IN LESS THAN TWO WEEKS YOUR FRIENDS WILL
THINK YOU HAVE A BRAND NEW HOME.

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. The offers set out in their advertisements are bona fide offers to sell aluminum siding, and the installation thereof, at the prices and on the terms and conditions stated.

2. Their aluminum siding and installation is being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of the reductions from respondents' regular selling prices.

3. Their aluminum siding material will never require painting or restorative maintenance.

4. Their aluminum siding is unconditionally guaranteed or guaranteed for life.

5. Their advertised offer of aluminum siding and installation for \$499 is limited to five days only.

6. After the installation of their aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow the use of their homes as models or demonstrators, purchasers will be granted reduced prices.

PAR. 6. In truth and in fact:

1. The offers set out in respondents' advertisements are not genuine or bona fide offers to sell aluminum siding and its installation of the kind therein described at the prices or on the terms and conditions stated, but are made for the purpose of obtaining leads to persons interested in the purchase of aluminum siding. After obtaining such leads, individual respondent Joseph L. Cameron or respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, disparage respondents' advertised aluminum siding and otherwise discourage the purchase thereof and attempt to sell and frequently do sell the more expensive aluminum siding.

2. Respondents' aluminum siding and its installation is not being offered for sale at special or reduced prices, and savings are not thereby afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' aluminum siding and its installation is sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

3. Respondents' aluminum siding materials will require painting and restorative maintenance.

4. Respondents' aluminum siding is not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the guarantee and the extent and manner of performance thereunder.

5. Respondents' advertised offer of aluminum siding and installation for \$499 is not limited to five days. Said product is advertised regularly at the represented price and on the terms and conditions stated therein.

6. After the installation of respondents' aluminum siding is completed, the homes of respondents' purchasers will not, in most instances, be used for demonstration or advertising purposes by respondents and as a result of allowing, or agreeing to allow their homes to be used as models, purchasers are not granted reduced prices.

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 further course and conduct of their aforesaid business, and in the furtherance of a sales program for inducing the purchase of their home improvement products and installations, including, but not limited to, residential siding, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

2. Respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that when instruments of indebtedness, executed by such purchasers in connection with their credit purchase agreements, are transferred or sold to financial institutions or third parties to whom the purchaser is thereafter indebted, valid claims and defenses which said purchasers may have against respondents may not be available to said purchasers in any subsequent legal proceeding in which the financial institution or third party seeks to enforce such obligations of indebtedness.

Therefore, the acts and practices, as set forth in Paragraph Seven hereof, were, and are, false, misleading and deceptive.

PAR. 8. 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 or affecting commerce, with corporations, firms and individuals in the sale of home improvement products and installations of the same general kind and nature of those sold by respondents.

PAR. 9. The use by the 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 respondents' home improvement products and installations by reason 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 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.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE
LAW JUDGE

NOVEMBER 10, 1975

PRELIMINARY STATEMENT

[1] The Commission issued a complaint in this proceeding on March 25, 1975, charging Mutual Construction Company, Inc., a corporation, and Joseph L. Cameron, individually and as an officer of said corporation, with 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. The complaint was served on the individual respondent, Joseph L. Cameron, on May 1, 1975, and on the corporate respondent, Mutual Construction Company, Inc., on May 3, 1975. Respondents filed their answer to the complaint on June 19, 1975.

[2] The complaint alleges that respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including, but not limited to, residential siding, and in the installation

thereof. The complaint further alleges that respondents, in the course and conduct of their aforesaid business, and for the purpose of inducing the purchase and installation of their home improvement products, and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty, the durability of their products and the availability of their advertised product and installation thereof. By and through the use of the aforesaid statements and representations, it is alleged that respondents have represented, and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell aluminum siding, and the installation thereof, at the prices and on the terms and conditions stated.

2. Their aluminum siding and installation is being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of the reductions from respondents' regular selling prices.

3. Their aluminum siding material will never require painting or restorative maintenance.

4. Their aluminum siding is unconditionally guaranteed or guaranteed for life.

5. Their advertised offer of aluminum siding and installation for \$499 is limited to five days only.

6. After the installation of their aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow the use of [3] their homes as models or demonstrators, purchasers will be granted reduced prices.

In truth and in fact, the complaint alleges:

1. The offers set out in respondents' advertisements are not genuine or bona fide offers to sell aluminum siding and its installation of the kind therein described at the prices or on the terms and conditions stated, but are made for the purpose of obtaining leads to persons interested in the purchase of aluminum siding. After obtaining such leads, individual respondent Joseph L. Cameron or respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, disparage respondents' advertised aluminum siding and otherwise discourage the purchase thereof and attempt to sell and frequently do sell the more expensive aluminum siding.

2. Respondents' aluminum siding and its installation is not being

offered for sale at special or reduced prices, and savings are not thereby afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' aluminum siding and its installation are sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

3. Respondents' aluminum siding materials will require painting and restorative maintenance.

4. Respondents' aluminum siding is not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the guarantee and the extent and manner of performance thereunder.

5. Respondents' advertised offer of aluminum siding and installation for \$499 is not limited to five days. Said product is advertised regularly at the represented price and on the terms and conditions stated therein.

[4] 6. After the installation of respondents' aluminum siding is completed, the homes of respondents' purchasers will not, in most instances, be used for demonstration or advertising purposes by respondents and, as a result of allowing, or agreeing to allow their homes to be used as models, purchasers are not granted reduced prices.

Therefore, the complaint alleges, the statements and representations as set forth above were, and are, false, misleading and deceptive.

The complaint further alleges that, in the further course and conduct of their aforesaid business, and in the furtherance of a sales program for inducing the purchase of their home improvement products and installations, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

1. In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

2. Respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that when instruments of indebtedness, executed by such purchasers in connection with their credit purchase agreements, are transferred or sold to financial institutions or third parties to whom the purchaser is thereafter

indebted, valid claims and defenses which said purchasers may have against respondents may not be available to said purchasers in any subsequent [5] legal proceeding in which the financial institution or third party seeks to enforce such obligations of indebtedness.

Therefore, the complaint alleges, the acts and practices set forth above were, and are, false, misleading and deceptive. The complaint further avers that the use by respondents of these 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 respondents' home improvement products and installations by reason of said erroneous and mistaken belief.

Hearings for the case-in-chief were set to commence on September 10, 1975, and defense hearings were to commence immediately following completion of the case-in-chief, and no later than September 22, 1975. On July 18, 1975, upon motion of complaint counsel, the undersigned issued an order suspending the pretrial schedule until August 11, 1975 on the ground that respondents had agreed to a stipulation of facts. On July 30, 1975, respondents filed a stipulation that the facts, as alleged in the complaint, are true facts and are, therefore, admitted, and that, upon the execution of the stipulation, the record in this matter shall be closed for the reception of evidence. In the aforesaid stipulation, respondents' counsel reserved the right to file briefs pertaining to the legal issue of the broadness of the proposed order as it applies to the individual respondent, Joseph L. Cameron.

By order issued August 11, 1975 by the undersigned, the record was closed for the reception of evidence and the submissions of the parties were limited to a proposed order and a legal memorandum in support thereof. Reply briefs were limited to the propriety of the relief to be entered in this proceeding.

Counsel for the parties have filed their proposed orders, legal memoranda, and reply briefs.

This matter is now before the undersigned upon the complaint, answers, pretrial proceedings, stipulation, proposed orders and legal memoranda in support thereof, and reply briefs filed by complaint counsel and counsel [6] for respondents. These submissions by the parties have been given careful consideration and, to the extent not adopted by this decision in the form proposed or in substance, are rejected as not supported by the record or as immaterial. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this decision, are hereby

denied. The findings of fact made herein are based on a review of the entire record in this proceeding.

FINDINGS OF FACT

1. Respondent Mutual Construction Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 742 Valley Rd., in the city of Birmingham, State of Alabama. Said corporate respondent was dissolved by resolution of its stockholders on August 11, 1975. (See certified copy of Stockholders' Resolution of Dissolution dated August 11, 1975.)

2. Respondent Joseph L. Cameron is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including those hereinafter set forth. His business address is the same as that of the corporate respondent. His home address is 3465 Birch Tree Dr., in the city of Birmingham, State of Alabama.

3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including, but not limited to, residential siding, and in the installation thereof.

4. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said products to be sold in various States of the United States and when sold, to be shipped from their place of business in the State of Alabama to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

[7] 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase and installation of their home improvement products, respondents and their salesmen or representatives have made, and are now making, numerous statements and representations in advertising and promotional material and through oral statements and representations with respect to the nature and limitations of their offers, their prices, their purchasers' savings, their warranty, the durability of their products and the availability of their advertised product and installation thereof.

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

ALL-ALUMINUM SIDING SALE
THIS IS A LIMITED OFFER

Initial Decision

87 F.T.C.

SPECIAL OFFER
MAIL THIS CARD TODAY
One lifetime installation protects forever!
100% Guaranteed Genuine Aluminum Siding
Since this is an advertising promotion, the
time limit on this offer is five days
\$499
COMPLETELY INSTALLED

If your serial number, located at the top of this page, appears in group #1, you will get \$100 off the regular price. If your serial number appears in group #2, you will get \$150 off the regular price. If your serial number appears in the GRAND PRIZE group #3, you will receive \$280 off the regular price.

IN LESS THAN TWO WEEKS YOUR FRIENDS WILL
THINK YOU HAVE A BRAND NEW HOME.

[8] 7. 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) The offers set out in their advertisements are bona fide offers to sell aluminum siding, and the installation thereof, at the prices and on the terms and conditions stated.

(2) Their aluminum siding and installation is being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of the reductions from respondents' regular selling prices.

(3) Their aluminum siding material will never require painting or restorative maintenance.

(4) Their aluminum siding is unconditionally guaranteed or guaranteed for life.

(5) Their advertised offer of aluminum siding and installation for \$499 is limited to five (5) days only.

(6) After the installation of their aluminum siding is completed, the homes of purchasers will be used for demonstration and advertising purposes by respondents, and, as a result of allowing or agreeing to allow the use of their homes as models or demonstrators, purchasers will be granted reduced prices.

8. In truth and in fact:

(1) The offers set out in respondents' advertisements are not genuine or bona fide offers to sell aluminum siding and its installation of the kind therein described at the prices or on the terms and conditions stated, but are made for the purpose of obtaining leads to persons

interested in the purchase of aluminum siding. After obtaining such leads, [9] individual respondent Joseph L. Cameron or respondents' salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, disparage respondents' advertised aluminum siding and otherwise discourage the purchase thereof and attempt to sell and frequently do sell the more expensive aluminum siding.

(2) Respondents' aluminum siding and its installation is not being offered for sale at special or reduced prices, and savings are not thereby afforded to purchasers because of reductions from respondents' regular selling prices. In fact, respondents do not have regular selling prices, but the prices at which respondents' aluminum siding and its installation is sold vary from purchaser to purchaser depending upon the resistance of the particular purchaser.

(3) Respondents' aluminum siding materials will require painting and restorative maintenance.

(4) Respondents' aluminum siding is not unconditionally guaranteed or guaranteed for life. Such guarantee as may be provided by respondents is subject to numerous terms, conditions and limitations with respect to the duration of the guarantee and the extent and manner of performance thereunder.

(5) Respondents' advertised offer of aluminum siding and installation for \$499 is not limited to five (5) days. Said product is advertised regularly at the represented price and on the terms and conditions stated therein.

(6) After the installation of respondents' aluminum siding is completed, the homes of respondents' purchasers will not, in most instances, be used for demonstration or advertising purposes by respondents and as a result of allowing, or agreeing to allow their homes to be used as models, purchasers are not granted reduced prices.

[10] Therefore the statements and representations as set forth in Findings 5, 6 and 7 hereof were, and are, false, misleading and deceptive.

9. In the further course and conduct of their aforesaid business, and in the furtherance of a sales program for inducing the purchase of their home improvement products and installations, including, but not limited to, residential siding, respondents have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

(1) In a substantial number of instances and in the usual course of their business, respondents sell and transfer their customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these financial institutions or other third

parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondents for failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

(2) Respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that when instruments of indebtedness, executed by such purchasers in connection with their credit purchase agreements, are transferred or sold to financial institutions or third parties to whom the purchaser is thereafter indebted, valid claims and defenses which said purchasers may have against respondents may not be available to said purchasers in any subsequent legal proceeding in which the financial institution or third party seeks to enforce such obligations of indebtedness.

Therefore, the acts and practices, as set forth in Finding 9 hereof were, and are, false, misleading and deceptive.

[11] 10. 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 or affecting commerce, with corporations, firms and individuals in the sale of home improvement products and installations of the same general kind and nature of those sold by respondents.

11. The use by the 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 respondents' home improvement products and installations by reason of said erroneous and mistaken belief.

12. 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 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.

CONCLUSIONS

THE COMMISSION'S AUTHORITY TO ISSUE AN ORDER

Corporate respondent Mutual Construction Company, Inc. and individual respondent Joseph L. Cameron have, by their Stipulation As To Facts, admitted all the material allegations of the complaint. That

stipulation was filed in this proceeding on July 30, 1975, and the record closed for the reception of evidence on Aug. 11, 1975.

Section 3.12(b)(2) of the Commission's Rules of Practice provides that the complaint and the admitting answer will provide a record basis on which the administrative law judge shall file an initial decision, including an appropriate order. Accordingly, in this case, respondents' stipulation is deemed to be an [12] admitting answer and, together with the complaint allegations, it constitutes the record basis for this decision. The findings of fact are based entirely on respondents' admission, in the stipulation, that the facts as alleged in the complaint in this matter are true. Therefore, the only issue remaining in this proceeding is the scope of the remedy, particularly whether it should be made applicable to Joseph L. Cameron in his individual capacity.

Respondents have admitted engaging in acts and practices violative of Section 5 of the Federal Trade Commission Act. The Commission is therefore vested with broad discretion in fashioning a remedy adequate to insure discontinuance of the unlawful practices. *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946). The only limitation on the Commission's discretion is the requirement that the remedy be reasonably related to the unlawful acts which form the basis for the order. *Jacob Siegel Co.*, *supra*, 327 U.S. at 613.

INDIVIDUAL LIABILITY OF RESPONDENT JOSEPH L. CAMERON

When they filed their stipulation admitting the material allegations of the complaint, respondents reserved the right to file briefs on the issue of the applicability of the proposed order to the individual respondent, Joseph L. Cameron. In their brief respondents suggest that the order extend to Mr. Cameron in his corporate capacity only, arguing that it is unfair for the Commission to impose on a layman the burden of distinguishing conduct prohibited by the order from that permitted by it.

This argument cannot be accepted. Respondent Cameron has admitted that he formulated, directed and controlled the acts and practices of the respondent corporation, including the specific acts and practices alleged in the complaint. Those practices, it has also been admitted, were false, deceptive and misleading, and were to the prejudice and injury of the public and of respondents' competitors. Thus, respondent Cameron has admitted that [13] he is personally responsible for the unlawful acts of the corporate respondent.

It is well settled that the Federal Trade Commission has the authority to issue orders directed individually against officers,

directors, and others who have participated in or controlled the unlawful acts of a corporate respondent. *Federal Trade Commission v. Standard Education Society, et al.*, 302 U.S. 112, 119-120 (1937); *Rayex Corp. v. Federal Trade Commission*, 317 F.2d 290, 295 (2d Cir. 1963); *Standard Distributors, Inc., et al. v. Federal Trade Commission*, 211 F.2d 7, 14-15 (2d Cir. 1954). The purpose of doing so is to make the order fully effective in preventing recurrence of the practices found to be unlawful, for the Commission has recognized that a corporate respondent is not the only vehicle through which individuals, who have been personally involved in unlawful practices, may in the future continue to engage in such practices. *Tractor Training Service, et al. v. Federal Trade Commission*, 227 F.2d 420, 425 (9th Cir. 1955), *cert. denied*, 350 U.S. 1005 (1956); *Consumer Sales Corp. v. Federal Trade Commission*, 198 F.2d 404, 407-408 (2d Cir. 1952), *cert. denied*, 344 U.S. 912 (1953).

An order against an individual need not be justified by a demonstrated intent to evade the order, or even a probability of such evasion; it is enough that there is opportunity for evasion. As the Commission stated in *Coran Brothers Corp., et al.*, Dkt. 8897, 72 F.T.C. 1, 25 (July 11, 1967):

The public interest requires that the Commission take such precautionary measures as may be necessary to close off any wide "loophole" through which the effectiveness of its orders may be circumvented. Such a "loophole" is obvious in a case such as this, where the owning and controlling party of an organization may, if he later desires, defeat the purposes of the Commission's action by simply surrendering his corporate charter and forming a new corporation, or continuing the business under a partnership agreement or as an individual proprietorship with complete disregard for the Commission's action against the predecessor organization.

[14] This case provides a striking example of the "loophole" referred to in *Coran*. Respondents' counsel has served on the administrative law judge and on complaint counsel a certified copy of the Stockholders' Resolution of Dissolution of the corporate respondent, Mutual Construction Company, Inc.¹ Thus, if no order is issued against Mr. Cameron individually, not only could he evade any Commission order issued against Mutual Construction Company, Inc. by the simple expedient of continuing its business and practices under a different corporate form, but he would effectively have prevented the issuance of any order by dissolving the corporate respondent before the order issued. The Commission need not, and should not, allow its authority to be so easily circumvented.

Respondent Cameron's control of the respondent corporation is admitted. It is therefore appropriate to include him in the scope of the

¹ This certified copy of the Stockholders' Resolution of Dissolution of the corporate respondent has been placed in the public record as part of respondents' brief. Further, official notice has been taken of the document.

remedy ordered. We would otherwise be faced with the situation described by the United States Court of Appeals for the Fourth Circuit in *Pati-Port, Inc., et al. v. Federal Trade Commission*, 313 F.2d 103, 105 (1963):

* * * it would seem in cases of this sort to be a futile gesture to issue an order directed to the lifeless entity of a corporation while exempting from its operation the living individuals who were responsible for the illegal practices.

The order which is adopted in this proceeding is tailored to prohibit the particular practices admitted to be false, deceptive and misleading, and is clear enough to be understood by a layman attempting in good faith to abide by it. There is, accordingly, no unfairness in making it effective against respondent Cameron. In addition, should a situation arise in which respondent is unable to determine whether a particular course of conduct would violate the order, he may apply to the [15] Commission under Rule 3.61(d) for a ruling on whether the proposed actions would comply with the order. See *Colgate-Palmolive, supra*, 380 U.S. at 394.

THE REMEDY

Complaint counsel's proposed order is identical in every material element to the notice order served with the complaint. Respondents have not challenged that order in any respect other than the individual liability of Joseph L. Cameron, and it will be adopted with only a few modifications. Since the corporate respondent, Mutual Construction Company, Inc., has been dissolved by resolution of the shareholders, no useful purpose would be served by issuing an order against it. That respondent has accordingly been deleted from the order.

Respondents have admitted engaging in certain false, misleading and deceptive practices in the advertising and sale of home improvement products, particularly residential siding. With the exception of record-keeping and reporting requirements generally included in Commission orders and deemed necessary to enable the Commission to monitor compliance therewith, the order simply prohibits respondent Cameron's further participation in those specific deceptive practices. The provisions of the order are thus reasonably related to the violations of law which have been admitted, and are necessary to correct such violations and to prevent evasion of the order.

A few provisions of the order merit discussion. Respondents have admitted that they, in the usual course of their business, take from purchasers instruments of indebtedness which they then assign to financial institutions under circumstances in which those institutions may be able to enforce the obligations free of valid claims the

customers might have against respondents, without disclosing to those customers that the instruments may be so assigned or the possible consequences of such assignment. The Commission has ruled on several occasions that such a practice is unfair and deceptive, and that the appropriate remedy is to order that full disclosure be made. See *All-State Industries of North Carolina, Inc., et al.*, Dkt. 8738, 75 F.T.C. 465 (April 1, 1969), *aff'd* 423 F.2d 423 (4th Cir. 1970), *cert. denied*, 400 U.S. 828 (1970); *Certified Building Products, Inc., et al.*, [16] Dkt. 8875, 3 CCH Trade Reg. Rep. ¶ 20,506 (Oct. 5, 1973), *aff'd sub nom. Thiret v. Federal Trade Commission*, 512 F.2d 176 (10th Cir. 1975). A provision requiring respondent to disclose to consumers from whom he secures an instrument of indebtedness that it may be assigned to another and that an assignee may be able to enforce the instrument free from the buyer's claims against the seller is included in the order. However, complaint counsel also have proposed requiring respondent to make, in connection with acceptance of an instrument of indebtedness, any disclosures required by Federal law or the law of the State in which the instrument is executed. Since the proposed provision is vague and, to the extent such Federal or State laws provide penalties for their violation, unnecessary and redundant, it has been deleted from the order.

Complaint counsel's proposed order would prohibit certain deceptive practices by respondent in the sale of *any product*, rather than simply those products involved in this proceeding. It is clear that the Commission has the power to enter such a broad order where necessary to forestall recurrence in the future of practices the same or similar to those found to be unlawful. *Benrus Watch Co. v. Federal Trade Commission*, 352 F.2d 313, 324 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966); *Niresk Industries, Inc. v. Federal Trade Commission*, 278 F.2d 337, 342-43 (7th Cir. 1960), *cert. denied*, 364 U.S. 883 (1960). Whether such a remedy is appropriate in a given case, however, depends on the particular circumstances of that case. *Colgate-Palmolive Co., supra*, 380 U.S. at 394; see *Fedders Corp.*, Dkt. 8932, 3 CCH Trade Reg. Rep. ¶ 20,825 (Jan. 14, 1975 [85 F.T.C. 38]). In this case the allegations of the complaint were restricted to home improvement products generally and residential siding in particular, and it is appropriate to limit the scope of the order to home improvement products.

Finally, complaint counsel's proposed order would require respondent to maintain for a period of five years certain records relative to representations made by respondent to purchasers of products covered by the order and to contracts entered into between respondent and his customers and suppliers. Since it appears that three years is adequate

to insure compliance with the order (*see Freight Liquidators*, Dkt. 8937 (order dated Feb. 25, 1975 [85 F.T.C. 274])); *Fedders Corporation*, Dkt. [17] 8932 (order dated Jan. 14, 1975 [*supra*]), and complaint counsel have made no showing that a longer period is necessary in this case, the order requires that the records be maintained for three years only.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over respondent Joseph L. Cameron, and this proceeding is in the public interest.
2. The acts and practices of respondents charged in the complaint and involved herein took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.
3. At the times relevant to the acts and practices charged in the complaint, the individual respondent, Joseph L. Cameron, formulated, directed and controlled the acts and practices of the corporate respondent, Mutual Construction Company, Inc.
4. At the times relevant to the acts and practices charged in the complaint herein, respondents were engaged in the advertising, offering for sale, sale and distribution to the public of home improvement products, including residential siding, and the installation thereof.
5. In the course and conduct of the aforesaid business, respondents engaged in false, misleading and deceptive advertising, and used unfair and deceptive acts and practices.
6. The aforesaid acts and practices of respondents were to the prejudice and injury of the public and of respondents' competitors and constituted deceptive acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. [18]

ORDER

It is ordered, That respondent Joseph L. Cameron, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution or installation of residential siding or other home improvement products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Advertising or offering for sale any residential siding or other home improvement products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondent maintains a readily available stock of said products.

2. 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 [19] prospects for the sale of residential siding or other home improvement products, or the installation thereof.

3. Discouraging the purchase of or disparaging any residential siding or other home improvement products or the installation thereof which are advertised or offered for sale by respondent.

4. Representing, directly or by implication, that any residential siding or other home improvement products or the installation thereof are offered for sale or sale and installation by respondent when such offer is not a bona fide offer to sell such products or installation.

5. Representing, directly or by implication, that any of respondent's offers to sell residential siding or other home improvement products or the installation thereof are limited as to time or restricted or limited in any other manner, unless such represented limitations or restrictions are actually enforced and in good faith adhered to.

[20] 6. Representing, directly or by implication, that any price for respondent's residential siding or other home improvement products or the installation thereof is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products or installations have been sold in substantial quantities by respondent in the recent regular course of his business; or misrepresenting, in any manner, the prices or the savings available to purchasers.

7. Failing to maintain adequate records:

(a) For a period of three (3) years which disclose the factual basis for any representations or statements as to special or reduced prices of residential siding or other home improvement products or installations, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraph 6 of this order.

[21] (b) For a period of three (3) years, with regard to each and every contract hereafter entered into between respondent and his customers for the sale of residential siding or other home improvement products or the installation thereof, which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges, for materials and for labor, and for those contracts involving siding, or the installation of siding, or both, additional information as to the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, the total amount of money paid to salesmen, agents or representatives for the solicitation of the said contracts, and what each customer was charged exclusive of

interest or finance charges per square foot for the performance of the said contract.

[22] (c) For a period of three (3) years invoices, notices for payment and all similar documents which respondent receives, in the conduct of his business of selling residential siding or other home improvement products and the installation thereof, from suppliers, subcontractors and other persons.

(d) For a period of three (3) years copies of all contracts entered into between respondent and his customers for the sale or installation of residential siding or other home improvement products.

8. Representing, directly or by implication, that respondent's residential siding or other home improvement products or the installation thereof 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 respondent promptly and fully performs all of his obligations and [23] requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

9. Falsely representing, directly or by implication, that his aluminum siding materials will not require painting or other type of restorative maintenance; or misrepresenting in any manner the durability, efficiency, composition or quality of respondent's residential siding or other home improvement products or the installation thereof.

10. Falsely representing, directly or by implication, that the home of any of respondent's purchasers of residential siding or other home improvement products, or prospective purchasers of such products, will be used for any type of advertising or demonstration purpose or as a model home and that, as a result of such use, respondent's purchasers or prospective purchasers will receive a reduced price or will earn discounts or allowances of any type.

[24] 11. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness executed by any purchaser of residential siding or other home improvement products, with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

(a) Where negotiation of the instrument to a third party is not prohibited by the law of the State in which the instrument is executed, that the trade acceptance, conditional sales contract, promissory note or other instrument may, at the option of respondent and without further

notice to the purchaser, be negotiated or assigned to a finance company or other third party; and

(b) Where the law of the State in which the instrument is executed does not preserve as against any holder of the instrument all the legal and [25] equitable defenses the purchaser may assert against the seller, that, in the event the instrument is negotiated or assigned to a finance company or other third party, the purchaser may have to pay such finance company or other third party the full amount due under the contract whether or not he has claims against respondent, such as defective merchandise, a refusal to service the merchandise, or respondent is no longer in business, or other like claims.

It is further ordered, That respondent shall notify the Commission of his present business or employment and of his affiliation with any new business or employment, within thirty (30) days following 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 respondent shall forthwith deliver a copy of this order to cease and desist to all [26] present and future personnel of respondent engaged in the offering for sale or sale of respondent's residential siding or other home improvement products or the installation thereof, and in the consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging the receipt of said order from each such person.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner*;

[1] Complaint in this matter was issued on March 25, 1975, charging Mutual Construction Company, Inc. and Joseph L. Cameron, individually and as an officer of the corporation, with various unfair and deceptive acts and practices in connection with the sale of aluminum siding, all in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45). Before evidentiary hearings were to begin, respondents filed a stipulation of facts admitting all allegations of the complaint but reserving the right to contest the order proposed against the individual respondent.

The administrative law judge entered an initial decision based on the stipulation, finding that respondents had engaged in practices including bait and switch, deceptive pricing, and misrepresentation of product quality and the scope of warranty coverage. The law judge proposed an order differing from the notice order accompanying the complaint in two respects: (1) The corporate respondent was omitted, inasmuch as it

had ceased to exist, and (2) the order entered against the individual respondent was limited to practices undertaken in connection with the sale of "aluminum siding and other home improvement products" rather than "all products."

[2] In their appeal complaint counsel request that the original language of the notice order be reinstated. We fully agree with this proposal. In performing its statutory duty to prevent the recurrence of unlawful practices found to have occurred, the Commission has wide discretion in framing an order, *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611 (1946), and "is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past." *Federal Trade Commission v. Ruberoid*, 343 U.S. 470, 473 (1952).

Here the activities we are called upon to prevent include such staples of sharp practice as deceptive pricing and bait and switch. In this case they were applied to the sale of home improvement products, but they are no less adaptable to the sale of innumerable other goods and services. The Commission would be doing little to rid this respondent of his bad habits were it to require only that he abstain from them in one of many readily entered fields of commercial endeavor.

Effective and efficient prevention of the unfair and deceptive acts and practices which have occurred here, therefore, requires reinstatement of the notice order language. This is, as complaint counsel note, in accord with numerous prior cases, some involving strikingly similar circumstances, e.g., *American Aluminum Corporation, et al.*, Dkt. 8865 (July 2, 1975), *aff'd.*, 522 F.2d 1278 (5th Cir. 1975); *All State Industries of North Carolina, Inc.*, 75 F.T.C. 465, 495 (1969), *aff'd.*, 423 F.2d 423 (4th Cir.), *cert. denied*, 400 U.S. 828 (1970); *Certified Building Products, Inc., et al.*, Dkt. 8875 (Oct. 5, 1973), *aff'd. sub nom. Thiret v. Federal Trade Commission*, 512 F.2d 176 (10th Cir. 1975).

OTHER ISSUES

Respondent filed a "notice of intent to appeal" to the Commission from the initial decision, but its counsel subsequently indicated by letter dated December 23, 1975, that the appeal was directed only to the "breadth of the order" sought by the Commission against the individual Joseph Cameron and that "unless the Commission is prepared to review and revise its position with respect to individual respondents * * * the respondent Joseph L. Cameron has nothing further to offer in this proceeding." Respondent has filed no other briefs in this matter. We agree with the administrative law judge that imposition of liability on the individual respondent is appropriate and necessary here, for the reasons outlined at pages 12-14 of the initial decision.

[3] The Commission on its own review has modified the proposed order of the administrative law judge in two respects not addressed by counsel. Paragraph 11 of the judge's order would require respondent to disclose the fact that a purchaser's contract or promissory note may be assigned or negotiated to a third party in States that allow it. The order would further require that the contract disclose (in States which allow a third party holder of an instrument to avoid defenses which the purchaser might assert against the seller) the fact that the purchaser may be deprived of certain defenses against a third party holder. The Commission has recently promulgated a Trade Regulation Rule concerning "Preservation of Consumers' Claims and Defenses," 16 C.F.R. §433 (November 18, 1975). Pursuant to the rule, effective May 14, 1976, respondent, like other sellers, will be required to insert language in his contracts to insure that consumers do not forfeit defenses by virtue of negotiation of their contracts to third parties. The presence in respondent's contracts of the protective language required by the rule will obviate the necessity for any of the disclosures required by Paragraph 11 of the law judge's order. Accordingly, we have deleted Paragraph 11 from our final order.

The Commission has further modified the reporting paragraph of the order to require that respondent report changes in business status only for a period of 10 years following the order's effective date. See *Carpets "R" Us, et al.*, Dkt. 8947 (February 26, 1976), slip op.* pages 13-14.

An appropriate order is appended.

FINAL ORDER

This matter having been heard by the Commission upon the cross-appeals of complaint counsel and respondents' counsel from the initial decision, and the Commission, for the reasons stated in the accompanying opinion, having modified the initial decision in certain respects:

It is ordered, That pages 1-17 of the initial decision of the administrative law judge be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission, excluding the last paragraph which begins on page 15 and the first paragraph which begins on page 16.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

It is further ordered, That the following order to cease and desist be, and it hereby is, entered:

* Reported in this Volume.

ORDER

It is ordered, That respondent Joseph L. Cameron, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution or installation of residential siding, other home improvement products, or any other products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Advertising or offering for sale any products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondent maintains a readily available stock of said products.

2. 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.

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

4. Representing, directly or by implication, that any product, installation, or service is offered for sale or sale and installation by respondent when such offer is not a bona fide offer to sell such product, installation, or service.

5. Representing, directly or by implication, that any of respondent's 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 enforced and in good faith adhered to.

6. Representing, directly or by implication, that any price for respondent's 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 respondent in the recent regular course of his business; or misrepresenting, in any manner, the prices or the savings available to purchasers.

7. Failing to maintain adequate records:

(a) For a period of three (3) years which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraph 6 of this order.

(b) For a period of three (3) years, with regard to each and every contract hereafter entered into between respondent and his customers, which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges, for materials and for labor, and for those contracts involving siding, or the installation of siding, or both, additional information as to the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, the total amount of money paid to salespeople, agents or representatives for the solicitation of the said contracts, and what each customer was charged exclusive of interest or finance charges per square foot for the performance of the said contract.

(c) For a period of three (3) years invoices, notices for payment and all similar documents which respondent receives, in the conduct of his business from suppliers, subcontractors and other persons.

(d) For a period of three (3) years copies of all contracts entered into between respondent and his customers.

8. Representing, directly or by implication, that respondent's 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 respondent promptly and fully performs all of his obligations and requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

9. Falsely representing, directly or by implication, that his aluminum siding materials will not require painting or other type of restorative maintenance; or misrepresenting in any manner the durability, efficiency, composition or quality of respondent's products, installations, or services.

10. Falsely representing, directly or by implication, that the home of any of respondent's purchasers, or prospective purchasers of such products, will be used for any type of advertising or demonstration purpose or as a model home and that, as a result of such use, respondent's purchasers or prospective purchasers will receive a reduced price or will earn discounts or allowances of any type.

It is further ordered, That respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each notice of affiliation shall

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Final Order

include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the offering for sale or sale of respondent's residential siding or other home improvement products or the installation thereof, and in the consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging the receipt of said order from each such person.

It is further ordered, That respondent shall, within sixty (60) days after the effective date of the order served upon him, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

Chairman Collier not participating.

Complaint

87 F.T.C.

IN THE MATTER OF
NATIONWIDE TRAINING SERVICE, INC., ET AL.

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

Docket C-2814. Complaint, Mar. 30, 1976—Decision, Mar. 30, 1976

Consent order requiring a Strunk, Ky., training school for heavy equipment operators, truck drivers, and related occupations, among other things to cease using unfair means and deceptive advertising to sell their courses, misrepresenting affiliation with various industries, employment opportunities, salary potential for training course graduates, training cost, manner of payment, training facilities and training programs, and job placement assistance. Respondents are required to make certain affirmative disclosures to students including three-day cooling-off period to cancel contract and have monies refunded. Respondents are further ordered to police the activities of salesmen and brokers engaged in the sale of respondents' training courses, to ensure compliance with the order.

Appearances

For the Commission: *James S. Teborek.*

For the respondents: *Harold G. Jeffers*, Oneida, Tenn.

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 Nationwide Training Service, Inc., a corporation, and Raymond E. Phillips, individually and as an officer 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 Nationwide Training Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office and place of business located at Strunk, Kentucky.

Respondent Raymond E. Phillips is an individual and an officer of respondent corporation. His business address is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale or distribution of courses of study and instruction purporting to prepare graduates thereof for employment as heavy equipment operators, truck drivers, and related occupations. Said courses when pursued to completion