

IN THE MATTER OF
MASTIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3086. Complaint, April 12, 1982—Final Order, April 12, 1982

This consent order requires Mastic Corporation, a manufacturer and seller of residential vinyl siding products, among other things, to cease paying for or disseminating any advertisement for vinyl siding that contains an energy related claim. The order requires the firm to distribute a copy of the order to all personnel engaged in the promotion of vinyl siding. Mastic Corporation is required to provide its distributors and retailers with a copy of the order together with a letter explaining its provisions.

Appearances

For the Commission: *Steven H. Meyer and Michael Dershowitz.*

For the respondent: *Daniel D. Nayer, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Mastic Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mastic is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 131 South Taylor St., South Bend, Indiana.

PAR. 2. Respondent is now, and for some time past, has been engaged in the manufacture, advertising, promotion, offering for sale, sale and distribution of residential vinyl siding products.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time past has caused, its residential vinyl siding products, when sold, to be shipped from its manufacturing plants in South Bend, Indiana and Stuarts Draft, Virginia to its distributors and retailers in various States of the United States. For the purpose

Complaint

99 F.T.C.

of inducing the purchase of its residential vinyl siding products by the consuming public, respondent disseminates and causes the dissemination of, and for some time past has disseminated and caused the dissemination of certain advertisements and promotional materials through the use of the United States mail. Accordingly, respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of said advertisements and other promotional materials, respondent has made statements with regard to its vinyl siding products. Among these are statements that respondent's vinyl siding:

Conserves Energy

...

Lowers Fuel Bills

...

... is a Non-conductor of heat or cold

...

... is a 24.8% better insulator than aluminum

...

... helps to stop air infiltration

PAR. 5. By and through the use of statements set forth in Paragraph Four, respondent has represented and is now representing directly or by implication, that:

- a. vinyl siding, by itself, significantly conserves energy;
- b. vinyl siding, by itself, significantly lowers fuel bills;
- c. vinyl siding, by itself, significantly reduces heat loss through the exterior walls of a home;
- d. vinyl siding does not conduct heat or cold;
- e. vinyl siding is superior to aluminum siding because it significantly exceeds aluminum siding in insulation value;
- f. vinyl siding, in all cases, significantly reduces air infiltration into and out of a home.

PAR. 6. In truth and in fact, contrary to respondent's representations set forth in Paragraph Five:

- a. vinyl siding, by itself, does not significantly conserve energy;
- b. vinyl siding, by itself, does not significantly lower fuel bills;

c. vinyl siding, by itself, does not significantly reduce heat loss through the exterior walls of a home;

d. vinyl siding, like all materials, conducts heat; indeed, because it is a very thin material, vinyl siding has a high rate of conductance.

e. vinyl siding does not exceed aluminum siding in insulation value; there is little, if any, difference in the insulation value of vinyl and aluminum siding.

f. vinyl siding does not, in all cases, significantly reduce air infiltration into and out of a home; indeed, in many cases vinyl siding has little, if any, effect on air infiltration.

Therefore, said advertisements and promotional materials were, and are false, deceptive, misleading or unfair.

PAR. 7. At the time respondent made the statements and representations alleged in Paragraphs Four and Five, it did not possess and rely upon a reasonable basis for such representations. Therefore, the statements and representations set forth and alleged in Paragraphs Four and Five were and are unfair, deceptive, or misleading.

PAR. 8. By and through the use of the aforementioned advertisements and promotional materials, respondent has represented and is now representing, directly or by implication, that it had a reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. In truth and in fact, respondent had no reasonable basis for the statements and representations set forth and alleged in Paragraphs Four and Five. Therefore, said advertisements and promotional materials were and are unfair, deceptive or misleading.

PAR. 9. The use by respondent of the aforesaid false, misleading, unfair or deceptive advertising and promotional materials, and the placement in the hands of its distributors and retailers of the means and instrumentalities by and through which others have used the aforesaid false, misleading, unfair or deceptive advertisements and promotional materials have had, and now have, the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete, and into the purchase of respondent's vinyl siding products by reason of said erroneous and mistaken belief.

PAR. 10. The acts and practices of respondent as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal

Trade Commission Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 has reason to believe that the respondent has 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 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Mastic Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 131 South Taylor St., in the City of South Bend, State of Indiana.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For purposes of this order, the following definitions shall apply:

Advertisement means any illustration, depiction, written or oral

statement, or other representation, whether the same appears in a television or radio broadcast, newspaper or label, brochure, leaflet, circular, mailer, book insert, journal, catalog, sales promotion material, other periodical literature, billboard, public transit card, point of purchase display, or in any other media.

Energy related claim means any general or specific representation that, directly or by implication, describes or refers to energy savings, efficiency or conservation, fuel savings, insulating value, air infiltration, conductance of heat, or heat gain or loss.

Vinyl siding product means any vinyl siding product made from vinyl and used for residential purposes, and includes siding which is directly backed with material such as backerboard or drop-in panels. For purposes of this order, *vinyl siding product* does not include *siding systems*, which are a combination of vinyl siding and any other product(s) which contain *insulation* as that word is defined by the Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, 16 CFR Part 460 (1980).

PART I

It is ordered, That respondent Mastic Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any vinyl siding product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from disseminating, causing to be disseminated, or paying in whole or in part for any advertisement which contains an energy related claim.

PART II

It is further ordered, That for a period of five years following the date of service of this Order, respondent deliver a copy of this Order to all present and future employees, personnel, or agents and representatives of respondent engaged in the creation, design, printing or dissemination of any advertisement promoting respondent's vinyl siding products; and that respondent obtain a signed statement acknowledging receipt of the order from each said person or entity.

PART III

It is further ordered, That respondent shall:

1. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that has been a distributor of respondent's vinyl siding products during the year prior to the date of service of this order, and to every person or firm that has been a retailer of respondent's vinyl siding products that respondent can identify from the warranty registration cards which, between July, 1980 and the date of service of this order, were both issued by and returned to respondent:

- a. a copy of this order, and
- b. a cover letter which informs the recipient in plain and readily understood language that Mastic has agreed with the Federal Trade Commission not to make energy related claims for its vinyl siding products, that the recipient should make no energy related claims for Mastic's vinyl siding products in the future, and that the recipient should stop using any Mastic promotional material which contains any energy related claims.

2. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondent distributed the material required by Paragraph 1 of PART III of this order.

PART IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change 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 this order.

PART V

It is further ordered, That the respondent shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
BRUNSWICK CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket 9028. Final Order, Aug. 14, 1980—Modifying Order, April 29, 1982

This order modifies the Commission's final order issued on August 14, 1980, 96 F.T.C. 151, by adding Paragraphs IX and X to the order, in accordance with the decision and judgment of the Eighth Circuit Court of Appeals. The new paragraphs: (1) limit Yamaha's liability in this matter solely to violations of Section 5 of the Federal Trade Commission Act; and (2) insures that nothing in the order prevents respondents from imposing upon themselves, their dealers and distributors, vertical restraints in connection with the sale by them for resale in the U.S. of outboard motors.

MODIFIED ORDER TO CEASE AND DESIST

The Commission having issued a final cease and desist order herein on August 14, 1980, and such order having been modified and affirmed by the United States Court of Appeals for the Eighth Circuit, and the Supreme Court having denied the petition for certiorari filed by respondents Brunswick Corporation and Mariner Corp.:

Now, therefore, *it is ordered*, that the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

For the purposes of this Order:

a) *Brunswick* shall mean the Brunswick Corporation, together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations (including Mariner Corp.), and corporations controlled by Brunswick Corporation; and all successors to Brunswick Corporation and their domestic and foreign subsidiaries, affiliates, joint ventures and related corporations; and all corporations controlled by the successors of Brunswick Corporation.

b) *Yamaha* shall mean Yamaha Motor Co., Ltd., together with its present and future domestic and foreign subsidiaries, affiliates, joint ventures, related corporations, and corporations controlled by Yamaha Motor Co., Ltd.; and all successors to Yamaha Motor Co., Ltd. and their domestic and foreign subsidiaries, affiliates, joint ventures