

seller within approximately the same period of time. Actual competition in the sale of the seller's goods may then be inferred even though one or both of the customers have other outlets which are not in geographical proximity to outlets of the other customer.²¹

While we do not comment on other issues involved in the examiner's findings that the remaining suppliers did not violate Section 2(d) of the amended Clayton Act when making payments to respondent, our silence is not to be construed as approval of the findings themselves or of the legal standards used in reaching these findings.

For the aforementioned reasons, an order will issue closing the proceedings. Should it appear that violations similar to those dealt with by the evidence herein have not been surely stopped, thus indicating that our conclusions with respect to respondent's good faith are misplaced, the Commission will reopen the proceeding and utilize the record as presently constituted together with the evidence of such future violations as a basis for further proceedings and, if appropriate, the issuance of an order to cease and desist.

FINAL ORDER

This matter having been heard by the Commission on appeal of counsel supporting the complaint from the initial decision of the hearing examiner dismissing the complaint, and upon briefs and argument in support thereof and in opposition thereto, and the Commission having concluded for the reasons stated in the accompanying opinion that the proceeding should be closed without the issuance of an order to cease and desist:

It is ordered, That the proceeding be, and it hereby is, closed.

IN THE MATTER OF

K-V BUILDERS, INC., ET AL.

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

Docket C-1003. Complaint, Oct. 20, 1965—Decision, Oct. 20, 1965

Consent order requiring a St. Louis, Mo., residential siding and roofing company to cease making deceptive savings and guarantee claims and other misrepresentations in advertisements, as indicated in the order below.

²¹ 329 F.2d at 708.

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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 K-V Builders, Inc., a corporation, and Seymour Halpern, Harold Halpern, and Melvin Halpern, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. K-V Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 5555 Manchester Street, in the city of St. Louis, State of Missouri.

Respondents Seymour Halpern, Harold Halpern, and Melvin Halpern are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

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

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have, by statements and representations in advertisements in various publications, in direct mail advertising, and by direct oral solicitations made by respondents or their salesmen or representatives, represented, directly or by implication:

(1) That purchasers who agree to allow the use of their homes for display or advertising purposes after the installation of respondents' products will receive a special discount or reduced price

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from respondents' usual and regular price and thereby be afforded a saving.

(2) That purchasers who agree to allow the use of their homes for display or advertising purposes will receive a bonus for each sale made or prospect furnished as a result of such use.

(3) That purchasers can be assured of receiving enough bonus money from the use of their homes as models or display homes to reimburse them for all, or a great part, of the cost of their purchase.

(4) That siding material sold by respondent will never need painting and never require maintenance.

(5) That aluminum siding materials sold by respondents are manufactured by Alcoa, Kaiser or Reynolds Aluminum Companies.

(6) That respondents are manufacturers or that their salesmen are representatives of various advertising companies or manufacturers.

(7) That respondents' products, and the application or installation of them, are unconditionally guaranteed.

(8) That free merchandise or gifts will be given to persons complying with certain conditions, such as listening to a salesman, purchasing an aluminum siding job, or the like.

PAR. 5. In truth and in fact:

(1) Respondents do not have a regular price at which their products or services are openly and actively offered for sale in good faith, for a reasonably substantial period of time, in the recent, regular course of their business, but the prices charged for their said merchandise or services differ from customer to customer in order to meet the exigencies of a particular prospective sale, and respondents do not afford a saving from an established price to purchasers to whom such inductions are offered. In fact, respondents seldom, if ever, actually use the homes of their purchasers for display or advertising purposes, and representations that such homes would be so used were made for the purpose of inducing a sale of respondents' products or services.

(2) Respondents do not provide a bona fide plan for the use of their customers' homes for display or advertising purposes, but make such representations for the purpose of inducing the purchase of respondents' products or services. Respondents seldom, if ever, actually use their customers' homes as display or model homes, and in rare cases where such homes may be so used, customers do not receive the bonuses in accordance with respondents' promises and representations.

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(3) Purchasers do not receive enough, if any, bonus money to offset the cost of their purchases.

(4) Products sold by respondent will require painting and maintenance.

(5) Aluminum siding sold by respondents is not manufactured by either Alcoa, Kaiser or Reynolds Aluminum Company.

(6) Respondents are not manufacturers, nor are they or their salesmen, representatives of advertising companies or manufacturers.

(7) Respondents' guarantee is not unconditional, and it fails to set forth the nature and extent of the guarantee, and the manner in which the guarantor will perform thereunder.

(8) Respondents do not give gifts or free merchandise to persons in accordance with their promises or offers, but use such offers and promises as a means of obtaining names of prospective purchasers of their products.

Therefore, the statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive.

PAR. 6. In the conduct of their business and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of residential siding, roofing and other products, of the same general kind and nature as that sold by respondents.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices 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' products by reason of said erroneous and mistaken belief.

PAR. 8. 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 commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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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 Bureau of Deceptive

Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent K-V Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 5555 Manchester Street, in the city of St. Louis, State of Missouri.

Respondents Seymour Halpern, Harold Halpern and Melvin Halpern are officers of said corporation and their address is the same as that of said corporation.

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 K-V Builders, Inc., a corporation, and its officers, and Seymour Halpern, Harold Halpern, and Melvin Halpern, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of residential siding, roofing, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, that:
 - (a) Merchandise or services are sold at a discount or reduced price, unless such price constitutes a reduction from an actual bona fide price at which the merchandise or services have been offered for sale to the public, for a reasonably substantial period of time, in the recent, regu-

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lar course of respondents' business, or misrepresenting, in any manner, the savings available to purchasers or prospective purchasers of respondents' merchandise or services.

(b) Purchasers will receive bonuses or other compensation, unless respondents provide an opportunity or program whereby customers can qualify for such bonuses or other compensation, and provide such bonuses or compensation, in every instance, to those qualifying therefor.

(c) Purchasers will receive enough bonus money from the use of their homes as models to offset the cost of respondents' merchandise, or misrepresenting in any manner the compensation realized by purchasers under respondents' bonus program.

(d) Aluminum siding sold by respondents is manufactured by Alcoa, Kaiser or Reynolds Aluminum Companies unless respondents are able to establish the truth of any such representation, or misrepresenting in any way the identity of the manufacturer or source of any of respondents' products.

(e) That the products sold by respondents will never require painting or maintenance, or misrepresenting in any manner the efficacy, durability or efficiency of respondents' products.

(f) Respondents are representatives of advertising companies or that they are manufacturers or representatives of manufacturers.

(g) That any of respondents' products, "job" or installations are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Using the word "free" or any other word or words of similar import or meaning in connection with sale, offering for sale or distribution of respondents' products or services, in advertisements or other offers to the public, as descriptive of an article of merchandise, or service:

(a) When all the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer might be misunderstood.

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(b) When, with respect to any article of merchandise or service required to be purchased in order to obtain the "free" article or service, the offerer either (i) increases the ordinary and usual price of such merchandise or service or (ii) reduces the quality or (iii) reduces the quantity or size thereof.

3. Offering gift merchandise to persons complying with certain conditions unless, in every instance, such merchandise is given to the persons complying with such conditions.

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

DIPLOMAT HAIR GOODS COMPANY ET AL.

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

Docket C-1004. Complaint, Oct. 20, 1965—Decision, Oct. 20, 1965

Consent order requiring a Waukegan, Ill., dealer in hair pieces, wigs and toupees to cease falsely advertising the quality, construction and appearance of its products, misrepresenting to prospective salesmen the terms of their employment, and disseminating such false advertising matter in the United States mails.

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 Diplomat Hair Goods Company, a corporation, and Earl H. Martin and Hope S. Martin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Diplomat Hair Goods Company is a corporation organized, existing, and doing business under and by virtue of the laws of State of Illinois, with its principal office and place of business located at 2425 West Washington Street in the

