

in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the respondent herein 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

GULF COAST ALUMINUM SUPPLY, INC., ET AL.

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

Docket 8662. Complaint, June 30, 1965—Decision, March 24, 1967

Order requiring a Tampa, Fla., distributor and installer of residential aluminum siding materials to cease misrepresenting that purchasers are offered special terms for the use of their premises as model homes, that its products are revolutionary or different, and making deceptive guarantee claims.

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 Gulf Coast Aluminum Supply Corporation, a corporation, and Don DePalma, individually and as an officer of said corporation, herein-after 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. Gulf Coast Aluminum Supply Corporation is a

Respondent Gulf Coast Aluminum Supply, Inc., erroneously referred to in complaint as Gulf Coast Aluminum Supply Corporation.

corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 7800 Florida Avenue, Tampa, Florida.

Respondent corporation also maintains an office located at 2010 North Industrial Boulevard, Dallas 7, Texas, from which it transacts a substantial volume of business.

Respondent Don DePalma is an officer of the corporate respondent, and he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 7800 Florida Avenue, Tampa, Florida.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution and installation of residential aluminum siding material 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 places of business in the States of Florida and Texas 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 aforesaid business, and for the purpose of inducing the purchase of their products, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective customers:

1. That the homes of prospective purchasers have been specially selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by respondents and that as a result of allowing their homes to serve as models, purchasers would receive reduced prices for respondents' products.

2. That respondents have opened or will soon open a branch office in the city where the customer's home is located and that respondents need to install siding on several homes in the area for advertising purposes.

3. That respondents' siding materials are entirely new and revolutionary and differ substantially from other siding materials available on the market.

4. That respondents' siding materials will last a lifetime and

will not require repainting or repair for the life of the structure on which they are applied.

5. That respondents' materials are "unconditionally guaranteed" in every respect.

PAR. 5. In truth and in fact:

1. The homes of prospective purchasers were not specially selected as model homes, and respondents did not use purchasers' homes as points of reference for advertising or demonstration purposes. In addition, respondents did not give reduced prices or other compensation to purchasers who agreed to have their homes used as models.

2. Respondents have opened no offices in cities other than Tampa and Dallas.

3. Respondents' siding materials are neither entirely new and revolutionary nor do they substantially differ from other siding materials available on the market.

4. Respondents' siding materials will not last a lifetime and will require repainting and repair.

5. Respondents' materials are not unconditionally guaranteed in any respect.

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

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

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that 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.

Mr. John T. Walker for the Commission.

Mr. Donald O. McFarland, Clearwater, Fla., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER
FEBRUARY 10, 1967

By a complaint issued June 30, 1965, Gulf Coast Aluminum Supply, Inc., a corporation (erroneously named in the complaint and caption hereof as "Gulf Coast Aluminum Supply Corporation"), and Don DePalma, individually and as an officer of said corporation, hereinafter called respondents, were charged with using false claims to sell and install residential aluminum siding material, in violation of Section 5 of the Federal Trade Commission Act.

The complaint, in substance, alleges that:

PARAGRAPH 1. Gulf Coast Aluminum Supply Corporation is a corporation organized and doing business under the laws of the State of Florida, with an office and place of business located at 7800 Florida Avenue, Tampa, Florida, and that the individual respondent, Don DePalma, is an officer of said corporation and formulates, directs and controls the acts and practices of said corporate respondent, and that his address is the same as that of corporate respondent.

Corporate respondent also maintains an office located at 2010 North Industrial Boulevard, Dallas 7, Texas, from which it transacts a substantial volume of business.

PAR. 2. Respondents are engaged in the offering for sale, sale, distribution, and installation of residential aluminum siding material to the public.

PAR. 3. In the course and conduct of their business, respondents cause and have caused their said products, when sold, to be shipped from their places of business in the States of Florida and Texas to purchasers thereof located in various other States of the United States, and maintain 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 said business, and for the purpose of inducing the purchase of their products, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective customers:

1. That the homes of prospective purchasers have been specially selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by respondents and that as a result of allowing their homes to

serve as models, purchasers would receive reduced prices for respondents' products.

2. That respondents have opened or will soon open a branch office in the city where the customer's home is located and that respondents need to install siding on several homes in the area for advertising purposes.

3. That respondents' siding materials are entirely new and revolutionary and differ substantially from other siding materials available on the market.

4. That respondents' siding materials will last a lifetime and will not require repainting or repair for the life of the structure on which they are applied.

5. That respondents' materials are "unconditionally guaranteed" in every respect.

In Paragraph Five, the complaint further alleges that, in truth and in fact:

1. The homes of prospective purchasers were not specially selected as model homes, and respondents did not use purchasers' homes as points of reference for advertising or demonstration purposes. In addition, respondents did not give reduced prices or other compensation to purchasers who agreed to have their homes used as models.

2. Respondents have opened no offices in cities other than Tampa and Dallas.

3. Respondents' siding materials are neither entirely new and revolutionary nor do they substantially differ from other siding materials available on the market.

4. Respondents' siding materials will not last a lifetime and will require repainting and repair.

5. Respondents' materials are not unconditionally guaranteed in any respect.

Therefore, it was alleged, the statements and representations set forth in Paragraph Four above are false, misleading and deceptive.

PAR. 6. It was further alleged that, in the conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding material of the same general kind and nature as that sold by respondents.

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

PAR. 8. The use by respondents of the aforesaid acts and practices, as therein 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.

On September 2, 1965, attorneys Gilbert B. Lessenco and Nicholas N. Kittrie, of the firm of Wilner & Bergson, Washington, D.C., filed an answer on behalf of respondents. In said answer, respondents admitted, in substantial part, the allegations set forth in Paragraphs One and Two, and subparagraphs 1, 3, 4, and 5 of Paragraph Five of the complaint, and all of Paragraph Six of the complaint; and denied the allegations contained in Paragraphs Three, Four, subparagraph 2 of Paragraph Five, and Paragraphs Seven and Eight of the complaint. The answer also denied that the statements and representations set forth in Paragraph Four of the complaint were false, misleading or deceptive.

A prehearing conference was held before the undersigned hearing examiner on September 23, 1965, at which time counsel for the parties appeared and indicated a desire to reach an agreement as to the facts and matters in dispute and thus avoid lengthy hearings. Respective counsel requested an opportunity to explore such possibilities. Thereafter, counsel continued such discussions and an informal conference with the hearing examiner was had regarding the same. Eventually, such discussions proved fruitless, and the hearing examiner set the matter for hearing for November 10, 1966, in Tampa, Florida.

On October 18, 1966, respondents' original counsel of record, Messrs. Lessenco and Kittrie, of Wilner & Bergson, filed notice of their withdrawal as counsel for respondents. Thereafter, on October 21, 1966, Donald O. McFarland, an attorney of Clearwater, Florida, filed his notice of appearance as counsel for respondents.

At the outset of the hearing, which convened in Tampa, Florida, on November 10, 1966, at which hearing John T. Walker appeared in support of the complaint, and Donald O. McFarland appeared for respondents, counsel announced that they had arrived at a stipulation with regard to the facts which had not

been admitted in the answer filed by original counsel for respondents, but which had expressly been denied. It was pointed out that the correct name of the corporate respondent is Gulf Coast Aluminum Supply, Inc., a corporation, rather than Gulf Coast Aluminum Supply Corporation, as alleged in the complaint. The stipulation was dictated into the record by counsel supporting the complaint and is contained in the transcript on pages 20 through 24. However, by written stipulation dated January 23, 1967, and approved by the hearing examiner on January 30, 1967, the transcript was corrected so as to make clear in the record the correct name of the corporate respondent and to make it clear in the stipulation, which was dictated into the record by complaint counsel, that respondents represented that they had opened or would soon open a branch office in Corpus Christi, Texas, and Baton Rouge, Louisiana, respectively, as alleged in subparagraph 2 of Paragraph Four of the complaint, whereas, as a matter of fact, respondents did not open branch offices in said cities.

Under the terms of the stipulation, it was agreed that the correct name of the corporate respondent is Gulf Coast Aluminum Supply, Inc., and that the complaint should be amended to so read.

It was further agreed that, if twenty customers, who reside in Corpus Christi, Texas, and Baton Rouge, Louisiana, respectively, and have previously entered into separate contracts with respondents for the purchase of their aluminum siding, were called as witnesses in this proceeding, they would testify as follows:

They received an advertisement in the mail from corporate respondent, Gulf Coast Aluminum Supply, Inc., to which was attached a business reply card to be filled out if they were interested in information concerning the respondent's aluminum siding. Said advertisement was similar to Commission's Exhibit No. 1, and received in the record. Said advertisement was mailed from Tampa, Florida, and the address on the reply card was corporate respondent's business address in Tampa, Florida. After the reply card was mailed by the witness to corporate respondent's business address in Tampa, Florida, a salesman called upon the witness and introduced himself as respondent's sales representative.

Under the terms of the stipulation, respondents have admitted the truth of the allegations contained in Paragraph Three of the complaint, which they had previously denied in their answer filed on September 2, 1965; respondents also have admitted each of subparagraphs 1 through 5 of Paragraph Four of the complaint,

which respondents had denied in their original answer; respondents also have admitted the allegations contained in subparagraph 2 of Paragraph Five, which they had denied in their answer, and also have admitted the allegations contained in Paragraphs Seven and Eight of the complaint, which they had denied in their answer. Commission's Exhibits Nos. 1 through 4 were received and incorporated in the record by agreement. Counsel for the parties waived the filing of proposed findings of fact and conclusions of law, and agreed that the hearing examiner may enter an order such as that requested in the complaint, or such order as he may consider appropriate in the circumstances.

Upon the basis of the entire record, including the allegations of the complaint which respondents admitted in their answer and the stipulation, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Gulf Coast Aluminum Supply, Inc., is the correct name of the corporate respondent, and is a corporation organized and doing business under the laws of the State of Florida, with its office and principal place of business located at 7800 Florida Avenue, Tampa, Florida. Respondent Don DePalma is an officer of the corporate respondent, and formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein found. His address is the same as that of the corporate respondent (Paragraph One of Answer).

2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of residential aluminum siding material to the public (Paragraph Two of Answer).

3. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective purchasers:

(1) That the homes of prospective purchasers have been specifically selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by respondents and that as a result of allowing their homes to serve as models, purchasers would receive reduced prices for respondents' products (Stipulation, Tr. 21-2); whereas, in their

answer, respondents admitted that said homes had not been selected as models, and respondents did not use said homes as points of reference for advertising or demonstration purposes. Further, respondents did not give reduced prices or other compensation to purchasers who agreed to have their homes used as models.

(2) That respondents had opened or would soon open a branch office in Corpus Christi, Texas, and in Baton Rouge, Louisiana, where the customer's home was located, and that respondents needed to install siding on several homes in the area for advertising purposes (Stipulation, Tr. 22); whereas, respondents did not open branch offices in Corpus Christi and Baton Rouge, and respondents have opened no offices in cities other than Tampa, Florida, and Dallas, Texas (also see stipulation correcting transcript, approved by the hearing examiner on January 30, 1967).

(3) That respondents' siding materials are entirely new and revolutionary and differ substantially from other siding materials available on the market (Stipulation, Tr. 22); whereas, in respondents' answer, they admitted that said siding materials are neither entirely new and revolutionary, nor do they substantially differ from other siding materials available on the market.

(4) That respondents' siding materials will last a lifetime and will not require repainting or repair for the life of the structure on which they are applied (Stipulation, Tr. 22); whereas, in respondents' answer, they admitted that such siding materials will not last a lifetime and will require repainting and repair.

(5) That respondents' materials are "unconditionally guaranteed" in every respect (Stipulation, Tr. 22); whereas, in respondents' answer, they admitted that such siding materials are not unconditionally guaranteed in any respect.

4. Respondents furnished guarantees to each of said witnesses similar to Commission's Exhibit No. 2. During the sales presentation to each of said twenty witnesses, respondents' representative represented that he was selling aluminum siding for the corporate respondent, Gulf Coast Aluminum Supply, Inc., and exhibited samples of corporate respondent's aluminum siding.

5. The written contract entered into between each of the twenty witnesses and corporate respondent's sales representative were on forms bearing the name of corporate respondent, Gulf Coast Aluminum Supply, Inc., and were similar to Commission's Exhibits Nos. 3 and 4.

6. Respondents accepted the contract of each of said witnesses and undertook performance thereunder, and they or their assigns accepted and received payments in discharge therefor.

7. Respondents furnished each of their sales representatives with a sample case and samples of their aluminum siding to be used in the sales presentations.

8. In the course and conduct of their business, and for some time last past, respondents have caused their products, when sold, to be shipped from their places of business in the States of Florida and Texas to purchasers thereof located in various other States of the United States.

9. In the conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of their aluminum siding material of the same general kind and nature as that sold by respondents from July 1, 1962, to the present.

10. Upon the basis of said stipulation, it is found that the statements and representations set forth and alleged in Paragraph Four of the complaint are false, misleading and deceptive.

CONCLUSIONS

The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that 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. Said acts and practices of respondents, as herein found, 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.

ORDER

It is ordered, That respondents Gulf Coast Aluminum Supply, Inc., a corporation, and its officers, and Don DePalma, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, distribution, or installation of residential aluminum siding materials 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 the home

of any of respondents' customers or prospective customers has been selected as a model home to be used as a point of reference for demonstration or advertising purposes.

2. Representing, directly or by implication, that any special price, allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model home demonstration purposes.

3. Representing that respondents have opened or are in the process of opening a branch office in any community and need to install siding on several homes in the area for advertising purposes.

4. Representing that respondents' siding materials are entirely new or revolutionary or differ substantially from other siding materials available on the market.

5. Representing that respondents' siding materials will last a lifetime or will not require repainting or repair for the life of the structure on which they are applied.

6. Representing, directly or by implication, that any of respondents' products is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 24th day of March, 1967, become the decision of the Commission.

It is further ordered, That Gulf Coast Aluminum Supply, Inc., a corporation (erroneously named in the complaint and caption hereof as "Gulf Coast Aluminum Supply Corporation"), and Don DePalma, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.