

Decision

IN THE MATTER OF

THE ALUMINUM COOKING UTENSIL CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6972. Complaint, Dec. 5, 1957—Decision, May 21, 1958*

Consent order requiring the manufacturer in New Kensington, Pa., of "Wear-Ever" aluminum cooking utensils, designed to employ the so-called "waterless" method of cooking, selling its products chiefly by representatives who gave demonstrations before groups of purchasers, to cease misrepresenting the health benefits obtained by cooking with its utensils and their superiority over competitive products, and that potential customers were selected by its advertising department to receive a special gift, among other things.

Mr. Morton Nesmith and *Mr. John Mathias* for the Commission.
Mr. William K. Unverzagt, of Pittsburgh, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On March 20, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an agreement containing consent order to cease and desist, which had been entered into by and between respondent and attorneys for both parties, under date of March 17, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent is a corporation organized, existing and doing business under the laws of the State of Delaware, with its offices and principal place of business located at Wear-Ever Building, in the city of New Kensington, State of Pennsylvania.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 5, 1957, issued

its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

9. That the proposed order set forth in the agreement may be entered by the Commission without further notice to the respondents, and when so entered it shall have the same force and effect as if entered after a full hearing; may be altered, modified, or set aside in the manner provided by statute for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; and that the order proposed in the said agreement is appropriate for the full disposition of all the issues as to all of the parties to this proceeding.

The said agreement, including the order proposed therein, is therefore accepted by the hearing examiner and transmitted to the Commission herewith for filing if the Commission so decides; and said proposed order makes adequate and proper disposition of the sub-

1643

Order

stantial and material matters charged in the complaint, and it is therefore adopted and hereinafter made and entered as the "Order" portion of this initial decision: *Provided*, That neither said agreement nor this initial decision shall become a part of the official record of this proceeding, nor shall this initial decision be published unless and until they respectively become parts of the official decision of the Commission.

ORDER

It is ordered, That respondent Wear-Ever Aluminum, Inc., a corporation, formerly the Aluminum Cooking Utensil Company, Inc., and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of aluminum, or any other product of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the use of respondent's utensils and the "waterless" method of cooking will promote or is conducive to better health when compared to other modern cooking utensils, namely, other utensils employing the "waterless" method of cooking and those utensils known as pressure cookers and as steamers. However, nothing contained herein shall prevent respondent from representing that more vitamins and minerals are retained in food cooked in their utensils and using the "waterless" method of cooking than when cooked in other utensils requiring substantially larger quantities of water.

(b) That the use of respondent's utensils and the "waterless" method of cooking will promote or is conducive to better health except in the cases of persons who are deficient in the food elements which may be lost, damaged or destroyed in other cooking methods or might be on the borderline.

(c) That the "waterless" method of cooking is peculiar to the use of respondent's products.

(d) That the "waterless" method of cooking can only be accomplished in aluminum utensils.

(e) That less food is required to satisfy hunger when prepared in respondent's utensils using the "waterless" method of cooking than when otherwise prepared.

Decision

54 F.T.C.

(f) That the magnesium in food is "Nature's laxative" and if it is boiled out of food, laxatives must be purchased at the drug store.

(g) That potential customers have been selected by the advertising department of Wear-Ever cookware to receive a special gift, unless such is the fact.

2. Furnishing means or instrumentalities to others by and through which they may mislead and deceive the public respecting the matters set forth in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed March 25, 1958, accepting an agreement containing a consent order to cease and desist theretofore executed by the respondent and counsel in support of the complaint, service of which was completed on April 18, 1958; and

It appearing from letters received from the respondent dated, respectively, April 24 and May 9, 1958, (1) that through inadvertence the words "by statute" were omitted from the last line of page 2 of said decision, resulting in an incomplete recitation of one of the provisions of the agreement of the parties, and (2) that by virtue of a certificate of amendment of the certificate of incorporation of the Aluminum Cooking Utensil Co., Inc., filed with the secretary of state of Delaware on April 1, 1958, the name of the respondent was changed, effective April 1, 1958, to Wear-Ever Aluminum, Inc.; and

The Commission being of the opinion (1) that the clerical error in the initial decision should be corrected, and (2) that the respondent should be identified in the order to cease and desist issued in disposition of this proceeding by the name "Wear-Ever Aluminum, Inc.":

It is ordered, That the initial decision be, and it hereby is, modified as follows:

(1) By inserting the words "by statute" after the word "provided" in the last line on page 2 of said decision;

(2) By revising the first paragraph of the order on page 3 of said decision to read

It is ordered, That respondent Wear-Ever Aluminum, Inc., a corporation, formerly the Aluminum Cooking Utensil Company, Inc., and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of aluminum, or any other product of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from:

1643

Decision

It is further ordered, That the initial decision as so amended shall, on the 21st day of May, 1958, become the decision of the Commission.

It is further ordered, That respondent, Wear-Ever Aluminum, Inc., a corporation, formerly the Aluminum Cooking Utensil Co., Inc., shall, within sixty (60) days after service upon it of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the aforesaid initial decision as modified.

IN THE MATTER OF
GREENHOUSE FURS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 7013. Complaint, Dec. 30, 1957—Decision, May 21, 1958

Consent order requiring furriers, with places of business at Perth Amboy and West New York, N.J., to cease violating the Fur Products Labeling Act by removing labels from fur products prior to sale to the ultimate consumer; by failing to comply with the labeling and invoicing requirements; and by advertising in newspapers which failed to disclose the names of animals producing certain furs, that certain products were composed of artificially colored or cheap or waste fur, or the country of origin of imported furs, and which represented fur products falsely as being bankrupt or auction stock or stock from a famous manufacturer.

Mr. John T. Walker for the Commission.

Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on December 30, 1957, charging respondents with misbranding and falsely and deceptively invoicing and advertising certain of their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Thereafter, on March 27, 1958, respondents and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Greenhouse Furs, Inc., as a New Jersey corporation, with its office and principal place of business located at 195 Smith Street, Perth Amboy, N.J., and individual respondent Abraham Cherkoss as president thereof and having the same address; respondent Maxwell Furs, Inc., as a New Jersey corporation with its office and principal place of business located at 4921 Bergenline Avenue, West New York, N.J., and individual respondent Max A. Perry as president thereof and having the same address.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of