

of March, 1961, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF
ALUMINUM COMPANY OF AMERICA ET AL.

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

Docket 7735. Complaint, Jan. 8, 1960—Decision, Mar. 4, 1961

Consent order requiring two aluminum manufacturers—parent corporation and wholly owned subsidiary—and their corporate advertising agency, to cease using false and misleading representations and disparaging competitive products in demonstrations on television programs to sell their “New Super-Strength Alcoa Wrap” aluminum household foil.

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 Aluminum Company of America, a corporation, Wear-Ever Aluminum, Inc., a corporation, and Ketchum, MacLeod & Grove, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding

Complaint

58 F.T.C.

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 Aluminum Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the Alcoa Building, City of Pittsburgh, State of Pennsylvania.

Respondent Wear-Ever Aluminum, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1730 Chestnut Street, Philadelphia, Pennsylvania. This corporate respondent is a wholly-owned subsidiary of respondent Aluminum Company of America and acts as the sales agent for said Aluminum Company of America.

Respondent Ketchum, MacLeod & Grove, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 411 Seventh Avenue, City of Pittsburgh, State of Pennsylvania. This corporate respondent is the advertising agency of respondent Aluminum Company of America, and prepares and places for publication, or telecast, advertising material including but not limited to that hereinafter set forth to promote the sale of aluminum and aluminum products, including aluminum household foil.

PAR. 2. Respondents Aluminum Company of America and Wear-Ever Aluminum, Inc. are now, and for some time last past have been, engaged, among other things, in the manufacture, sale and distribution of aluminum household foil, using the trade name "NEW SUPER-STRENGTH ALCOA WRAP" for their product which they sell to distributors for resale and delivery to consumers. Said respondents cause their household foil, when sold, to be transported from their places of business, among others, in New Kensington, Pennsylvania, Oakland, California, and Chillicothe, Ohio, to purchasers thereof located in various other states of the United States. Respondents Aluminum Company of America and Wear-Ever Aluminum, Inc. maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents Aluminum Company of America and Wear-Ever Aluminum, Inc., in the course and conduct of their business,

at all times mentioned herein, have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum and aluminum products, including household foil.

PAR. 4. Respondent Ketchum, MacLeod & Grove, Inc. is now, and has been, in substantial competition, in commerce, with other corporations, firms and individuals engaged in the advertising business.

PAR. 5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their aluminum and aluminum products, including household foil, respondents Aluminum Company of America and Wear-Ever Aluminum, Inc., with the aid and direct participation of respondent Ketchum, MacLeod & Grove, Inc., have caused the publication and dissemination of certain statements and pictorial presentations in newspapers having a general circulation and on television commercials broadcast over national networks.

Among and typical of the statements and representations contained in said advertisements, but not all-inclusive, including the audio-video representations contained in said television broadcasts, as above set forth, are the following:

VIDEO

Shows two hams side by side. One is labeled ORDINARY WRAP. Foil is tattered and torn. Ham is dried out. Other is not torn. Ham is fresh. Labeled NEW SUPER-STRENGTH ALCOA WRAP.

(A reproduction is attached hereto marked Exhibit "A" and made a part hereof.)

Shows ham labeled ORDINARY WRAP.

(A reproduction is attached hereto marked Exhibit "B" and

made a part hereof.)

Shows ham labeled NEW SUPER-STRENGTH ALCOA WRAP.

(A reproduction is attached hereto marked Exhibit "C" and made a part hereof.)

AUDIO

Look! These leftover hams were wrapped and unwrapped the same number of times.

The ordinary foil is tattered and torn. Ham is dried out, tasteless. But not a rip in new Alcoa Wrap. Ham is juicy, tasty!

PAR. 6. Through the use of the aforesaid statements and representations and through the use of said video demonstrations and others of the same import not specifically set out herein, respondents have represented, directly or by implication, that the ham and the household foil labeled "ORDINARY WRAP" and the ham and the household foil labeled "NEW SUPER-STRENGTH ALCOA WRAP" had undergone a valid demonstration under the same or similar conditions; that both hams had been wrapped and unwrapped

Complaint

58 F.T.C.

the same number of times; that as a result thereof the household foil labeled "ORDINARY WRAP" was tattered and torn, whereas the household foil labeled "NEW SUPER STRENGTH ALCOA WRAP" was not tattered and torn; and that the ham wrapped in said ordinary foil was dried out and tasteless, whereas the ham wrapped in said New Super-Strength Alcoa Wrap was juicy and tasty.

PAR. 7. The aforesaid statements, representations and demonstrations, as depicted in newspapers and television advertisements, are false and misleading in the following respects:

The two hams illustrated were not wrapped and unwrapped the same number of times, as represented in said advertisements.

The two hams illustrated were among several hams bought and allowed to age without wrapping for various periods of time. Among the hams purchased, two were selected for the demonstration. The ham which appeared to be the most fresh and moist was used in connection with the demonstration of New Super-Strength Alcoa Wrap. The ham which appeared to be the most dried out and tasteless was used in connection with the demonstration of the household foil labeled "ORDINARY WRAP."

The dried-out appearing ham used in connection with the demonstration of the household foil labeled "ORDINARY WRAP" was wrapped in foil, but the foil was deliberately torn and severely wrinkled, whereas the foil used in connection with the demonstration of New Super-Strength Alcoa Wrap was not subjected to the deliberate abuse to which the ordinary wrap was exposed.

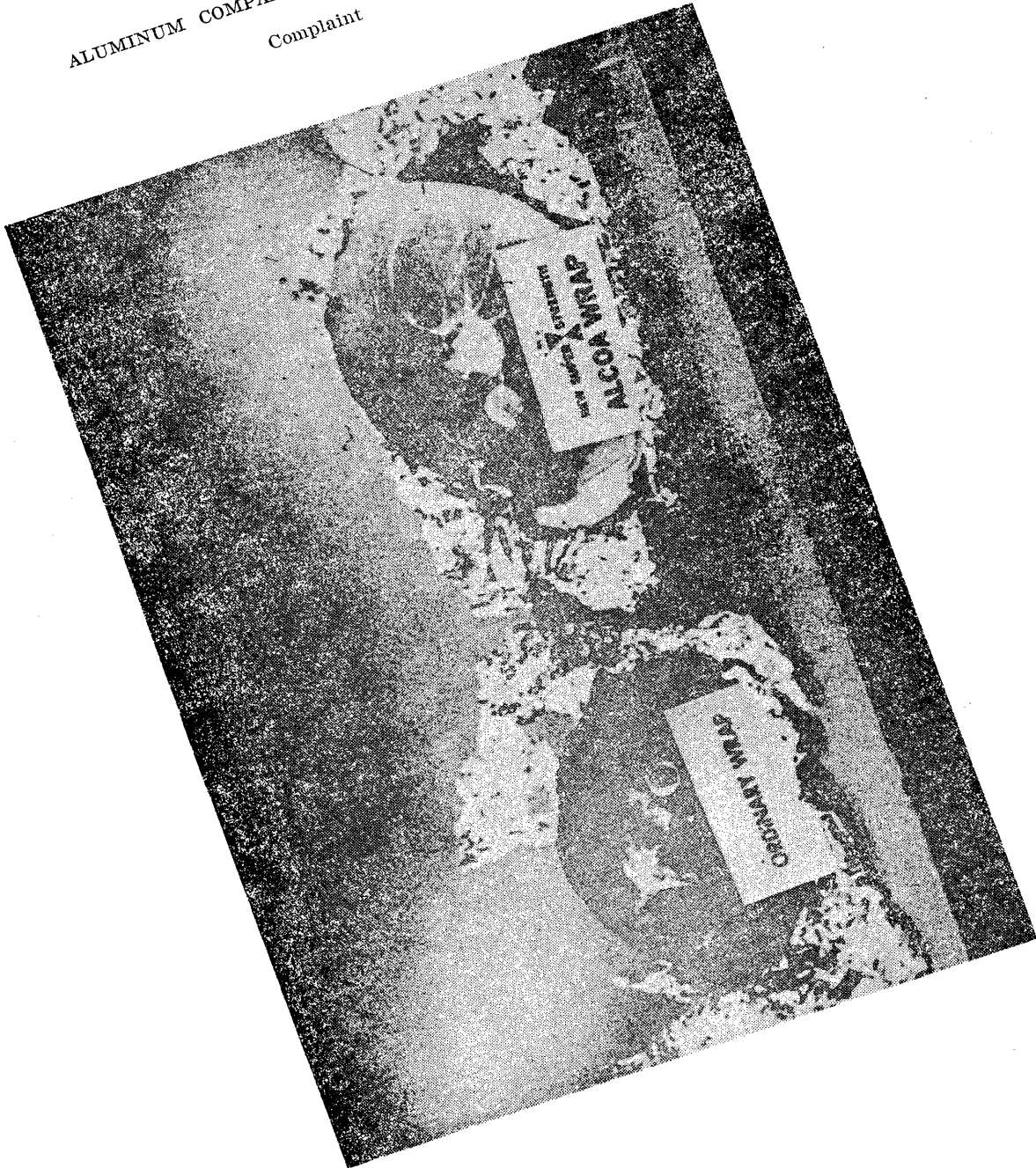
PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of a substantial quantity of the product of respondents Aluminum Company of America and Wear-Ever Aluminum, Inc. because of such erroneous and mistaken belief. As a result thereof, substantial trade has been, and is being, unfairly diverted to said respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

PAR. 9. 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 and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ALUMINUM COMPANY OF AMERICA ET AL.
Complaint

269

265





Complaint

265



Decision

58 F.T.C.

Mr. John T. Walker for the Commission.

Bergson & Borkland, by *Mr. Herbert A. Bergson*, of Washington, D. C., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 8, 1960, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false, misleading and deceptive statements and representations in newspaper and television advertisements with respect to their aluminum household foil, known as "New Super-Strength Alcoa Wrap".

Thereafter, on January 3, 1961, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on January 9, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Aluminum Company of America as a Pennsylvania corporation, with its office and principal place of business located in the Alcoa Building, Pittsburgh, Pennsylvania; Respondent Wear-Ever Aluminum, Inc. as a Delaware corporation, with its office and principal place of business located at Wear-Ever Building, New Kensington, Pennsylvania, and a sales office located at 1730 Chestnut Street, Philadelphia, Pennsylvania, this corporate respondent being a wholly-owned subsidiary of Respondent Aluminum Company of America and acting as the sales agent therefor in the sale of aluminum household foil; and Respondent Ketchum, McLeod & Grove, Inc. as a Pennsylvania corporation, with its office and principal place of business located at Four Gateway Center, Pittsburgh, Pennsylvania (formerly located at 411 Seventh Avenue, Pittsburgh, Pennsylvania), this corporate respondent being an advertising agency of Respondent Aluminum Company of America, and preparing and placing for publication or telecast, advertising material including but not limited to that set forth in the complaint, to promote the sale of aluminum and aluminum products, including aluminum household foil.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and

conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease and Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents Aluminum Company of America, Wear-Ever Aluminum, Inc., and Ketchum, MacLeod & Grove, Inc., corporations, and their officers, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of NEW SUPER-STRENGTH ALCOA WRAP, or other similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any demonstration purporting to prove, or representing as proving, the properties of said products in preserving the quality or appearance of food, or the strength, durability or any other property, quality or characteristic of said products, when such demonstration does not so prove;

2. Disparaging by untruthful statements or any misleading or deceptive method, including any pictorial presentation or demonstration, or in any other deceptive or misleading manner, any property, quality or characteristic of any product competitive with NEW SUPER-STRENGTH ALCOA WRAP or other similar product of Respondents.

Complaint.

58 F.T.C.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 4th day of March, 1961, become the decision of the Commission; and accordingly:

It is ordered, That the above-named respondents 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 the order to cease and desist.
