

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
ALUMINOUS COATINGS, INC., ET AL.

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

Docket 8518. Complaint, June 29, 1962—Decision, Mar. 28, 1963

Order entered on default of respondents, requiring Hallandale, Fla., distributors of roof and other surface paints or coatings which they purchased, to cease misrepresenting—through salesmen carrying out their sales plan for securing dealers and in advertising furnished such salesmen, prospective dealers, and the public—the makers, quality, and guarantees of their paints; sales, advertising, and other assistance offered to their dealers; net profits to be expected; and other misrepresentations as in the order below set forth.

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 Aluminous Coatings, Inc., a corporation, Aluma-Glo Corporation of America, a corporation, and Nathan Backer, individually and as an officer of said corporations,

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. Respondents Aluminous Coatings, Inc., and Alumaglo Corporation of America are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, with their office and principal place of business located at 313 East Beach Boulevard, in the city of Hallandale, State of Florida.

Respondent Nathan Backer is an individual and an officer of said corporate respondents. He formulates, directs and controls the acts and practices of said corporate respondents, and his address is the same as that of said corporations. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of paints or coatings for roofs and other surfaces to distributors for resale 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 Florida, or from the place of manufacture of said products in the States of Pennsylvania or New Jersey, 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 as aforesaid, respondents are now, and have been, in direct and substantial competition, in commerce, with corporations, firms and individuals in the sale of the same or similar products.

PAR. 5. In the course and conduct of their business, respondents have operated, and continue to operate, a sales plan by means of which they secure distributors or dealers for the sale and distribution of their products to the purchasing public. These distributors or dealers are solicited and secured by salesmen employed by the respondents, such salesmen having been selected and trained by respondents for this purpose. The primary function of these salesmen is to establish said dealerships and to obtain orders for the products of respondents by means of written contracts or "franchise" agreements with which are combined provisions for "initial" orders of respondents' products. These dealers or distributors also are required to sign trade acceptances as payment for the products purchased.

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PAR. 6. As a part of said sales plan but not restricted thereto, said salesmen for respondents, acting within the scope of their employment, for the purpose of inducing prospective dealers to enter into franchise agreements and to purchase respondents' products, represented and continue to represent, directly or by implication, to prospective dealers or franchise purchasers that:

1. Dealer purchasers of respondents' products will be granted exclusive and protected territories within which to operate their business of reselling respondents' products.
2. The paint or coating offered for sale is made from or contains pigments manufactured or produced by the Aluminum Company of America.
3. The paint is manufactured by the Aluminum Company of America.
4. Respondent corporations Aluminous Coatings, Inc., and Alumaglo Corporation of America are a part of, division or subsidiary of the Aluminum Company of America.
5. The paint offered for sale is regularly advertised and will continue to be advertised by the Aluminum Company of America on its national broadcast known as "Alcoa Presents" or the "Alcoa Hour".
6. Due to the widely known Alcoa trademark and its public acceptance, the prospective franchise dealer will have the advantage of displaying and selling a paint highly acceptable to the general public.
7. Respondents will perform all sales promotions and advertising, which will make selling by the dealer unnecessary.
8. Any dealer who has unsold paint left on hand will be protected and such merchandise will be picked up by respondents, with money refunded for the unsold paint.
9. Respondents will erect highway advertising signs, will paint the dealer's house, and will distribute individual brochures and samples in the entire franchise territory.
10. The purchaser can reasonably expect to earn a specified net profit based upon the amount of his purchases, varying from \$2,000 to \$10,000 a year.
11. The paint is equal to or superior to any firstline paint on the market.
12. The paint is unconditionally guaranteed for 10 years.
13. Prospective dealers are especially selected because of their good credit and high standing in the community.
14. The supply of paint purchased by the dealer will be sold out before the first payment falls due.

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15. It will not be necessary for a dealer to make any payments for the paint until it is sold.

16. One gallon of the paint, or coating material, will cover 100 square feet of surface or more than competitive paints.

17. The paint will waterproof basements, remedy leaking roofs, and may be effectively applied to any type of surface, including concrete, wood and metal.

18. The paint has been successfully tested and used by Government agencies and large industrial firms.

19. Trade acceptances signed by dealers will not be sold or transferred.

20. Respondents manufacture the paint or other products offered for sale and sold by them.

PAR. 7. In truth and in fact:

1. Dealer purchasers of respondents' products will not be granted exclusive or protected territories within which to operate their business of reselling respondents' products.

2. The paint or coating offered for sale is not made from and does not contain pigments manufactured or produced by the Aluminum Company of America.

3. The paint is not manufactured by the Aluminum Company of America.

4. Respondent corporations Aluminous Coatings, Inc., and Alumaglo Corporation of America are not a part of, division or subsidiary of the Aluminum Company of America.

5. The paint offered for sale has not been regularly advertised and will not continue to be advertised by the Aluminum Company of America on its national broadcast known as "Alcoa Presents" or the "Alcoa Hour".

6. Respondents' paint does not bear the Alcoa trademark.

7. Respondents will not perform all sales promotions and advertising, and selling by the dealer will thus be necessary.

8. Respondents will not protect any dealer by picking up any paint he has on hand nor do they refund money for the unsold paint.

9. Respondents will not erect highway advertising signs, paint the dealer's house, and distribute individual brochures and samples in the entire franchise territory.

10. The purchaser of respondents' products cannot reasonably expect to earn annually from \$2,000 to \$10,000 or any other specified net profit based upon the amount of his purchases.

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11. Respondents' paint is not equal to or superior to any firstline paint on the market.

12. Respondents' paint is not unconditionally guaranteed for 10 years.

13. Prospective dealers are not especially selected because of their good credit or high standing in the community. On the contrary and as a general rule respondents' products will be sold to any person who will contract to purchase them and has the necessary funds to pay the purchase price.

14. In most instances the dealer is unable to sell the paint supplied by respondents before his first payment falls due.

15. Respondents' dealers are required to pay for the paint whether or not it is sold.

16. Respondents' paint or other material will not satisfactorily cover 100 square feet of surface or cover more surface than competitive paints.

17. The paint will not in all instances waterproof basements or remedy leaking roofs, and it is not effective when applied to some types of surfaces.

18. The paint has not been successfully tested or used by Government agencies and large industrial firms.

19. Trade acceptances signed by dealers are given or transferred by respondents to a financial company which attempts to secure payment without regard to respondents' representations.

20. Respondents do not manufacture the paint or other products offered for sale and sold by them.

Therefore, the representations set forth in Paragraph 6, above, and others similar thereto are and were false, misleading and deceptive.

PAR. 8. Also in the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made and now make certain statements with respect to the said products in circulars and other advertising media furnished to their salesmen for use in soliciting the purchase of said products, and also in circulars and advertising distributed to prospective dealers and members of the public. Among and typical of such statements are the following:

A SUPERIOR COATING

Highest Quality Material The material stays bright and never needs to be painted or repainted for many years to come

As our dealer you are entitled to and will receive continuous cooperation.

Ten Year Replacement Guarantee

Furnish us with the names of your most important prospects * * * These names (as well as any others which you may submit at a later date) will be circularized in your behalf. Prospects developed from such circularization will

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be followed up by our Sales Promotion Department with a special letter and literature.

Can be easily applied with an ordinary Brush or Spray Gun

PAR. 9. By and through the use of the statements and representations set forth above respondents represent and have represented that:

1. Their products are superior or are composed of the highest quality material.
2. Their products will give effective service and last for years.
3. They will give their dealers continuous cooperation in the operation of their franchises.
4. Their products are unconditionally guaranteed for 10 years.
5. They will continuously circularize prospects furnished by their dealers.
6. Their products are easily applied:

PAR. 10. In truth and in fact:

Respondents' products are not of the highest quality, and in many instances the cans in which the products are packed and shipped are bulged and in unsalable condition when received by the dealer purchaser; said products are not received in salable or usable condition in many instances and will not be effective for years or any other substantial length of time; respondents do not cooperate with their dealer purchasers in the operation of their franchises; said products are not guaranteed unconditionally but on the contrary the guarantee is subject to limitations and conditions; respondents do not continuously circularize the prospects of their dealers or follow up the initial contacts; respondents' products are not easily applied but on the contrary in many instances said products are too thick or otherwise in such condition that they can be applied only under difficult circumstances.

Therefore, the statements and representations referred to in Paragraphs 8 and 9, above, were and are false, misleading and deceptive.

PAR. 11. The use by respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their said products has had and has the tendency and capacity to mislead and deceive a substantial number of their said dealers as well as members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and to cause substantial numbers of said dealers as well as members of the purchasing public to purchase substantial quantities of the respondents' products because of such erroneous and mistaken belief.

PAR. 12. The acts and practices of respondents as hereinbefore set forth were and are all to the prejudice and injury of their representatives or dealers, their competitors and the public, and constituted and now constitute unfair and deceptive acts and practices and unfair

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methods of competition in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

Mr. John W. Brookfield, Jr., and *Mr. Robert E. O'Brien* supporting the complaint.

Mr. Murray Glantz, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

FEBRUARY 5, 1963

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on June 29, 1962, charging them with engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act, by the use of false, deceptive and misleading statements and representations with respect to their products in connection with securing distributors or dealers for the sale and distribution thereof to the purchasing public, and in connection with inducing the purchase of such products by prospective dealers and members of the public. After being served with said complaint respondents appeared by counsel and thereafter filed answer denying that they had made certain of the statements and representations alleged in the complaint and admitting the making of others, and denying that any of said representations were false, misleading and deceptive.

Pursuant to notice duly given, a prehearing conference was convened before the undersigned on September 17, 1962, in Washington, D.C., which was attended by counsel supporting the complaint and counsel for respondents. At said conference agreement was reached concerning the narrowing of issues in a number of respects, and as to the procedure to be followed in expediting the trial of the proceeding. A prehearing order embodying the stipulations, admissions and agreements made at said prehearing conference, and governing the future course of the proceeding was issued by the undersigned on October 12, 1962. Pursuant to said order counsel supporting the complaint supplied to counsel for respondents a list of witnesses which they proposed to call and a list of documents which they proposed to offer in evidence, and otherwise complied with said order. Counsel for respondents failed to supply to counsel supporting the complaint a list of the witnesses which he proposed to call or of the documents which he proposed to offer in evidence, and failed to comply with the undersigned's prehearing order in other respects. By order

issued November 8, 1962, the undersigned ordered that respondents be foreclosed from calling any witnesses or offering any documentary evidence at the hearings scheduled herein, unless within 5 days from the date of such order full compliance was made with the undersigned's prehearing order. No further action was taken by respondents, following the issuance of the undersigned's order of November 8, 1962, to comply therewith or with the prehearing order issued October 12, 1962.

Hearings on the charges were thereafter held from November 26 to November 28, 1962, in Atlanta, Georgia, before the undersigned hearing examiner. Although given due notice of said hearing, neither respondents nor their counsel made any appearance thereat. At said hearing testimony and other evidence were offered in support of the allegations of the complaint, said evidence being duly recorded and filed in the office of the Commission. Respondents having defaulted in appearing at the hearing and having failed to offer any evidence in opposition to the complaint, the undersigned entered an order at the close of the evidence offered in support of the complaint closing the proceeding for the reception of evidence and fixing a date for the filing of proposed findings, conclusions and an order. Proposed findings of fact, conclusions and an order were filed by counsel supporting the complaint on January 14, 1962. No proposed findings, conclusions or order have been filed on behalf of respondents, although given written notice of an opportunity to file same by order of the undersigned dated November 29, 1962.

After having carefully reviewed the entire record in this proceeding, and the proposed findings, conclusions and order, and based on his observation of the witnesses, the undersigned finds that this proceeding is in the interest of the public and makes the following:

FINDINGS OF FACT

Identity of Respondents

1. Respondents Aluminous Coatings, Inc., and Aluma-Glo Corporation of America are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida, with their office and principal place of business located at 313 East Beach Boulevard, in the city of Hallandale, State of Florida. Respondent Aluma-Glo Corporation of America was organized by the individual respondent Nathan Backer in 1959, and said individual respondent organized respondent Aluminous Coatings, Inc., on June 17, 1960.

2. Respondent Nathan Backer is the president of the corporate respondents, and his wife is the secretary of said respondents. The

individual respondent Nathan Backer owns all of the stock of respondent Aluma-Glo Corporation and he and his wife, together, own all of the stock of respondent Aluminous Coatings, Inc. The individual respondent Nathan Backer formulates, directs and controls the acts and practices of the corporate respondents, and his address is the same as that of said respondents. All of said respondents have cooperated and acted together in the performance of the acts and practices hereinafter found.

Business of Respondents

3. The corporate respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of paints or coatings for roofs and other surfaces to distributors or dealers for resale to the public. The paints or coatings sold and distributed by the corporate respondents have been and are now purchased from other firms and corporations. Since approximately June 1960, the corporate respondents have purchased their paints or coatings from Ohmlac Paint & Refining Company of Newark, New Jersey. Prior thereto such products were purchased from a manufacturer in Pittsburgh, Pennsylvania. There is no substantial difference in the products sold under the label of Aluminous Coatings, Inc., and those sold under the label of Aluma-Glo Corporation of America. Such products are sold and distributed to the public through independent retail and service establishments which, for the most part, are not primarily in the paint business but are engaged in selling other products or services, such as television and radio stores, garages, gasoline service stations and grocery establishments.

Interstate Commerce and Competition

4. In the course and conduct of their business the corporate respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Florida, or from the place of manufacture of said products in the States of Pennsylvania or New Jersey, 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 commerce, as "commerce" is defined in the Federal Trade Commission Act.¹

5. In the course and conduct of their business as aforesaid, the corporate respondents are now, and have been, in direct and substan-

¹ It was stipulated by counsel for respondents at the prehearing conference that the sales of said respondents in commerce were in excess of \$1,000,000 annually.

tial competition, in commerce, with other corporations, firms and individuals in the sale of the same or similar products.²

Sales Plan

6. In the course and conduct of their business, the corporate respondents have operated, and continue to operate, a sales plan by means of which they secure distributors or dealers for the sale and distribution of their products to the purchasing public. These distributors or dealers are solicited and secured by salesmen employed by the respondents. The primary purpose of such salesmen is to establish dealerships for respondents' products, and to obtain orders for such products. In connection therewith, said salesmen use written contracts or "franchise" agreements supplied to them by the corporate respondents, said agreements containing provisions for initial orders of respondents' products. In many instances the dealers or distributors are required to sign "trade acceptances" or promissory notes in payment for the products purchased by them. Respondents' salesmen are compensated on a commission basis, receiving payment weekly for sales made to dealers whom they have signed up during the preceding week.

Misrepresentations by Salesmen

7. As a part of said sales plan but not restricted thereto, the salesmen of the corporate respondents, acting within the scope of their employment, for the purpose of inducing prospective dealers to enter into franchise agreements and/or to purchase the products of said respondents, have represented and continued to represent, directly or by implication, to such dealers that:

(1) Dealer purchasers of respondents' products will be granted exclusive and protected territories within which to operate their business of reselling respondents' products.

(2) The paint or coating offered for sale is made from or contains pigments manufactured or produced by the Aluminum Company of America.

(3) The paint or coating offered for sale is manufactured by the Aluminum Company of America.

(4) The corporate respondents, Aluminous Coatings, Inc., and Aluma-Glo Corporation of America, are a part of or are divisions or subsidiaries of the Aluminum Company of America.

² While denying in their answer the allegation of the complaint with respect to the existence of competition with others, counsel for respondents at the prehearing conference admitted that the corporate respondents are in competition, in commerce, with other firms in the sale of paint products.

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(5) The paint or coating offered for sale is regularly advertised and will continue to be advertised by the Aluminum Company of America on its national broadcast known as "Alcoa Presents" or the "Alcoa Hour".

(6) Due to the widely known Alcoa trademark and its public acceptance, the prospective dealer or distributor will have the advantage of displaying and selling a paint highly acceptable to the general public.

(7) Respondents will perform all sales promotions and advertising which will make selling by the dealer or distributor unnecessary.

(8) Any dealer or distributor who has unsold paint left on hand will be protected and such merchandise will be picked up by respondents, with money refunded for the unsold paint.

(9) Respondents will erect highway advertising signs, will paint the dealer's house or place of business, and will distribute individual brochures and samples to prospective customers whose names are furnished to respondents by the dealer.

(10) The dealer can reasonably expect to earn a specified net profit based upon the amount of his purchases, such profit varying from approximately \$2,000 to as much as \$25,000 a year.

(11) The paint is equal to or superior to any firstline paint on the market.

(12) The paint is unconditionally guaranteed for a period of 10 years.

(13) The supply of paint purchased by the dealer will be sold out before the first payment thereon falls due.

(14) It will not be necessary for a dealer to make any payments for the paint until it has been sold.

(15) One gallon of paint, or coating material, will cover 100 square feet of surface, or more than competitive paints.

(16) The paint will waterproof basements, remedy leaking roofs, and may be effectively applied to any type of surface, including concrete, wood and metal.

(17) The paint has been successfully tested and used by Government agencies and large industrial firms.

(18) Trade acceptances or notes signed by dealers will not be sold or transferred by respondents.

(19) Respondents manufacture the paint or other products offered for sale and sold by them, or are affiliated with the manufacturers thereof.

8. The representations set forth in paragraph 7 above are, false, misleading and deceptive since in truth and in fact:

(1) Dealer purchasers of respondents' products in many instances are not granted exclusive or protected territories within which to operate their business of reselling respondents' products.

(2) The paint or coating offered for sale is not made from and does not contain pigments manufactured or produced by the Aluminum Company of America.

(3) The paint is not manufactured by the Aluminum Company of America.

(4) Neither of the respondent corporations Aluminous Coatings, Inc., and Aluma-Glo Corporation of America is a part, or a division or subsidiary, of the Aluminum Company of America.

(5) The paint offered for sale has not been regularly advertised and will not continue to be advertised by the Aluminum Company of America on its national broadcast known as "Alcoa Presents" or the "Alcoa Hour".

(6) Respondents' paint does not bear the Alcoa trademark.

(7) Respondents will not perform all sales promotions and advertising, and selling by the dealer will thus be necessary.

(8) Respondents will not protect any dealer by picking up any paint he has on hand, nor do they refund money for the unsold paint.

(9) Respondents will not erect highway advertising signs, paint the dealer's house or place of business, or distribute individual brochures and samples to prospective customers whose names are furnished to respondents by the dealer.

(10) The purchaser of respondents' products cannot reasonably expect to earn annually from \$2,000 to \$25,000, or any other specified net profit, based upon the amount of his purchases.

(11) Respondents' paint is not equal to or superior to any firstline paint on the market.

(12) Respondents' paint is not unconditionally guaranteed for 10 years.

(13) In most instances the dealer is unable to sell the paint supplied by respondents before his first payment falls due, or at all.

(14) Respondents' dealers are required to pay for the paint whether or not it is sold.

(15) Respondents' paint or other material will not satisfactorily cover 100 square feet of surface or cover more surface than competitive paints.

(16) The paint will not in all instances waterproof basements or remedy leaking roofs, and it is not effective when applied to some types of surfaces.

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(17) The paint has not been successfully tested or used by Government agencies and large industrial firms.

(18) Trade acceptances signed by dealers are given or transferred by respondents to a finance company, which attempts to secure payment without regard to respondents' representations.

(19) Respondents do not manufacture the paint or other products offered for sale and sold by them.

Misrepresentation in Advertising

9. In the course and conduct of their business and for the purpose of inducing the purchase of their products, the corporate respondents have made and now make certain statements with respect to the said products in circulars and other advertising media furnished to their salesmen for use in soliciting the purchase of said products, and also in circulars and advertising distributed to prospective dealers and to members of the public. Among and typical of such statements are the following:

A SUPERIOR COATING

Highest Quality Material

The material stays bright and never needs to be painted or repainted for many years to come.

As our dealer you are entitled to and will receive continuous cooperation.

Ten Year Replacement Guarantee

Furnish us with the names of your most important prospects * * * These names (as well as many others which you may submit at a later date) will be circularized in your behalf. Prospects developed from such circularization will be followed up by our Sales Promotion Department with a special letter and literature.

Can be easily applied with an ordinary Brush or Spray Gun

10. By and through the use of the statements and representations set forth above the corporate respondents represent and have represented that:

(1) Their products are superior or are composed of the highest quality material.

(2) Their products will give effective service and last for years.

(3) They will give their dealers continuous cooperation in connection with the resale of their products.

(4) Their products are unconditionally guaranteed for 10 years.

(5) They will continuously circularize prospects furnished by their dealers.

(6) Their products are easily applied.

11. The statements and representations set forth in paragraphs 9 and 10 above are false, misleading and deceptive since in truth and in fact:

(1) Respondents' products are not of the highest quality, and in many instances the cans in which the products are packed and shipped are bulged and in unsalable condition when received by the dealer purchaser, or the cans become bulged and the tops thereof blow off while they are in the dealer's place of business.

(2) Said products will not be effective for years or for any other substantial length of time.

(3) Respondents do not cooperate with their dealer purchasers in connection with the resale of their products, outside of supplying the dealers with advertising literature which the dealers are expected to mail and distribute.

(4) Said products are not guaranteed unconditionally, but on the contrary the guarantee is subject to substantial limitations and conditions.

(5) Respondents do not continuously circularize the prospects of their dealers or follow up the initial contacts.

(6) Respondents' products are not easily applied but, on the contrary, in many instances said products are too thick or otherwise in such condition that they can be applied only with great difficulty.

Effect of Practices

12. The use by the corporate respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their said products has had and now has the tendency and capacity to mislead and deceive a substantial number of their said dealers, as well as members of the purchasing public, into the erroneous and mistaken belief that such statements and representations were and are true, and to cause substantial numbers of said dealers, as well as members of the purchasing public, to purchase substantial quantities of said respondents' products because of such erroneous and mistaken belief.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

2. The acts and practices of the corporate respondents, as hereinabove found, were and are all to the prejudice and injury of their distributors or dealers, their competitors and the public, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

3. In view of the complete dominance of the corporate respondents by the individual respondent Nathan Backer, and the practice of said

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respondent of conducting his business activities under different corporate names, it is the opinion and conclusion of the examiner that the order to be issued herein should run against said respondent individually, as well as an officer of the corporate respondents, so as to prevent evasion of said order and to make said order more effective in terminating the practices herein found to be illegal.

ORDER

It is ordered, That respondents Aluminous Coatings, Inc., a corporation, and Aluma-Glo Corporation of America, a corporation, and their officers, and Nathan Backer, individually and as an officer of said corporations, 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 paint, roof coating or any other product or products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Purchasers of their products will be granted exclusive territory for the resale of their said products or will be given exclusive or protected areas in which to resell respondents' products.
2. The products sold by respondents are made from or contain pigments manufactured or produced by the Aluminum Company of America, or that respondents' products are manufactured by the Aluminum Company of America.
3. Respondents are a part of, a division of, a subsidiary of, or in any manner connected with Aluminum Company of America; or that respondents are affiliated with or connected with any company or organization with which in fact they are not affiliated.
4. Respondents' products have been advertised by Aluminum Company of America, or that respondents' dealers will have the advantage of the "Alcoa" trademark in promoting the sale of said products.
5. Respondents will perform all necessary sales promotions or advertising for their products, or that no selling effort by dealer purchasers will be required; or misrepresenting in any manner the advertising and sales promotion aid that respondents will give their dealer purchasers.
6. Respondents will pick up or take back unsold paint in the hands of dealers or make refunds to dealers for such products.
7. Purchasers of respondents' products for resale will earn from

\$2,000 to \$25,000 a year, or earn any amounts in excess of those usually and customarily earned by respondents' dealer purchasers.

8. Respondents' products are equal or superior to firstline paint; or otherwise misrepresenting the quality of such products or the period of time for which such products will be effective.

9. Respondents' products are guaranteed for 10 years or any other period of time or in any other manner, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

10. Products purchased by a dealer from respondents will be resold before payment therefor is due.

11. Payment will not be required for the products sold by respondents to dealer purchasers until the products have been resold; or misrepresenting in any manner the time within which payment will be required by respondents.

12. Respondents' products will effectively cover more surface area than competitive products; will waterproof basements or remedy leaking roofs; or in all instances can be easily applied or will be effective when applied to all types of surfaces.

13. Respondents' products have been tested, approved or used by any governmental agency, or any other organization or concern, which has not so tested, approved or used such products.

14. Trade acceptances signed by purchasers of respondents' products will not be transferred, sold or assigned.

15. Respondents manufacture the products sold by them, or are manufacturers of paints, roof coatings, or related products.

16. Respondents will cooperate with and continuously aid the purchasers of their products in carrying on their business of reselling said products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall, on the 28th day of March 1963, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

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IN THE MATTER OF

CONTINENTAL WAX CORPORATION ET AL.

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

Docket. 7351. Complaint, Jan. 6, 1959—Decision, Mar. 29, 1963*

Order requiring Mount Vernon, N.Y., distributors of their liquid "Six Month Floor Wax", also known as "Continental Grip-Kote", to cease representing falsely—in newspaper advertising, by radio and television, and on the product can—that the wax would give six months' satisfactory use on floors, and to cease using "six months" in the trade name of the product.

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 Continental Wax Corporation, a corporation, and Lee Hall, Herbert Heller, and Jack Heller, 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 Continental Wax Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 10 Warren Place, Mount Vernon, New York.

Respondents Lee Hall, Herbert Heller, and Jack Heller 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 a household wax product known as Continental Six Month Floor Wax and/or Continental Grip-Kote to retailers for resale 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 product, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein

*As amended May 5, 1959.