

the public may be misled as to any of the matters or things prohibited by the above provisions of this order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
DENNY CORPORATION ET AL.

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

Docket 8612. Complaint, Jan. 3, 1964—Decision, Aug. 26, 1964

Order requiring a Philadelphia, Pa., manufacturer of an insulation product named "Aluma-Sheeth" to cease misrepresenting the qualities of its product and implying that it has met standards established by the National Bureau of Standards or the Federal Housing Administration.

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 Denny Corporation, a corporation and Nathan Denenberg, Maurice Denenberg and Aaron Denenberg, individually and as officers 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. Respondent Denny Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 2028 Washington Avenue in the city of Philadelphia, State of Pennsylvania.

Respondents Nathan Denenberg, Maurice Denenberg and Aaron Denenberg are officers of the corporate respondent. They formulate,

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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 manufacturing, advertising, offering for sale, sale and distribution of the insulation product designated "Aluma-Sheeth" to the public through distributors and manufacturer's representatives.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said insulation product, when sold, to be shipped from their place of business in the State of Pennsylvania 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said insulation product, respondents have made certain statements and representations concerning the performance, relative effectiveness and thermal values of "Aluma-Sheeth" and other products as established by certain federal agencies in manuals, leaflets and other printed matter.

Typical and illustrative of the aforesaid statements are the following:

Aluma-Sheeth guards against condensation in walls. Aluma-Sheeth with special Breather Type Aluminum foil is highly permeable which allows vapor to escape from inner wall areas.

ALUMA-SHEETH PROVES THAT THICKNESS ALONE DOES NOT GIVE THE BEST THERMAL VALUE. ALUMA-SHEETH in $\frac{1}{8}$ " thickness combined with the proper air spaces (a minimum of $\frac{3}{4}$ " air space of facing each surface of ALUMA-SHEETH) has a resistance value of 5.94; compared with the resistance of 2.06 for $2\frac{5}{32}$ " insulation board, 1.32 for $\frac{1}{2}$ " insulation board and .45 for $\frac{1}{2}$ " gypsum board. These values have been established by the Bureau of Standards, Washington, D.C. and the Federal Housing Administration.

PAR. 5. By and through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents represented, directly or by implication, that:

1. "Aluma-Sheeth" prevents the condensation of water vapor in inner wall areas and allows the said vapor to escape from the said areas through perforations in the product.

2. Non-reflective type insulation boards when installed with two adjacent air spaces provide insulation resistance values of 2.06 for $2\frac{5}{32}$ " insulation board and 1.32 for $\frac{1}{2}$ " insulation board.

3. Quality ratings or values of "Aluma-Sheeth" and non-reflective type insulation boards have been established by the National Bureau of Standards and by the Federal Housing Administration.

PAR. 6. In truth and in fact:

1. "Aluma-Sheeth" does not prevent the condensation of water vapor in inner wall areas or allow the escape of appreciable amounts of water vapor from such areas but, on the contrary acts to some extent as a vapor barrier.

2. Non-reflective type $2\frac{5}{32}$ " and $\frac{1}{2}$ " insulation boards when installed with two adjacent air spaces provide considerably greater insulation protection than the values represented by respondents.

3. Quality ratings or values have not been established by the National Bureau of Standards or by the Federal Housing Administration for Aluma-Sheeth or for non-reflective type insulation boards.

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

PAR. 7. By the aforesaid practices, respondents place in the hands of others means and instrumentalities by and through which they may mislead the public as to the effectiveness, characteristics and endorsements of insulation products.

PAR. 8. 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 insulation of the same general kind and nature as that sold by respondents.

PAR. 9. 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' product by reason of said erroneous and mistaken belief.

PAR. 10. 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. Frank P. Dunn and Mr. Peter L. Wolff supporting the complaint.

Crumlish and Kania of Philadelphia, Pa., by *Mr. Joseph R. Glancey* for respondents.

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INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JULY 10, 1964

This proceeding was commenced by the issuance of a complaint on January 3, 1964, charging the corporate respondent and the three named individual respondents, individually and as officers of said corporation, with 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 misrepresenting the effectiveness characteristics and endorsements of their insulation products.

After being served with the said complaint, the aforesaid respondents appeared by counsel and thereafter filed their joint answer admitting a number of the specific allegations in the complaint, but denying generally the illegality of the practices charged in the complaint.

By order dated February 25, 1964, the hearing examiner scheduled a prehearing conference in this matter for the purposes of, among other things, obtaining stipulation of any uncontested facts, exchanging lists of documents and witnesses, authentication of documents, amendment of the complaint, etc. In response to the order scheduling the prehearing conference, counsel for both parties entered into and submitted to the hearing examiner a stipulation of facts which by agreement of the parties was to be made part of the record in lieu of evidence in support of and in opposition to the charges in the complaint.

By order dated April 13, 1964, the hearing examiner accepted the stipulation of facts and ordered the stipulation of facts incorporated into the record of this proceeding. In view of the fact that the parties waived any and all further procedural steps in this proceeding, it was further ordered that the record be closed for the taking of testimony and reception of evidence.

Based upon the entire record consisting of the complaint, answer, stipulation of facts, exhibits, and other matters of record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order.

FINDINGS OF FACTS

1. At the time of the distribution of manuals, leaflets, and other printed matter containing the statements and representations set forth in paragraphs 4 and 5 hereof, Denny Corporation was and continues to be a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, and was and pres-

ently is located in Philadelphia, Pennsylvania. Its principal office and place of business was and still is located at 2028 Washington Avenue in the city of Philadelphia, State of Pennsylvania.

Nathan Denenberg, Maurice Denenberg, and Aaron Denenberg are individuals and at the time of the distribution of manuals, leaflets, and other printed matter quoted in paragraph 4 hereof, were and presently are officers of the corporate respondent. Their business address was and still is 2028 Washington Avenue, in the city of Philadelphia, State of Pennsylvania. At the time of the distribution of manuals, leaflets, and other printed matter quoted in paragraph 4 hereof, they formulated, directed and controlled and presently formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices of the type set forth in paragraphs 4 and 5 hereof. (Stip. of Facts, par. 1; Ans. par. 1.)

2. At the time of the distribution of manuals, leaflets, and other printed matter quoted in paragraph 4 hereof, the respondents were and presently are engaged in manufacturing, advertising, offering for sale, sale and distribution of the insulation product designated "Aluma-Sheeth" to the public through distributors and manufacturer's representatives. (Stip. of Facts, par. 2; Ans. par. 2.)

3. At the time of the distribution of manuals, leaflets, and other printed matter quoted in paragraph 4 hereof, the respondents accepted and presently accept orders for "Aluma-Sheeth" from customers located outside the State of Pennsylvania and have caused and now cause their said insulation product, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein, have maintained and presently maintain, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Stip. of Facts, par. 3; Ans. par. 3.)

4. In the course and conduct of their business during the years 1960 through 1962 and for the purpose of inducing the sale of their said insulation product, respondents have made certain statements and representations concerning the performance, relative effectiveness and thermal values of "Aluma-Sheeth" and other products as established by certain federal agencies in manuals, leaflets, and other printed matter. (Stip. of Facts, par. 4; CX 1-83.)

Typical and illustrative of the aforesaid statements are the following:

"Aluma-Sheeth" guards against condensation in walls. "Aluma-Sheeth" with special Breather Type Aluminum foil is highly permeable which allows vapor to escape from inner wall areas.

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"ALUMA-SHEETH" PROVES THAT THICKNESS ALONE DOES NOT GIVE THE BEST THERMAL VALUE. "ALUMA-SHEETH" in $\frac{1}{8}$ " thickness combined with the proper air spaces (a minimum of $\frac{3}{4}$ " air space of facing each surface of "ALUMA-SHEETH") has a resistance value of 5.94; compared with the resistance of 2.06 for $2\frac{5}{32}$ " insulation board, 1.32 for $\frac{1}{2}$ " insulation board and .45 for $\frac{1}{2}$ " gypsum board. These values have been established by the Bureau of Standards, Washington, D.C., and the Federal Housing Administration.

5. By and through the use of the foregoing statements and representations, and others of similar import not specifically set out herein, the respondents represented, directly or by implication, that:

a. "Aluma-Sheeth" prevents the condensation of water vapor in inner wall areas and allows the said vapor to escape from the said areas through perforations in the product.

b. Non-reflective type insulation boards when installed with two adjacent air spaces provide insulation resistance values of 2.06 for $2\frac{5}{32}$ " insulation board and 1.32 for $\frac{1}{2}$ " insulation board.

c. Quality ratings or values for "Aluma-Sheeth" and non-reflective type insulation boards have been established by the National Bureau of Standards and by the Federal Housing Administration. (Stip. of Facts, par. 5.)

6. In truth and in fact:

a. "Aluma-Sheeth" does not prevent the condensation of water vapor in inner wall areas or allow the escape of appreciable amounts of water vapor from such areas but, on the contrary, acts to some extent as a vapor barrier.

b. Non-reflective type $2\frac{5}{32}$ " and $\frac{1}{2}$ " insulation boards when installed with two adjacent air spaces provide considerably greater insulation protection than the values represented by respondents.

c. Quality ratings or values have not been established by the National Bureau of Standards or by the Federal Housing Administration for "Aluma-Sheeth" or for non-reflective type insulation boards.

Therefore, the statements and representations as set forth in paragraphs 4 and 5 hereof were and are false, misleading and deceptive. (Stip. of Facts, par. 6.)

7. By the aforesaid practices, respondents place in the hands of others means and instrumentalities by and through which they may mislead the public as to the effectiveness, characteristics and endorsements of insulation products. (Stip. of Facts, par. 7.)

8. 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 insulation material of the same general kind and nature as that sold by respondents. (Stip. of Facts, par. 8.)

9. 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.

CONCLUSIONS

1. The aforesaid 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.

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

3. The complaint herein states a cause of action, and this proceeding is in the public interest.

The order, as hereinafter set forth, follows the form of the order contained in the complaint, since the facts are found as alleged in the complaint and the parties have stipulated and the hearing examiner agrees that such order is appropriate and may be entered.

ORDER

It is ordered, That respondents, Denny Corporation, a corporation, and its officers, and Nathan Denenberg, Maurice Denenberg, and Aaron Denenberg, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with manufacturing, offering for sale, sale and distribution of "Aluma-Sheeth" or other insulation 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 "Aluma-Sheeth" or any other substantially similar product prevents the condensation of water vapor in inner wall areas or allows the escape of appreciable amounts of water vapor from the said areas of structures to which they are applied; or misrepresenting in any manner the amount or degree to which any product will prevent the formation of moisture in inner wall areas or allow the escape of water vapor from such areas of structures to which they are applied.

2. Representing, directly or by implication, that non-reflective type insulation boards or any other type of insulation product has any measurement of effectiveness or other characteristic which is not the actual measurement of effectiveness or characteristic of said boards or any other type of insulation product.

3. Representing, directly or by implication, that quality ratings or values for insulating effectiveness have been established by the National Bureau of Standards or the Federal Housing Administration for "Aluma-Sheeth" or non-reflective type insulation boards; or misrepresenting the test results, endorsement, approval or acceptance of any product by a governmental or private agency.

4. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which they may mislead or deceive the public as to any of the matters and things hereinabove prohibited.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, effective August 1, 1963, the initial decision of the hearing examiner shall, on the 26th day of August 1964, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Denny Corporation, a corporation, and Nathan Denenberg, Maurice Denenberg, and Aaron Denenberg, individually and as officers of said corporation, 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.

IN THE MATTER OF

FAIRCHILD OPTICAL COMPANY, INC., ET AL.

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

Docket C-818. Complaint, Aug. 26, 1964—Decision, Aug. 26, 1964

Consent order requiring a Chicago distributor of "Magna-Sighter," an optical