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Commissioner Reilly concurring in the decision except for the holding that respondent advertising agency, W. B. Doner & Company, should be included in the order to cease and desist. Commissioner MacIntyre dissented as to that portion of the decision relating to fictitious pricing, and has filed a dissenting opinion.

## IN THE MATTER OF

JOHN A. GUZIAK TRADING AS SUPERIOR  
IMPROVEMENT COMPANY

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

*Docket 8614. Complaint, Jan. 20, 1964—Decision, June 28, 1965*

Order requiring a Little Rock, Ark., distributor of aluminum and simulated stone siding materials to cease making deceptive pricing and discount representations, falsely guaranteeing its products, misrepresenting that it is connected with any aluminum manufacturer, and representing to any prospective purchaser that his house will be used as a "model home."

## 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 John A. Guziak, an individual, formerly trading through the instrumentality of General Aluminum Company, a corporation, and now trading through the instrumentality of Superior Improvement Company, a corporation, hereinafter referred to as the respondent, has 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 John A. Guziak is an individual formerly trading through the instrumentality of General Aluminum Company, a Tennessee corporation with his principal office and place of business located at 630 Third Avenue, South, in the city of Nashville, State of Tennessee, and now trading through the instrumentality of Superior Improvement Company, an Arkansas corporation, with his principal office and place of business located at 1605 Main Street, in the city of Little Rock, State of Arkansas.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution

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or indirectly, the purchase of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited in paragraph A. above.

Respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

## III

Respondent W. B. Doner & Company and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of foods, drugs, cosmetics or devices, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, through the use or display of any words, emblem, seal, symbol, certification, or otherwise, that merchandise has been approved or endorsed by an independent organization engaged in protecting the interests of consumers or in determining objectively the merits of such merchandise: *Provided*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish either that such representation is truthful in every material respect or that respondent neither knew nor had reason to know of the falsity of such representation.

B. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited in paragraph A. above.

Respondent 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.

*It is further ordered*, That the charges contained in paragraphs seven, nine, twelve and thirteen of the complaint be, and they hereby are, dismissed.

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being used only as a means to induce resistant purchasers into the buying of said merchandise under the mistaken impression that they were receiving some sort of special price because of their willingness to allow their homes to be used for this purpose and that they would receive a bonus of \$100 for each sale made by the respondent as a result of using that person's home as a model.

(2) Purchasers do not receive enough, if any, bonus money to offset the cost of their siding job.

(3) Respondent is not a manufacturer of siding materials.

(4) Aluminum siding materials sold by respondent are not manufactured by Alcoa, Kaiser or Reynolds Aluminum Company.

(5) Respondent is not connected or affiliated with Reynolds Aluminum Company.

(6) Aluminum siding sold by respondent is not applied by factory trained personnel.

(7) Aluminum siding sold by respondent will require painting and maintenance.

(8) The simulated stone siding sold by respondent will chip or crack, will require maintenance, and is not completely fireproof.

(9) Respondent's guarantee is not unconditional and it fails to set forth the nature and extent of the guarantee and the manner in which the guarantor will perform.

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

PAR. 6. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum and simulated stone home and building siding materials of the same general kind and nature as that sold by respondent.

PAR. 7. The use by the respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's 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.

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of aluminum and simulated stone home and building siding materials to the public.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, his said products, when sold, to be shipped from his places of business in the States of Tennessee and Arkansas to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has 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 his business and for the purpose of inducing the purchase of his products, respondent has, by statements and representations in advertisements in newspapers, in direct mail advertising, and by direct oral solicitations, represented, directly or by implication:

(1) That persons who allowed the siding materials installed by respondent to be used for model home demonstration purposes would receive,

(a) A special discount price from respondent's usual and regular price, and,

(b) A bonus of \$100 for each sale made by respondent as a result of using that person's home as a model.

(2) That purchasers can be assured of receiving enough bonus money from the use of their home as a model to offset the cost of their siding job.

(3) That respondent is a manufacturer of siding materials and consequently can offer such materials at lower prices.

(4) That aluminum siding materials sold by respondent are manufactured by Alcoa, Kaiser or Reynolds Aluminum Company.

(5) That respondent is connected or affiliated with Reynolds Aluminum Company.

(6) That respondent's siding materials are applied by factory trained installers.

(7) That aluminum siding sold by respondent will never need any painting and will never require maintenance.

(8) That the simulated stone siding sold by respondent will never chip or crack, will never require maintenance and is completely fireproof.

(9) That the application of siding materials by the respondent is unconditionally guaranteed.

PAR. 5. In truth and in fact:

(1) Respondent did not intend to use, nor did he use, the home of any of his purchasers for demonstration purposes, this statement

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Tennessee, and on September 25, 1964, at Hopkinsville, Kentucky, at which testimony and other evidence were offered in support of and in opposition to the allegations of the complaint. At the conclusion of the hearings on September 25, 1964, the record was closed and in due course both parties filed proposed findings of fact, conclusions of law and briefs in support thereof. Consideration has been given to the proposed findings of fact, conclusions of law and briefs submitted by the parties and all proposed findings of fact hereinafter not specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner hereinafter makes his findings of fact, conclusions and order.

#### The Complaint

It should be noted at the outset that under the complaint as drafted, John A. Guziak, as an individual, is the sole respondent in this proceeding. Although the General Aluminum Company, a corporation, and Superior Improvement Company, a corporation, are referred to in the caption of the complaint, they were not joined as named parties in this proceeding, but were merely added for descriptive purposes to typify the individual respondent trading as said companies. At the opening of the hearings in Little Rock, Arkansas, on September 15, 1964, counsel for the individual respondent moved to dismiss this proceeding for the reason that the acts and practices complained of were the acts of the aforesaid corporations and that the individual respondent was carrying out his duties as an officer of said corporations. It was also counsel for respondent's position that without the two corporate entities being joined as parties to this proceeding, the complaint did not lie against the individual respondent. In denying the motion to dismiss, the hearing examiner expressed the opinion that notwithstanding the non-joinder of the two corporate entities, the complaint would be in proper form provided that it could be established that the individual respondent actively formulated, directed, managed, and controlled the policies of both of the corporations, or was aware of, responsible for or personally participated in the acts and practices complained of herein. The examiner, however, believes that it would have been preferable practice to have joined the corporate entities in this proceeding, but as indicated, the failure to do so would not be fatal.

Paragraph Four, the charging paragraph of the complaint, reads as follows:

**PARAGRAPH FOUR:** In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent has, by

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*Mr. DeWitt T. Puckett* supporting the complaint.

*Mr. Claude Carpenter* and *Moses, McClellan, Arnold, Owen & McDermott* by *Mr. Harry E. McDermott*, Little Rock, Ark., for respondent.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

DECEMBER 24, 1964

This proceeding was commenced by the issuance of a complaint on January 30, 1964, charging the respondent, John A. Guziak, an individual trading as General Aluminum Company, a corporation, and as Superior Improvement Company, a 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 making false and deceptive statements and representations in newspapers and direct mail advertisements and in oral solicitations regarding prices, discounts, bonuses, guarantees and other specifically enumerated claims in the sale of aluminum and simulated stone siding materials.

After being served with the complaint, the respondent appeared by counsel and on March 31, 1964, filed his answer admitting a number of the specific allegations in the complaint, but denying generally that he, as an individual, or to his knowledge any of the corporations with which he has been connected, made any of the statements and representations alleged in the complaint.

By order dated April 7, 1964, the hearing examiner scheduled a prehearing conference in this matter for the purposes of, among other things, simplification and clarification of the issues; obtaining stipulations, admissions of fact and authenticity of documents; exchanging lists of witnesses and documents; and the scheduling of the time and places of the hearings. As a result of the prehearing conference, counsel for both parties exchanged lists of witnesses and documents, agreed upon the time and places of the hearings and various other matters.

By order of the Acting Director, Hearing Examiners, dated August 24, 1964, the undersigned hearing examiner was substituted for Loren H. Laughlin, the hearing examiner heretofore appointed to take testimony and receive evidence in this proceeding who because of illness was unavailable.

Hearings were held in this matter on September 15, 16, 17, 1964, in Little Rock, Arkansas, September 21 and 22, 1964, at Nashville,

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was not admissible. In fairness to complaint counsel, it should be noted that he was substituted in this proceeding on March 6, 1964, several months after the complaint was filed, and did not participate in the drafting of the complaint.

## FINDINGS OF FACT

1. The respondent, John A. Guziak, is an individual engaged in advertising, offering for sale, sale and distribution of aluminum and simulated stone home and building siding materials to the public (Tr. 19).

2. In the latter part of 1960, respondent organized the General Aluminum Company, a Tennessee corporation, with an office and warehouse located at 630 Third Avenue, South Nashville, Tennessee, for the purpose of engaging in the aforesaid business (Tr. 21). General Aluminum Company closed its office and ceased operations in October or November 1962 (Tr. 21, 38, 54-56).

3. In the latter part of 1962 or early 1963, respondent left Tennessee and organized a similar type of business in Arkansas under the corporate name Superior Improvement Company, an Arkansas corporation, with an office and warehouse at 1605 Main Street, Little Rock, Arkansas. That business is still active (Tr. 21, 38).

4. Respondent Guziak is president of both corporations, sole owner of all the stock of each corporation and formulates, directs, manages and controls the policies, acts and practices of the two corporations (Tr. 20-24, 55-56).

5. Respondent Guziak was never a manufacturer of aluminum or simulated stone siding materials (Tr. 39, 44, 67-68), but purchased them during all times covered by the complaint herein from the following suppliers (Tr. 40-41, 43-44):

U.S. Aluminum Siding Corporation,  
Franklin Park, Illinois  
Terox Corporation of America,  
Franklin Park, Illinois  
Brixite Corporation,  
South Carney, New Jersey  
Pfeifer Wire Company,  
Tuscaloosa, Alabama  
Wolverine Corporation,  
Michigan

Said products are shipped by the aforesaid suppliers from their above-mentioned addresses to respondent Guziak's warehouses in Nashville, Tennessee, or in Little Rock, Arkansas (Tr. 39-40). As materials are required for various jobs, the carpenters or workmen