

IN THE MATTER OF
SUN RADIO SERVICE & SUPPLY CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3022. Complaint, Dec. 23, 1936—Decision, Jan. 23, 1937

Where a corporation long engaged in the manufacture, sale, and distribution of radio receiving sets and radio tubes and supplies in commerce among the various States and in the District of Columbia, made use of letters "R. C. A." as a mark or brand for its said sets, tubes, and supplies thus made and sold by it and its subsidiaries, and built up and enjoyed a valuable goodwill in said letters as thus applied, which, so used, were generally recognized and understood by trade and purchasing public as meaning products made and sold as aforesaid by it and its said subsidiaries; and where activities above set forth of said corporation and its subsidiaries, as well as those of other well-known manufacturers and distributors of such products, included the new type of metal tube developed by them to meet demand of many purchasers of such sets for such a tube, in which the technical elements are sealed in steel, or in which metal functions instead of glass, and such so-called metal tubes had become popularized and were sold to purchasers in large quantities; and thereafter a corporate retailer engaged in the District of Columbia in selling and distributing radio sets, tubes and supplies, including its so-called "Automatic Radio"—

Displayed letters "R. C. A." over word "Automatic" in representing, designating and referring to its aforesaid set in advertisements in newspapers of wide interstate circulation, together with words "Newest" and "Licensed," and "Featuring the New METAL Tube," and sold said products, thus advertised and represented, in commerce among the various States and in aforesaid District, notwithstanding fact sets in question were not those made by aforesaid corporation and its subsidiaries, nor were the tubes thus featured those products which had become popularized and known to trade and purchasing public as metal tubes, as hereinbefore set forth;

With effect of confusing, misleading and deceiving purchasers and prospective purchasers into the erroneous belief that said various products were those of said corporation and its subsidiaries, and of other competitors who had built up and long enjoyed valuable goodwill, as aforesaid, in manufacture, sale and distribution of their respective products, and with tendency and capacity unfairly to divert trade to it from its competitors, including manufacturers and distributors who do not misrepresent their products and deceive or mislead purchasers or prospective purchasers thereof through use of such letters or simulation, or through use of word "Metal" as descriptive of their tubes, not, in fact, such, as understood as hereinbefore explained, and who truthfully represent nature and merits of their products under their own trade names and brands and as of their own manufacture and design; and to the substantial injury of aforesaid corporation and its subsidiaries and other competitors, and of a substantial portion of public, by inducing purchasers and prospective purchasers to buy prod-

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ucts made and sold by it, in and because of the erroneous belief that they were those products of hereinbefore corporation and its subsidiaries, preferred by many purchasers as superior to products competitive therewith, and that its said tubes were metal tubes, as such had become popularly known to trade and purchasing public:

Held, That such acts and practices were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Joseph C. Fehr for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Sun Radio Service & Supply Corporation, a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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, Sun Radio Service & Supply Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal place of business located at 938 F Street N. W., in the city of Washington, in the District of Columbia. It is now, and has been for more than one year last past, engaged in the business of selling and distributing at retail, radio receiving sets and radio tubes and supplies in commerce within the District of Columbia, and among the various States of the United States. In the course and conduct of its business respondent has been at all times referred to herein, in competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The Radio Corporation of America is a corporation organized existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 30 Rockefeller Plaza, in the city of New York and State of New York. It is now, and since 1919, has been engaged in the manufacture, sale and distribution of radio receiving sets and radio tubes and supplies between and among the various States of the United States and in the District of Columbia, using the letters "R. C. A." as a mark or brand for said radio receiving sets, radio tubes, and

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supplies thus manufactured and sold by it and by its owned and controlled subsidiaries, and causing said products when sold to be shipped from its place of business or that of its subsidiaries, to purchasers thereof located in States of the United States other than the State in which such shipments originated. Said Radio Corporation of America has built up and enjoys a valuable goodwill in the said letters "R. C. A." as applied to its said products, particularly radio receiving sets, radio tubes and supplies. Said letters, "R. C. A." when applied to or used in connection with radio receiving sets and radio tubes and supplies, are generally recognized and understood by the trade and purchasing public to signify products manufactured and sold in commerce between and among various States of the United States and in the District of Columbia by the said Radio Corporation of America and its subsidiaries.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain of its products to be inserted in newspapers having circulation between and among various States of the United States and in the District of Columbia, and by said means respondent has caused and now causes its said products to be represented, designated and referred to as—

Newest

R. C. A.
AUTOMATIC
Featuring the New
METAL Tube

Licensed

and respondent has sold and now sells its products, thus advertised and represented, between and among various States of the United States and in the District of Columbia.

In truth and in fact, the respondent's said products were not and are not products made or manufactured by the Radio Corporation of America or its subsidiaries referred to in paragraph 2 hereof; nor are the tubes featured in the aforesaid advertising matter those tubes which have become popularized and known to the trade and purchasing public as "metal" tubes, in which the technical elements are sealed in a vacuum in steel, or radio tubes wherein metal functions instead of glass for radio receiving sets.

PAR. 4. The acts and practices of the respondent as set forth in paragraph 3 hereof, and others similar thereto, are false and misleading and have the capacity and tendency to confuse, mislead, and deceive purchasers and prospective purchasers and cause them erroneously to believe that the respondent's said products so described and

referred to were and are the products of the Radio Corporation of America and its subsidiaries, when such was not and is not the fact, and erroneously to believe that said glass tubes are metal tubes, in which the technical elements are sealed in a vacuum of steel, when such is not the fact, to the injury of said Radio Corporation of America and its subsidiaries, and to the injury of other competitors of the respondent, and unfairly injures the goodwill of said competitors which they have built up and have had for many years in the manufacture, sale and distribution of their respective products among the purchasing public in the various parts of the United States and in the District of Columbia.

PAR. 5. There are now, and have been for more than one year last past, among the competitors of respondent, manufacturers and distributors likewise engaged in the business of manufacturing and selling in commerce, as herein set out, radio receiving sets and radio tubes and supplies, and similar products, who do not misrepresent said products and who do not deceive or mislead purchasers or prospective purchasers of their products by simulating or using the letters "R. C. A.," or by simulating or using the trade name or brand of any other competitor, and who do not use the word "metal" as descriptive of tubes offered for sale and sold by them which are not, in fact, tubes in which the technical elements are sealed in a vacuum in steel, or such tubes wherein metal functions instead of glass, and who truthfully represent the nature and merits of their products under their own trade names and brands, and as of their own manufacture and design.

PAR. 6. The use by respondent of said methods, acts and practices as above set forth, have had and now have the tendency and capacity to unfairly divert trade to respondent from its competitors, to the substantial injury of its competitors in said commerce, and also has the tendency and capacity to injure a substantial portion of the public by inducing purchasers and prospective purchasers to purchase the products manufactured and sold by respondent as aforesaid, in and because of the erroneous belief that said products are the products of its competitors or as aforesaid, and that its tubes are "metal" tubes as such tubes have become popularly known to the trade and purchasing public.

PAR. 7 The aforesaid methods, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged, and said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 23, 1936, issued, and served its complaint in this proceeding upon respondent, Sun Radio Service & Supply Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 6, 1937, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and stated that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Sun Radio Service and Supply Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, having its principal office and place of business at 938 F Street, N. W., in the city of Washington, in the District of Columbia. Respondent, for more than one year last past has been, and still is, engaged in the business of selling and distributing at retail radio receiving sets, radio tubes, and supplies. Among these products which respondent sells in commerce within the District of Columbia and among the various States of the United States is the "Automatic Radio." Respondent advertises this particular product with the letters "RCA" immediately above the words "AUTOMATIC." Respondent also advertises the "Automatic Radio" as "featuring the new METAL tube."

Respondent transports its product or causes the same to be transported from its place of business in the city of Washington, in the District of Columbia, to the purchasers thereof located in various States of the United States, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade in said product sold and distributed by respondent, in

commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The Radio Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 30 Rockefeller Plaza, in the city of New York and State of New York. It is now, and since 1919 has been, engaged in the manufacture, sale and distribution of radio receiving sets and radio tubes and supplies in commerce between and among the various States of the United States and in the District of Columbia, using the letters "RCA" as a mark or brand for said radio receiving sets, radio tubes and supplies thus manufactured and sold by it and by its owned and controlled subsidiaries. It causes said products when sold to be shipped from its place of business, or that of its subsidiaries, to purchasers thereof located in States of the United States other than the State in which such shipments originated. Said Radio Corporation of America has built up and enjoys a valuable good will in the said letters "RCA" as applied to its said products, particularly radio receiving sets, radio tubes, and supplies. Said letters, "RCA" as applied to or used in connection with radio receiving sets and radio tubes and supplies, are generally recognized and understood by the trade and purchasing public to signify products manufactured and sold in commerce between and among various States of the United States and in the District of Columbia by the said Radio Corporation of America and its subsidiaries.

Many purchasers of radio receiving sets have come to prefer the comparatively new "metal" tubes for use in radio receiving sets; that is to say, tubes in which the technical elements are sealed in a vacuum in steel, or tubes wherein metal functions instead of glass. To meet this demand the Radio Corporation of America and its subsidiaries and other well known manufacturers and distributors of radio receiving sets and radio tubes and supplies have developed the new type of metal tube hereinabove described and these so-called metal tubes have become popularized and sold to purchasers thereof in large quantities.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain

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of its products to be inserted in newspapers having a wide interstate circulation, and by said means respondent has caused and now causes its said products to be represented, designated and referred to as

Newest

R. C. A.

Licensed

AUTOMATIC

Featuring the New

METAL Tube

and respondent has sold and now sells its products, thus advertised and represented in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The statements and representations set forth in paragraph 3 hereof, have a tendency and capacity to deceive and mislead purchasers and prospective purchasers of respondent's said products into the belief:

(a) That the radio receiving sets advertised and represented by respondent as "RCA AUTOMATIC, featuring the New METAL Tube," were and are the products of the Radio Corporation of America and its subsidiaries.

(b) That the tubes thus advertised and represented as "METAL" tubes are tubes that have become popularized and known to the trade and purchasing public as tubes in which the technical elements are sealed in a vacuum in steel, or tubes for radio receiving sets wherein metal functions instead of glass.

In truth and in fact, the respondent's said products were not and are not products made or manufactured by the Radio Corporation of America or its subsidiaries referred to in paragraph 2 hereof; and the tubes featured in the advertising matter above set out are not such tubes as have become popularized and known to the trade and purchasing public as "metal" tubes, i. e., tubes in which the technical elements are sealed in a vacuum in steel, or tubes for radio receiving sets wherein metal functions instead of glass.

The representations made by the respondent as herein above set forth and others similar thereto, are misleading and deceptive and have a tendency and capacity to confuse, deceive and mislead, and have confused, misled, and deceived purchasers and prospective purchasers into the erroneous beliefs herein above described to the injury of said Radio Corporation of America and its subsidiaries and of other competitors of respondent, which said competitors have built up and have for many years enjoyed valuable goodwill as aforesaid, in the manufacture, sale and distribution of their respective products among the purchasing public in various parts of the United States and in the District of Columbia.

PAR. 5. There are among the public, many purchasers of radio receiving sets, radio tubes and radio supplies, who use the products of the Radio Corporation of America and its subsidiaries in preference to products manufactured and sold by competitors, believing that the products manufactured and sold by said Radio Corporation of America and its subsidiaries are superior in quality to those of competing products.

PAR. 6. There are now, and have been for more than one year last past, among the competitors of respondent, manufacturers and distributors, likewise engaged in the business of manufacturing and selling in commerce, as herein set out, radio receiving sets and radio tubes and supplies, and similar products, who do not misrepresent said products and who do not deceive or mislead purchasers or prospective purchasers of their products by simulating or using the letters "RCA," or by simulating or using the trade name or brand of any other competitor, and who do not use the word "metal" as descriptive of tubes offered for sale and sold by them which are not, in fact, tubes in which the technical elements are sealed in a vacuum in steel, or such tubes wherein metal functions instead of glass, and who truthfully represent the nature and merits of their products under their own trade names and brands and as being of their own manufacture and design.

PAR. 7. The use by respondent of said methods, acts, and practices, as above set forth, have had and now have the tendency and capacity to unfairly divert trade to respondent from its competitors, to the substantial injury of said Radio Corporation of America and its subsidiaries and of other competitors, and also has the tendency and capacity to injure a substantial portion of the public by inducing purchasers and prospective purchasers to purchase the products manufactured and sold by respondent, as aforesaid, in and because of the erroneous beliefs that said products are the products of the Radio Corporation of America and its subsidiaries, as aforesaid, and that its tubes are "metal" tubes as such tubes have become popularly known to the trade and purchasing public.

CONCLUSION

The aforesaid acts and practices of the respondent Sun Radio Service and Supply Corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed on January 6, 1937, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Sun Radio Service and Supply Corporation, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of radio receiving sets and radio tubes and supplies in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through the use of the letters "RCA," or through any other means, that said radio receiving sets, radio tubes and supplies are manufactured by the Radio Corporation of America or any of its subsidiaries;
2. Representing that the radio tubes offered for sale and sold by it, either alone or in connection with its radios, are "new METAL tubes," until and unless said tubes are those known to the trade and purchasing public as "metal" tubes in which the technical elements are sealed in a vacuum in steel, or wherein metal functions instead of glass;
3. Making any other representations of similar tenor or import.

It is further ordered, That the respondent shall, within 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 this order.

Syllabus

IN THE MATTER OF
KELLY BREWING & MALTING COMPANY, TRADING AS
ROSECREST DISTILLERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2451. Complaint, June 20, 1935—Decision, Jan. 25, 1937

Where a rectifier and wholesaler of spirituous liquors, principal products of which were blended whiskies, distilled gin, apple brandy, and bottled straight whiskies, and, excepting production of gin by redistillation of tax-paid purchased alcohol over juniper berries and other aromatics, producing no spirits by distillation, and with no place therefor, but purchasing all its distilled spirits requirements from others, and selling its said products to wholesale and retail purchasers thereof in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce as above set forth, and with those engaged in purchasing, rectifying, blending, and bottling such beverages and in similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other spirituous beverages sold by them, from mash, wort or wash as above set forth, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, to its customers and furnished them with the means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various spirituous beverages, thus bottled, labled, sold, and transported by it, by process of original and continuous distillation as above set forth, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "Distillers" in connection with liquor industry, in the trade and by the consuming public, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public; With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller and that the whiskies, gins and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash as aforesaid, and of inducing dealers and purchasing public, in such beliefs, to buy its said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from its competitors who do not, by their