

IN THE MATTER OF
ORVILLE J. BOND, TRADING AS ZEPHYR RADIO COMPANY

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

Docket 3294. Complaint, Jan. 4, 1938—Decision, June 14, 1939

Where an individual respectively engaged, under different trade names, in sale of radio parts to wholesalers, and in sale of radio sets, purchased from manufacturers thereof, to service men or hardware dealers, and, as thus engaged in selling to purchasers in other States, in substantial competition with those engaged in sale and distribution of similar sets through the medium of mail orders among the various States and in the District of Columbia; in advertising his said sets through direct mail, from lists of prospects, in periodicals and in a semimonthly newspaper—

Represented that his five-tube, \$6.95 set would get politics, news, music, market and weather reports on a "new Zephyr world-wide, all electric, battery, or auto radio" with all latest improvements, etc., facts being his said Zephyr set, complete with all working parts and aerial designed as local receiver primarily for reception in a radius of not over 100 miles, was not capable of picking up signals from the major continents of the world, or even from remote places on this continent, and would not, as understood from term, give "world-wide reception;"

With tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that such representation was true, and with result, as direct consequence of such mistaken and erroneous belief thus induced, of causing consuming public to purchase substantial volume of said sets, and of diverting trade unfairly from those engaged in sale of like and similar products and intended for like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

Held, That such act and practice, as above set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward J. Hornibrook*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. Merle P. Lyon* 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 Orville J. Bond, individually and trading as Zephyr Radio Co., hereinafter referred to as respondent, has been for more than 2 years last past, and is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a pro-

ceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Orville J. Bond, now is, and at all times for more than 2 years last past has been, doing business under the trade name Zephyr Radio Co., with his office and principal place of business located at 13139 Hamilton Avenue, Detroit, Mich.

PAR. 2. Orville J. Bond, operating under the trade name Zephyr Radio Co., is now and for more than 2 years last past has been engaged among other things, in the sale and distribution of radio receiving sets, radio parts, and like products, to the purchasing public and to dealers for resale located in the various States of the United States other than the State of Michigan or the State of origin of the shipment and in the District of Columbia.

There is now, and has been for more than 2 years last past, a course of trade and commerce by said respondent in the aforesaid radio receiving sets, radio parts, and like products between and among the various States of the United States. Respondent causes said products, when sold, to be transported from his place of business in Detroit, Mich., into and through States of the United States other than the State of Michigan to the purchasing public and to merchant vendees thereof at their respective points of location.

In the course and conduct of his said business, respondent is now, and has been for more than 2 years last past, in substantial competition with corporations, partnerships, and individuals engaged in the manufacture, sale, and distribution of radio receiving sets, radio parts, and similar products, in like commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business as described in paragraphs 1 and 2 hereof, respondent for the purpose of inducing the purchase of the said products so offered for sale by him, has circulated and distributed to retail dealers and to the purchasing public throughout the United States by mail and otherwise, in newspapers and magazines, folders, pamphlets, circulars, letters, and other literature, and by broadcasts over radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, advertisements of the products sold by him. In many of said advertisements, respondent has caused pictorial representations of radio sets to be prominently and conspicuously displayed, together with statements describing said radio receiving sets and products and their reception and uses. Among such representations

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and statements used by respondent with pictorial representations of a radio set, are the following:

5 tube \$6.95. Get politics, news, music, market and weather reports on a new Zephyr world-wide all-electric battery or auto radio. All latest improvements—Money Back Guaranty.

Zephyr All Wave Aerial—builds up weak signals.

The aforesaid statements and representations, together with other similar statements and representations not here set-out in full, serve as representations on the part of respondent that said radio sets are sold to retail dealers and the purchasing public for \$6.95 complete with all necessary working parts including among other parts cabinet, complete working chassis, five live working tubes properly installed therein and sufficient aerial for satisfactory, world-wide reception, that the said price of \$6.95 is the price at which said radio receiving sets are sold and delivered to the purchasers thereof complete with all necessary working parts for satisfactory reception; that the said sets when installed are capable of receiving and will receive broadcast programs from all parts of the world satisfactorily and that the "Zephyr All Wave Aerial" builds up and strengthens weak signals.

PAR. 4. In truth and in fact, the aforesaid radio receiving sets are not sold and delivered to retail dealers and the purchasing public complete with all necessary working parts for \$6.95. Said radio receiving sets do not have the capacity to receive broadcasts of radio programs from all parts of the world free from static or other interferences at all times under normal conditions. Said radio receiving sets are not equipped with all of the necessary working parts for the clear and uninterrupted reception of world-wide radio broadcasts. At the price of \$6.95, said radio receiving sets are not equipped with five live working tubes. Said radio receiving sets are not equipped with sufficient aerial for world-wide reception. Said aerial does not build up and strengthen weak signals.

PAR. 5. The said representations of said respondent aforesaid are false and misleading and have had and do have the tendency and capacity to mislead and deceive a substantial number of radio dealers and members of the purchasing public into the mistaken and erroneous belief that the respondent's said radio receiving sets so represented to sell at \$6.95 are fully equipped with all of the said necessary working parts and are capable of receiving satisfactorily radio broadcasts from all over the world, and that the Zephyr All Wave Aerial builds up and strengthens weak signals. The said representations of said respondent have had and do have the capacity to induce

retail dealers and members of the purchasing public to buy respondent's said receiving sets and radio products because of the erroneous beliefs engendered by such false and misleading designations and representations and to unfairly divert trade to respondent from competitors who are engaged in the sale of radio receiving sets that are fully equipped with tubes, aerial, and all necessary working parts for satisfactory reception of world-wide broadcasts and like products to those sold by respondent in commerce between and among the various States of the United States and the District of Columbia, who do not use such false and misleading designations and representations. As a result thereof injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above-alleged acts and practices of respondent are all to the prejudice and injury 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, 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 the Federal Trade Commission Act, the Federal Trade Commission on January 4, 1938, issued and served its complaint in this proceeding upon respondent Orville J. Bond, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by Merle P. Lyon, attorney for the Commission, before Edward J. Hornibrook, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint, respondent not having filed brief and having not requested oral argument; and the Commission having duly considered the matter, 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:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Orville J. Bond, is an individual trading under the firm name and style of Zephyr Radio Co. and Bond Radio Co., with office and principal place of business located at 13139 Hamilton Avenue, Highland Park (Detroit), Mich. Respondent, under the trade name Bond Radio Co., sells radio parts to wholesalers, and under the trade name Zephyr Radio Co. sells radio sets bearing the brand name "Zephyr" to dealers, that is to service men or hardware dealers. These radio sets are purchased from radio manufacturers.

PAR. 2. Respondent causes said radios, when sold, to be transported from his place of business in Highland Park (Detroit), Mich., to purchasers thereof located in the States of the United States other than the State of Michigan.

PAR. 3. Respondent is now, and for more than 1 year last past has been, engaged in substantial competition with corporations, partnerships, and other individuals engaged in the sale and distribution of similar radio receiving sets through the medium of mail orders between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale of and in selling his radio receiving sets and for the purpose of creating a demand therefor, now causes, and for more than 1 year last past has caused, advertisements to be issued, published, and circulated to and among the members of the consuming public of the United States through the medium of direct mail from lists of prospects, in magazines, and in a semimonthly newspaper.

PAR. 5. Respondent makes, and has made to the general consuming public, statements with reference to the alleged value and merit of said radio receiving set, and some of the statements so made and circulated by the respondent are as follows:

BUY RADIOS WHOLESALE

5 Tube Set
\$6.95

30 DAYS' TRIAL! !

Get politics, news, music, market and weather reports on a new Zephyr world-wide, all electric, battery or auto radio. All latest improvements—Money Back Guarantee—1 year Free service. Write for FREE catalog and advertise-user plan. Zephyr Radio Company, 13139 Hamilton Avenue, Detroit, Michigan.

PAR. 6. The "Zephyr" radio receiving set advertised to sell at \$6.95 is a complete radio set with all working parts and aerial designed as a local receiver primarily for reception in a radius not over 100 miles and will not give world-wide reception; "world-wide reception" as

applied to radio means that a radio is capable of picking up signals transmitted from the major continents of the world and this radio receiving set is not capable of picking up signals from the major continents of the world, nor even from remote places on this continent.

PAR. 7. The false and misleading claim and representation made by the respondent, as aforesaid, by means of advertisement in offering for sale and selling the "Zephyr" five-tube set \$6.95 is and has been calculated to, and has had and now has the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the belief that such representation is true.

PAR. 8. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representation, causes the consuming public to purchase a substantial volume of said five-tube \$6.95 "Zephyr" radio receiving sets, with the result that trade has been unfairly diverted from corporations, partnerships, and other individuals engaged in the sale of like and similar products intended to be used for like and similar purposes, who truthfully advertise their products. As a result thereof substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid act and practice of the respondent as set forth in the findings as to the facts is to the prejudice of the public and of respondent's competitors and constitutes unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward J. Hornibrook, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by Carrel F. Rhodes, counsel for the Commission, the respondent not having filed brief, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Orville J. Bond, his representatives, agents, and employees, directly or through the name Zephyr

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Radio Co., or any other trade or corporate name or other device, in connection with the offering for sale, sale and distribution of its radio receiving sets in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that the radio set now known as and sold under the name Zephyr Radio Receiving Set for \$6.95, or any other radio receiving set similarly constructed, will give world-wide reception, or that such a set will receive programs broadcast from all continents.

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

F & F LABORATORIES, INC.

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