

IN THE MATTER OF
ELECTRICAL LABORATORIES COMPANY, INC.

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

Docket 3707. Complaint, Feb. 13, 1939—Decision, Mar. 25, 1941

Where a corporation engaged in manufacture of aerial eliminators, antennae, and other electrical and mechanical devices and parts for radio receiving sets, and in competitive interstate sale and distribution thereof—

Made such statements and representations, in advertisements in newspapers, periodicals, and pamphlets circulated throughout the United States, of a device labeled and referred to by it as "Walco Aerial Eliminator" and "Dynamic Antenna," as "Throw Away Your Aerial! Amazing \$1 device does away with it Entirely! Special Tuning Feature Improves Selectivity, Tone. * * * Gives volume and distance equal to outdoor aerial with far Better Selectivity. * * * Ends all dangers of lightning, storms, short circuits. No more clicks and noise from wind and rain";

Facts being such device did not improve selectivity and tone of radio sets, or under all circumstances give volume and distance equal to outdoor aeriels, did not give better selectivity, dependent in fact, upon design, quality, and other factors, and did not end all dangers of lightning, storms and short circuits, but only to extent that such dangers might be due to maintenance of outdoor aerial, and, further, did not eliminate clicks and noises from wind and rain, except as they might be due to physical movement of outside aerial resulting from wind, rain or other atmospheric disturbances;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of said representations were true, and result that numerous members of consuming public purchased a substantial volume of its said products, and trade was unfairly diverted to it from competitors selling and distributing similar devices; to their injury:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. R. A. McQuat* for the Commission.

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 Electrical Laboratories Company, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing

1054

Complaint

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, Electrical Laboratories Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 49 East Twenty-first Street, New York, N. Y. Said respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of radio receiving sets, antennae, aerial eliminators, and other electrical and mechanical devices and parts for radio receiving sets and similar products and in the distribution thereof. Respondent causes said products, when sold, to be transported from its principal place of business in New York City to purchasers thereof located in the several States of the United States other than the State of origin and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a constant course of trade in said products so sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, respondent is and has been in active and substantial competition with corporations, partnerships, and individuals likewise engaged in the sale and distribution of radio receiving sets, antennae and other electrical and mechanical devices and parts for radio receiving sets and like products.

PAR. 2. In the course and conduct of its said business, respondent, for the purpose of inducing the purchase of its said radio receiving sets, antennae, aerial eliminators, and other electrical and mechanical devices and parts for radio receiving sets, has published and circulated among prospective customers throughout the United States and in the District of Columbia, by mail, newspapers and magazines, pamphlets, circulars, letters and other literature, advertisements containing false and misleading statements and representations. Among such false and misleading statements and representations is a pictorial representation of an electrical and mechanical device labeled "Dynamic Antenna," together with the following statements and representations:

Throw Away Your Aerial!

Amazing \$1 Device Does Away With It ENTIRELY! Special Tuning Feature Improves Selectivity, Tone.

Complaint

32 F. T. C.

Simply hook Walco Aerial Eliminator on back of radio—forget yards and yards of aerial trouble! Size only 3x5 inches. Eliminates ugly wires all over room, on roof, or hanging out window. Gives volume and distance equal to outdoor aerial with far BETTER SELECTIVITY.

No More Nuisance or Danger

Easy to connect Walco Aerial Eliminator, in 2 minutes without tools! Ends all dangers of lightning, storms, short circuits. No more clicks and noise from wind and rain. NOW you can hook up radio in any room. No wires show.

*Send No Money**Try it 5 Days at Our Risk!*

Merely mail the coupon. No money necessary now. When delivered pay postman \$1, plus few cents postage. If not delighted, return it in 5 days—your \$1 refunded at once.

ELECTRICAL LABORATORIES Co., Dept. 2212, 49 East 21st St., New York City.

The aforesaid statements and representations, together with other statements and representations not herein set out, serve as representations on the part of the respondent that the "Walco Aerial Eliminator" and the "Dynamic Antenna" improve selectivity and tone, remove electrical disturbances, give volume and distance equal to outdoor aerial with better selectivity and remove all nuisance and danger of lightning, storms, and short circuits, and that respondent owns, operates, or controls a laboratory or factory where said products are designed, made, or tested. A substantial part of the public are of the belief that an advantage is to be obtained by purchasing directly from the manufacturer or designer without the intervention of a middleman.

PAR. 3. In truth and in fact, respondent does not own, maintain, operate, or control a laboratory or factory in which any of its said products are designed, manufactured or tested. Respondent's said "Walco Aerial Eliminator" and "Dynamic Antenna" do not improve selectivity and tone, remove electrical disturbances, give volume and distance equal to outdoor aerial with better selectivity, or remove all nuisance and danger of lightning, storms and short circuits.

PAR. 4. There are among respondent's competitors many who sell and distribute radio receiving sets, aerials, antennae, and other electrical and mechanical devices for radio receiving sets, who do not in any manner misrepresent their products and who do not represent that they design, manufacture or test the products sold and distributed by them, when such is not a fact.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set-out, have had and now have the capacity and tendency to, and do, mislead

1054

Findings

and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade has been diverted unfairly to respondent from competitors engaged in the business of selling and distributing radio receiving sets, devices for radio receiving sets and like products, who do not misrepresent the source, quality, nature and capacity of their said products. As a result thereof, injury has been done, and is now being done, by respondent to its competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 13, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Electrical Laboratories Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Testimony and other evidence in support of the allegations of said complaint were introduced by Carrel F. Rhodes and R. A. McOuat, attorneys for the Commission, before 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 this proceeding came on for final hearing before the Commission on the complaint, testimony and other evidence, and brief in support of the complaint (respondent not having filed answer or brief and oral argument not having been requested), and the Commission, having duly considered the matter and now being 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, Electrical Laboratories Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business and offices at 49 East Twenty-first Street, New York, N. Y. Said respondent was at all times mentioned in the complaint engaged in the manufacture, sale, and distribution of aerial eliminators, antennae, and other electrical and mechanical devices and parts for radio receiving sets.

PAR. 2. Respondent caused said products, when sold, to be transported from its principal place of business in New York, N. Y., to purchasers located in the several States of the United States and in the District of Columbia, and maintained at all times herein mentioned a constant course of trade and commerce in said products sold and distributed by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business respondent, for the purpose of inducing the purchase of its aerial eliminators, antennae, and other electrical and mechanical devices and parts for radio receiving sets, advertises said devices in newspapers, magazines, and pamphlets circulated among prospective customers throughout the United States. Such advertisements contain various statements and representations with respect to a device labeled and referred to in said advertisements as "Walco Aerial Eliminator" and as "Dynamic Antenna," such as:

THROW AWAY YOUR AERIAL!

Amazing \$1 device does away with it ENTIRELY! Special Tuning Feature Improves Selectivity, Tone. * * * Gives volume and distance equal to outdoor aerial with far BETTER SELECTIVITY. * * * Ends all dangers of lightning, storms, short circuits. No more clicks and noise from wind and rain.

PAR. 4. In truth and in fact respondent's said "Walco Aerial Eliminator" or "Dynamic Antenna" does not improve the selectivity and tone of radio receiving sets and does not under all conditions give volume and distance equal to outdoor aerials, with better selectivity. Selectivity of receiving sets is dependent upon the design of the receiver, quality of materials, excellence of workmanship, and other factors, and is not improved by the use of respondent's device in lieu of an outdoor aerial. Said "Walco Aerial Eliminator" or "Dynamic Antenna" does not end all dangers of lightning, storms, and short circuits, but only to the extent that these dangers may be due to the maintenance of an outside aerial. Said "Walco Aerial Eliminator" or

1054

Order

"Dynamic Antenna" does not eliminate clicks and noises from wind and rain except insofar as they may be due to physical movement of an outside aerial resulting from wind, rain, or other atmospheric disturbance.

PAR. 5. There are among respondent's competitors many who sell and distribute in commerce throughout the United States antennae and other electrical and mechanical devices for radio receiving sets intended to serve the same or similar purposes for which respondent advertises its products and with whom the respondent is engaged in active and substantial competition.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent as hereinabove set out have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a result of this erroneous and mistaken belief numerous members of the consuming public have purchased a substantial volume of respondent's said products, with the result that trade has been unfairly diverted to respondent from competitors engaged in the business of selling and distributing similar devices for use with radio receiving sets. As a result thereof injury has been done, and is now being done, by respondent to its competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning 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, testimony and other evidence in support of the allegations of said complaint taken before John P. Bramhall, an examiner of the Commission, therefore duly designated by it, brief filed by Carrel F. Rhodes, counsel for the Commission (respondent having failed to file any answer or brief and no request for oral argument having been made) and the Commission having made its findings as to the facts and its conclusion that

Order

32 F. T. C.

said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Electrical Laboratories Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its radio receiving set accessory now known as and sold under the name "Walco Aerial Eliminator" or "Dynamic Antenna," or any similar device having substantially the same utility, do forthwith cease and desist from:

1. Representing that such device improves the selectivity and tone of radio receiving sets and gives volume and distance equal to outdoor aerials, with better selectivity.

2. Representing that such device ends all dangers of lightning, storms, and short circuits, except insofar as these dangers may be due to the maintenance of an outside aerial.

3. Representing that such device eliminates clicks and noises from wind and rain, except insofar as these may be due to the physical movement of an outside aerial resulting from such causes.

It is further ordered, That respondent shall, within 60 days after the 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
DAVID H. GOLDMAN, TRADING AS ZEEN CHEMICAL
COMPANY

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

Docket 3995. Complaint, Jan. 22, 1940—Decision, Mar. 26, 1941

Where an individual engaged in compounding, and in interstate sale and distribution of, his "Zeen Dry Cleaner" for cleaning clothing, upholstered furniture, carpets, rugs, blankets, draperies, and woolen and other materials, and for protection of such articles also from ravages of moths—

- (a) Represented, in labels affixed to containers thereof, and in printed matter distributed among the trade and public, that his said cleaner would "moth-proof or de-moth woolen materials in upholstery or rugs with one operation";

Facts being said product did not reach deep-seated infestations of moths, unless used according to complete and specific instructions for such purpose, cleans and removes dirt * * * spots and stains from all fabrics and, while it possessed moth-repellent properties, such properties, due to evaporation, were gradually diminished and lost unless repeated applications were made at proper intervals; and

- (b) Represented to trade and public that said preparation "* * * dry cleans and removes dirt * * * spots and stains from all fabrics * * * cleans and removes all foreign matter," "Is nonexplosive, as rubbing cannot ignite it," and "Is used exclusively by leading furniture and department stores everywhere";

Facts being it would not remove certain types of spots and stains from fabrics, and was made of petroleum distillates which vaporize to form gas capable of causing explosion if exposed to fire or flame, and the claim of exclusive use thereof by "leading furniture and department stores everywhere" was misleading, since said product was sold in not more than five or six States;

With capacity and tendency to deceive and mislead manufacturers of fabrics, dealers therein, and members of the public into the erroneous and mistaken belief that his said representations were truthful and thereby to induce purchase of his said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair and deceptive acts and practices in commerce.

Mr. Joseph C. Fehr for the Commission.

Mr. H. K. Bell, of Spieth, Taggart, Spring & Annat, of Cleveland, Ohio, for respondent.