

Syllabus

IN THE MATTER OF
NU-TONE LABORATORIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4645. Complaint, Nov. 25, 1941—Decision, Apr. 20, 1942

Where a corporation, engaged in the manufacture and competitive interstate distribution and sale of two devices to be attached to radio receiving sets which it described as "aerial eliminators" and "line noise eliminators"; through labels attached thereto and through counter cards which were conspicuously exhibited by retailers in connection with display of said devices, directly and by implication—

(a) Represented that said "aerial eliminator" constituted an indoor aerial for radio reception, use of which rendered perfect or improved the tone and selectivity of the radio to which attached, reducing noises due to static and other causes, enabling it to receive broadcasts from more distant stations than would otherwise be the case, and making it possible to dispense with any aerial without impairment of performance.

The facts being devices in question would not perform the functions of an aerial, reduce noises in question except at the expense of the incoming program, or accomplish results claimed above, but would, in a large majority of cases, result in less efficient reception and performance; and use thereof would not result in a radio performing without any aerial, but merely in the substitution of another instrumentality performing function of an aerial; and

(b) Represented that its "line noise eliminator," when attached to the power line of a radio receiving set, would reduce line noises or those due to static or electrical interference, and improve the tonal quality of the instrument;

The facts being that noises in question enter a set through the aerial and not the power line, so that such device used as directed would not be expected to accomplish results claimed therefor, though if used on some other electrical appliance causing interference, it would tend to reduce such static;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of causing it to purchase said devices, thereby unfairly diverting trade to respondent from its competitors:

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. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Branower & Kornfeld, of Chicago, Ill., for respondent.

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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 Nu-Tone Laboratories, Inc., a corporation hereinafter referred to as 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, Nu-Tone Laboratories, Inc., is a corporation organized and existing under the laws of the State of Illinois, and having an office and principal place of business at 115 South Market Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 5 years last past, engaged in the business of manufacturing, distributing, and selling, among other things, two devices designed to be attached to radio receiving sets and described by respondent as "aerial eliminators" and "line noise eliminators." In the course and conduct of its business, respondent sells the two said devices to various retail dealers, and causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices in commerce among and between 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 is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships and individuals engaged in the sale and distribution of aeriels and devices intended and sold for use in the reduction of "line noises" in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the character, effectiveness, or utility of their devices or the method of their use which is necessary to accomplish their purpose.

PAR. 4. In the course of its business and for the purpose of inducing the purchase of said devices, respondent has made and caused to be made various representations and claims concerning the character, effectiveness and utility thereof. By means of labels attached to the said devices and counter cards furnished to dealers which re-

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spondent intended to be, and were, conspicuously exhibited by retail dealers in connection with displays of said devices for sale.

PAR. 5. Respondent's said aerial eliminator was at different times constructed in two different ways. As first constructed it consisted of a hollow cylinder, with closed ends. From one end protruded short red and green wires, and from the other a short brown wire. The red and brown wires were joined together inside the cylinder to form a single continuous wire running through the cylinder, but with different colored ends. The end of the green wire inside the cylinder was wrapped three or four times around the other wire.

As later constructed the ends of the red and brown wires inside the cylinder were connected by a small grid condenser, consisting of a piece of mica fiber wrapped in lead foil and paper. The end of the green wire inside the cylinder was simply connected to a bit of wood.

Respondent's directions for the use of this device, regardless of the method of construction, were to connect the brown wire to a good ground, such as a water pipe or radiator, and the green and red wires respectively to the ground and aerial posts on the set.

PAR. 6. Among and typical of said representations and claims so made as to the aerial eliminator are the following:

Aerial Eliminator; Greater Distance;
Perfect Selectivity; Less Static;
Perfect Tone; Eliminates All Outside Wires;
Reduces Static and Noise; Indoor Radio Aerial.

Respondent also designated some of said devices by the names "Nu-Tone" and "Perfectone" which appear upon said labels.

PAR. 7. Through the use of the foregoing statements and designations respondent has represented, directly and through implication, that said device in itself constitutes an indoor aerial for radio reception; that by its use the tone and selectivity of the radio to which it is attached will be rendered perfect, or improved; that noises, due to static and other causes, will be reduced; that the radio will be enabled to receive broadcasts from stations more distant than would otherwise be the case, and that the use of an outside aerial, or any aerial, may be dispensed with without impairment of the performance of the radio.

PAR. 8. The foregoing claims and representations so made and disseminated by respondent in the course of its aforesaid business are exaggerated, misleading, and untrue as to the device, regardless of which method of construction is employed. In truth and in fact respondent's said device is not, in and of itself, an instrumentality

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which will perform the function of a radio aerial. Its use will not render perfect nor improve the tonal quality or selectivity of radios to which it is attached. It will not reduce noises due to static or other causes, emanated from radios to which it is attached, except at the expense of the incoming program, nor will it render such radios capable of receiving broadcasts from stations more distant than would otherwise be the case. The use of the device in accordance with respondent's directions instead of an outside aerial, will, in the large majority of cases, result in less efficient reception and performance. The device, when used as directed, does not result in the radio set performing without any aerial, but merely in the substitution of another instrumentality for an outside aerial, or aerial of some other type, which performs to a greater or less degree, the function of such aerial.

PAR. 9. The said line noise eliminator consists of a closed cardboard cylinder containing a small condenser, consisting of a coil of lead foil and paper. At one end is a common knife connection, and at the other a receptacle for such a connection. The condenser is placed between and in contact with the two strips of metal which form the blades of the knife connection and which extend through the cylinder to enable contact to be made at the other end when another wire is plugged into the receptacle.

Respondent's directions for the use of this device both on radio sets and electric appliances were to plug the power wire of the set or appliance into the device and plug the device into the wall outlet.

PAR. 10. Among and typical of said representations and claims so made as to the "line noise eliminator" are the following:

Line Noise Eliminator
Reduces Static and Noise Due to Electrical Interference
For All Radio Sets

Respondent also designated some of said devices by the names "Clear-Tone," "Nu-Tone," and "Marvel."

PAR. 11. Through the use of the foregoing statements and designations respondent has represented, directly and through implication that said device will, when attached to a radio, eliminate noises entering the radio through the power line, improve the tone of the instrument, and reduce noises due to static and electrical interference.

PAR. 12. The foregoing claims and representations so made and disseminated by respondent in the course of its aforesaid business are exaggerated, misleading, and untrue. In truth and in fact, respondent's said device will not, when attached to a radio, eliminate noises entering through the power line. It will not improve the tone of the instrument, nor reduce noises due to static or electrical interference.

PAR. 13. The use by respondent of the designations and representations as set forth herein in connection with the offering for sale and sale of its said devices, has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the false and erroneous belief that such representations and designations were true and correct, and to induce them to purchase said devices on account thereof. Respondent, further, has likewise supplied to and placed in the hands of dealers and distributors, a means or instrumentality whereby they may mislead and deceive the purchasing public with respect to the quality, character, and performances of respondent's said devices.

As a result of respondent's acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of radio aeriels and devices for the reduction of line noises, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been, 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. 14. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of respondent's competitors, and constitute 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 November 25, 1941, issued its complaint in this proceeding and caused same to be served upon respondent, Nu-Tone Laboratories, 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. After the issuance of said complaint and the filing of answer thereto by respondent, a hearing was held on February 26, 1942, at Chicago, Ill., before James A. Purcell, an examiner of the Commission theretofore duly designated by it. At the said hearing, the attorney for the Commission and counsel for the respondent stipulated and agreed that a certain statement of facts read into the transcript of hearing should constitute the record in the matter and be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon said facts as stipulated to make

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its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts), and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Counsel for the respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer and stipulation, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nu-Tone Laboratories, Inc., is a corporation organized and existing under the laws of the State of Illinois, and having an office and principal place of business at 115 South Market Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 5 years last past, engaged in the business of manufacturing, distributing, and selling, among other things, two devices designed to be attached to radio receiving sets and described by respondent as "aerial eliminators" and "line noise eliminators." In the course and conduct of its business, respondent sells the two said devices to various retail dealers, and causes said devices, when sold, to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices in commerce among and between 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 is now, and at all times mentioned herein has been in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of aeriels and devices intended and sold for use in the reduction of line noises in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the character, effectiveness or utility of their devices or the method of their use which is necessary to accomplish their purpose.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of said devices, respondent has made

and caused to be made various representations and claims concerning the character, effectiveness, and utility thereof by means of labels attached to the said devices and counter cards furnished to dealers which respondent intended to be, and were, conspicuously exhibited by retail dealers in connection with displays of said devices for sale.

PAR. 5. Respondent's said aerial eliminator was at different times constructed in two different ways. As first constructed it consisted of a hollow cylinder, with closed ends. From one end protruded short red and green wires, and from the other a short brown wire. The red and brown wires were joined together inside the cylinder to form a single continuous wire running through the cylinder, but with different colored ends. The end of the green wire inside the cylinder was wrapped three or four times around the other wire.

As later constructed the ends of the red and brown wires inside the cylinder were connected by a small grid condenser, consisting of a piece of mica fiber wrapped in lead foil and paper. The end of the green wire inside the cylinder was simply connected to a bit of wood.

Respondent's directions for the use of this device, regardless of the method of construction, were to connect the brown wire to a good ground, such as a water pipe or radiator, and the green and red wires respectively to the ground and aerial posts on the set.

PAR. 6. Among and typical of said representations and claims so made as to the aerial eliminator are the following:

Aerial Eliminator; Greater Distance.

Perfect Selectivity; Less Static.

Perfect Tone; Eliminates all Outside Wires; Reduces Static and Noise.

Indoor Radio Aerial.

Respondent also designated some of said devices by the names "Nu-Tone" and "Perfectone" which appear upon said labels.

PAR. 7. Through the use of the foregoing statements and designations respondent has represented, directly and through implication, that said device in itself constitutes an indoor aerial for radio reception; that by its use the tone and selectivity of the radio to which it is attached will be rendered perfect or improved; that noises, due to static and other causes, will be reduced; that the radio will be enabled to receive broadcasts from stations more distant than would otherwise be the case, and that the use of an outside aerial, or any aerial, may be dispensed with without impairment of the performance of the radio.

PAR. 8. Respondent's said device, however constructed, is not, in and of itself, an instrumentality which will perform the function of a radio aerial. Its use will not render perfect nor improve the tonal quality or selectivity of radios to which it is attached. It will not reduce

noises due to static or other causes, emanated from radios to which it is attached, except at the expense of the incoming program, nor will it render such radios capable of receiving broadcasts from stations more distant than would otherwise be the case.

The use of the device in accordance with respondent's directions instead of an outside aerial, will, in the large majority of cases, result in less efficient reception and performance. The device, when used as directed, does not result in the radio set performing without any aerial, but merely in the substitution of another instrumentality for an outside aerial, or aerial of some other type, which performs to a greater or less degree, the function of such aerial.

PAR. 9. The said line noise eliminator consists of a closed cardboard cylinder containing a small condenser, consisting of a coil of lead foil and paper. At one end is a common knife connection, and at the other a receptacle for such a connection. The condenser is placed between and in contact with the two strips of metal which form the blades of the knife connection and which extend through the cylinder to enable contact to be made at the other end when another wire is plugged into the receptacle.

Respondent's directions for the use of this device both on radio sets and electrical appliances were to plug the power wire of the set or appliance into the device and plug the device into the wall outlet.

PAR. 10. Among and typical of said representations and claims so made as to the "Line Noise Eliminator," are the following:

Line Noise Eliminator.

Reduces Static and Noise Due to Electrical Interference.

For All Radio Sets.

Respondent also designated some of said devices by the names "Clear-Tone," "Nu-Tone," and "Marvel."

Noises caused by static and the operation of other electrical appliances enter into a radio receiving set through the aerial, and not through the power line. In consequence, when the device is connected to the power line of a radio set, in accordance with respondent's directions, it will not be effective to eliminate line noises, will not improve the tone of the instrument or reduce noises due to static or electrical interference. When noises emitted from a radio set are caused by electrical interference due to the operation of some other electrical appliance, the use of the device on such other electrical appliance will tend to reduce the interference and static caused by its operation.

PAR. 11. The aforesaid representations have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations

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and implications are true and to cause a substantial number of members of the public to purchase respondent's devices, thereby diverting trade to respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of 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, the answer of the respondent and a stipulation as to the facts entered into between the respondent herein and counsel for the Commission and read into the transcript of this proceeding at a hearing held on February 26, 1942, at Chicago, Ill., before James A. Purcell, an examiner of the Commission theretofore duly designated by it, which stipulation provides, among other things, that the Commission may proceed upon the facts as stipulated, without further evidence or other intervening procedure, to issue and serve upon the respondent herein findings as to the facts and its conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That respondent, Nu-Tone Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its devices designated "aerial eliminators" and "line noise eliminators" or any other devices of substantially similar construction or possessing substantially similar properties, whether sold under the same names or any other names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said device designated "aerial eliminator" will improve the tonal quality or selectivity of radio receiving sets to which it is attached, render such sets capable of receiving broadcasts from stations more distant than would otherwise be the case, perform the function of a radio aerial, or reduce noises due to static or other causes except at the expense of the incoming program.

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2. Representing that said device designated "line noise eliminator" when attached to the power line of a radio receiving set will reduce line noises, or noises due to static or electrical interference, or improve the tonal quality of the instrument.

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.

Complaint

IN THE MATTER OF

MERVIN WINEHOLT, TRADING AS WINEHOLT COMPANY
AND MERVIN WINEHOLT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4691. Complaint, Jan. 30, 1942—Decision, Apr. 29, 1942*

Where an individual, engaged in the interstate sale and distribution of watches and pistols, among other things; by advertisements in newspapers, magazines and trade journals, and by folders, pamphlets, circulars, and other advertising matter, directly or by implication—

- (a) Represented that the watch he sold at \$1.98 was unconditionally guaranteed to have a useful life and to render satisfactory service under normal usage for 5 years, its movement finely tested, and that the case contained gold; and
- (b) Represented through use of words "Locomotive" and "R. R. Dial" that it was a "Railroad watch" or comparable thereto, and enhanced such implication by pictorial representations showing large hands and large, distinct hour numerals, and, through use of words "Railroad engraved back," that its back was engraved;

The facts being said watch did not have a useful life, but repairs of parts would be necessary long before expiration of 5 years; back thereof was not engraved, but design was stamped thereon mechanically; movement was not finely tested; case contained no gold whatever; and product did not possess the desirable characteristics and dependability of a "Railroad" watch as long understood by purchasing public as an especially accurate and dependable watch required for use by railroad employees, but was only a cheap imitation thereof; and

- (c) Falsely represented that the pistols he sold at \$6.45 were regularly sold at retail at \$12, and that his price of \$6.45 was a special price available for a limited time only;

With effect of misleading and deceiving a substantial portion of the public into the belief that such statements were true, thereby causing it, because of such mistaken belief, to purchase substantial quantities of said products:

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

Mr. Maurice C. Pearce 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 Mervin Wineholt, an individual, trading as Wineholt Co., and Mervin Wineholt Co., hereinafter referred to as respondent, has violated the provisions of