

Complaint

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IN THE MATTER OF
RADIO WIRE TELEVISION, INC.

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

Docket 4491. Complaint, Apr. 19, 1941—Decision, June 2, 1942

Where a corporation, engaged in the competitive interstate sale and distribution of radio receiving sets, accessories, and parts, and kits for use in home construction; by means of advertisements in catalogues, pamphlets, and other advertising matter—

Represented that its "One-tube battery operated all-wave set" had the power or capacity to "tune in the world"; and by the designations "Two-tube AC-DC kit" and "Two-tube AC-DC set" that such sets were two tube sets;

The facts being that such so-called "all-wave sets" did not have the power and capacity to bring in all-wave radio programs from wherever broadcast and it was not possible for the "one tube battery set," "to tune in the world," or bring in programs broadcast from stations located throughout the world; while so-called "two-tube" kits and sets were not equipped with two fully functioning tubes, but were equipped with one detecting, amplifying or receiving tube and one tuning or rectifying tube;

With effect of misleading and deceiving a substantial number of members of the purchasing public—which believes that the greater number of actually functioning tubes there are in a set the better the performance, and buys radios in the belief that an all-wave set has power and capacity to and will bring in programs broadcast on all wave lengths from stations throughout the world—into the mistaken belief that aforesaid representations were true, with result that they purchased substantial volume of said products, thereby unfairly diverting trade to it from its competitors; to the injury of competition in commerce:

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. Miles J. Furnas*, trial examiner.

Mr. S. Brogdyne Tew, II for the Commission.

Baar, Bennett & Fullen, of New York City, for respondent.

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 Radio Wire Television, Inc., 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, Radio Wire Television, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 100 Sixth Avenue, New York, N. Y. The respondent also maintains branch offices in Chicago, Ill., Boston, Mass., and Atlanta, Ga. The respondent is engaged in the sale and distribution of radio receiving sets, parts, kits for home construction of radio sets, and other radio accessories to the purchasing public located in the United States and in foreign countries.

PAR. 2. The respondent now maintains and for more than one year last past has maintained a course of trade in said products so sold and distributed by it in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries.

In the course and conduct of its said business the respondent is now and for more than one year last past has been in competition with other corporations and with individuals and partnerships engaged in the business of manufacturing, selling and distributing radio receiving sets, radio parts and like products in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries.

PAR. 3. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its radio receiving sets, radio parts, and like products, respondent has circulated and distributed among prospective customers throughout the United States, in the District of Columbia, and in foreign countries, by mail, advertisements, catalogues, pamphlets, and advertising broadsides containing many statements and representations concerning its said radio receiving sets and parts thereof. In said advertising material so disseminated said respondent has made various false and misleading statements and representations in describing said radio receiving sets and their power and capacity for reception and concerning the number of active functioning tubes in said radio sets. Among said statements and representations so made by respondent are the following:

One-tube battery operated all-wave set.

One-tube battery set, with this one tube battery set you can tune in the world.

Two-tube AC-DC kit.

Two-tube AC-DC set.

The aforesaid statements and representations, together with similar statements and representations not herein specifically set out, purport

to be descriptive of said respondent's radio receiving sets, radio parts, and like products, the number of necessary functioning tubes with which they are equipped and the power and capacity for world wide reception of radio receiving sets. Said statements serve as representations on the part of the respondent to members of the purchasing public that said radio receiving sets are equipped with fully functioning tubes, and that said radio receiving sets have the power and capacity to bring in and will bring in programs broadcast from stations located throughout the world.

A substantial number of the purchasing public believe that the greater the number of actually functioning tubes in a radio receiving set, the better it performs and the greater and clearer its power of detecting, amplifying and receiving radio waves, and a substantial number of the purchasing public buy radio sets under that belief, and, further believe that an all-wave radio set has the power and capacity to and will bring in programs broadcast on all waves from stations located throughout the world.

PAR. 4. In truth and in fact the respondent's "One-tube battery operated all-wave set" is not an all-wave radio set. It does not have the power and capacity to bring in all-wave radio programs from wherever broadcast. It is impossible with the respondent's one-tube battery set to tune in the world. Said set does not have the power and capacity to bring in radio programs broadcast from stations located throughout the world. Further, in truth and in fact the respondent's so-called "Two-tube AC-DC kit" and "Two-tube AC-DC set" are not two-tube radio sets. The said sets are not equipped with two fully functioning tubes, respectively, but are on the contrary, merely equipped with one detecting, amplifying or receiving tube and with one nonfunctioning or tuning beacon tube or rectifying tube. The said rectifier tubes do not serve as amplifying or detecting tubes and do not perform any recognized and customary function of a radio receiving tube in the detection, amplification and reception of radio signals or programs.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by the respondent as aforesaid in describing its said radio receiving sets, radio parts and like products as hereinabove set out were and are calculated to and have had and now have a tendency and capacity to and do mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of such erroneous and mistaken belief, so induced, a substantial portion of the purchasing public has purchased a substantial volume of re-

spondent's said products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing radio receiving sets and parts therefor. As a consequence thereof, injury has been done and is now being done by respondent to competition in commerce between and among 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 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 19, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Radio Wire Television, 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, no answer thereto having been filed by respondent, a hearing was held before an examiner of the Commission theretofore duly designated by it, and certain facts agreed upon by respondent and counsel for the Commission were read into the record and 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 agreed statement of facts, and brief in support of the complaint (respondent having waived the filing of brief and 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:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Radio Wire Television, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal place of business at 100 Sixth Avenue, New York, N. Y. Respondent is engaged in the sale and distribution of radio receiving sets, radio accessories, and parts and kits for use in the home construction of

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radio sets. In the course of this business respondent maintains branch offices in Chicago, Ill., Boston, Mass., and Atlanta, Ga.

PAR. 2. In the course and conduct of its aforesaid business respondent maintains, and for more than 1 year last past has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. In the conduct of this business respondent has been and is in competition with other corporations, and with individuals and partnerships engaged in the sale and distribution of radio receiving sets, radio parts and like products in commerce throughout the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of its radio receiving sets, radio parts, kits, and other radio accessories, respondent has circulated and distributed among prospective purchasers throughout the United States and in the District of Columbia, advertisements, catalogs, pamphlets, and other advertising material containing statements and representations concerning its said products. In such advertisements, catalogs, pamphlets, and other advertising material distributed as aforesaid, respondent has made various false and misleading statements and representations in describing radio receiving sets and their power and capacity for the reception of radio signals and broadcasts, and also concerning the number of active, functioning tubes in such radio sets. Typical of said statements and representations are the following:

One-tube battery operated all-wave set.

One-tube battery set, with this one tube battery set you can tune in the world.

Two-tube AC-DC kit.

Two-tube AC-DC set.

The foregoing statements and representations by respondent, together with similar statements and representations not specifically set out herein, purport to be descriptive of its radio receiving sets and parts, the number of necessary functioning tubes with which they are equipped, and the power and capacity of such sets for world-wide reception of radio broadcasts. These statements serve as representations by respondent to members of the purchasing public that its radio receiving sets are equipped with fully functioning tubes and have the power and capacity to bring in programs broadcast from stations located throughout the world.

PAR. 4. A substantial number of members of the purchasing public believes that the greater the number of the actually functioning tubes in a radio receiving set the better it performs, and the greater and

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Conclusion

clearer is its power of detecting, amplifying, and receiving radio waves, and such members of the purchasing public buy radios under the belief that an all-wave radio set has the power and capacity to and will bring in programs broadcast on all wave lengths from stations located throughout the world.

PAR. 5. Respondent's radio receiving set described as "One-tube battery operated all-wave set" is not an all-wave radio set. It does not have the power and capacity to bring in all-wave radio programs from wherever broadcast, and it is impossible with this one-tube battery set to "tune in the world." This set does not have the power and capacity to bring in radio programs broadcast from stations located throughout the world.

Respondent's radio receiving sets designated as "Two-tube AC-DC Kit" and "Two-tube AC-DC set" are not two-tube radio receiving sets. These sets are not equipped with two fully functioning tubes. They are in fact equipped with one detecting, amplifying, or receiving tube and with one tuning tube or rectifying tube. The tuning or rectifying tube does not serve as an amplifying or detecting tube, and does not perform any recognized and customary function in a radio set in the detection, amplification, and reception of radio signals or radio broadcasts.

PAR. 6. The aforesaid false and misleading statements and representations made by respondent in describing its radio receiving sets and radio parts were and are calculated to, and have had and now have the tendency and capacity to and do, mislead, and deceive a substantial number of members of the purchasing public into the mistaken belief that such representations are true. As a result of such mistaken belief, such members of the purchasing public have purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to respondent from its competitors; and, as a consequence thereof, injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The 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.

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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, certain facts agreed upon by respondent and counsel for the Commission and read into the record at a hearing before an examiner of the Commission theretofore duly designated by it, and brief filed in support of the complaint, 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 respondent, Radio Wire Television, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution of radio receiving sets, parts, or accessories in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's radio receiving set designated as "One-tube battery operated all-wave set" has the power or capacity to "tune in the world" or bring in radio programs from wherever broadcast; or that said set or any other receiving set has power or capacity to receive broadcast programs in excess of its actual power and capacity to receive such programs.

2. That respondent's radio receiving sets designated as "Two-tube AC-DC kit" and "Two-tube AC-DC set" are two-tube sets; or that said sets or any other receiving sets have a number of tubes in excess of the actual number of fully functioning tubes in such sets which perform recognized and customary functions in the detection, amplification and reception of radio signals or programs.

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.

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IN THE MATTER OF

THE SEAMLESS RUBBER COMPANY

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

Docket 4509. Complaint, May 27, 1941—Decision, June 2, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of electrical heating pads composed principally of flat, flexible networks of fine wire embedded in asbestos or rubber with one or more built-in automatic heating thermostats, a four-position switch labeled "Off," "L," "M," and "H," extension cord and plug; by means of advertisements disseminated through the mails, circulars, and leaflets, and in catalogues and other advertising literature, directly or by inference—

Represented that its said heating pads were capable of generating three different sustained levels of temperature, and that temperature thereof might be controlled and the desired uniform heat obtained simply by setting the switches at points marked "L," "M," or "H";

The facts being that temperature of said pads could not be thus controlled, but if connected and turned on, the pads eventually attained the maximum temperature and were thermostatically controlled at said level, regardless of how the switches were set, sole function of which was to regulate the wattage of electric current used by the pads and thus control to some extent the speed with which the maximum temperature would be attained;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said advertisements were true, thereby inducing it 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. James M. Hammond for the Commission.

Mr. William F. Davis, Jr. and *Mr. Benjamin H. Dorman*, of Boston, Mass., and *Mr. Richard A. Mahar*, of Washington, D. C., for respondent.

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 The Seamless Rubber Co., 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Seamless Rubber Co., is a corporation, organized, existing, and doing business under and by virtue