

Syllabus

IN THE MATTER OF

ZENITH RADIO CORPORATION

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

Docket 4174. Complaint, July 6, 1940—Decision, Oct. 12, 1942

Where a corporation, engaged in manufacturing and assembling radio receiving sets, radio tubes and similar products, and in interstate sale and distribution thereof; by means of advertisements in newspapers and magazines, folders and circulars, and also through radio broadcasts—

- (a) Represented, directly or by implication, that its radio sets were capable of bringing in programs broadcast from Europe, South America, and the Orient every day, and that such programs would be reasonably audible and distinct at all times and under all conditions, through such typical statements as "EUROPE IS TALKING TO YOU Every Night IN ENGLISH—ARE YOU LISTENING? With Zenith, the short-wave radio that gives you 'Europe, Direct' you can hear all the leaders * * * all the daily news broadcasts * * * Europe, South America, or the Orient every day guaranteed or your money back on all short-wave Zeniths";

The facts being that there are times when, due to atmospheric conditions, electrical disturbances, and other obstacles which the industry has so far been unable to overcome, satisfactory reception of foreign broadcasts is impossible and neither its or any other sets are capable of providing such reception at all times or under all conditions;

- (b) Represented, directly or by implication, through such typical statements as "6-Tube Superheterodyne Table Model," "8-Tube Superheterodyne With Wavemagnet Aerial," etc., that sets advertised by it as containing 6 or 8 tubes contained said number of necessary and fully functioning tubes for the detection, amplification, and reception of radio signals;

The facts being that one of such devices in certain sets was not a tube but merely a tuning indicator, and one or more of the others were rectifier tubes which, while serving the auxiliary function of changing alternating into direct current, do not perform the primary function of detecting, amplifying, or receiving radio signals, and a substantial portion of the purchasing public does not distinguish between tubes which perform such primary functions and rectifier tubes and tuning indicator devices which perform only auxiliary functions, but believes that the greater the number of tubes, the greater will be the set's power;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said radio receiving sets possessed capacities which they did not in fact possess, thereby causing its purchase of such sets:

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

As respects the extent of the public understanding of the limitations on foreign short-wave radio reception—in connection with advertiser-seller's direct or implied representations that its sets were capable of bringing in programs

Complaint

35 F. T. C.

broadcast from Europe, South America, and the Orient every day, and that such programs would be reasonably audible and distinct at all times and under all conditions, and the advertiser-seller's insistence that the purchasing public is fully acquainted with the fact that there are times when atmospheric conditions, electrical disturbances, and other obstacles prevent satisfactory reception of foreign broadcasts—the public, while it may be to a limited extent aware of some of the difficulties encountered in radio reception, does not possess sufficient information to enable it properly to evaluate representations in question, which were couched in such language as to lead it to believe that advertiser-seller had succeeded in overcoming the conditions which would interfere with satisfactory reception.

Before *Mr. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

Mr. Carrel F. Rhodes and *Mr. Edward L. Smith* for the Commission.

Montgomery, Hart, Pritchard & Herriot, of Chicago, Ill., 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 Zenith Radio Corporation, 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, Zenith Radio Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 6001 West Dickens Street, Chicago, Ill.

Respondent is now and has been for more than 10 years last past engaged in the business of manufacturing and assembling radio receiving sets, radio tubes, and like products, and in selling and distributing said products to dealers for resale direct to the purchasing public. Said respondent corporation sells and distributes said products to dealers for resale and to buyers among the purchasing public throughout the United States and in the District of Columbia. Said respondent now causes and for more than 10 years last past has caused its said products when sold either to dealers for resale or direct to the purchasing public to be transported from its principal place of business in Chicago, Ill., to the purchasers thereof at their several points of location in the State of Illinois and in the various States of the United States other than the State of Illinois and in the District of Columbia.

There is now, and has been at all times mentioned herein, a course of trade in said products so sold and distributed by said respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of the business set out and described in paragraph 1 hereof, for the purpose of inducing the purchase of the radio receiving sets, radio tubes, and like products offered for sale and sold by it, the respondent has circulated, and has caused dealers in its products to circulate, among prospective purchasers throughout the United States, by mail, advertisements in newspapers and magazines, by means of advertising folders, pamphlets, circulars, letters, and other literature, and by broadcasts from radio stations with sufficient power to convey the programs emanating therefrom into the various States of the United States, many statements and representations concerning its said radio receiving sets. In many of said programs so broadcast and in the advertising literature so disseminated, said respondent has made, and has caused dealers to make, false and misleading statements and representations in describing said radio receiving sets and their power and capacity for reception, and the number of active functioning tubes in said radio sets. Among said statements and representations so made and circulated by respondent and its dealers, under its direction, are the following:

London, Paris, Berlin, Moscow, Rome now broadcast in English!

Zenith Short-Wave Radios are guaranteed to bring in Europe, South America, or the Orient every day or your money back! * * *

Long distance radios with short-wave are guaranteed to bring in Europe or your money back. Way back in 1923 Zenith was pioneering in short-wave radio to make possible today's superlative performance * * *.

Positively the greatest 1940 Zenith values ever offered * * * ten-tube superheterodyne * * * eleven-tube superheterodyne * * * radio console with eight tubes * * * the amazing new 1940 eight-tube, three band Radiorgan Zenith long distance radio * * * six tubes! Push buttons! Long and short-wave * * * six-tube heterodyne with wave magnet aerial, two-button Radiogram.

The aforesaid statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of said respondent's Zenith Short-Wave radio receiving sets; the number of necessary functioning tubes with which they are equipped and the power and capacity for foreign reception of said radio receiving sets, and serve as representations on the part of the respondents to members of the purchasing public and to dealers that said radio receiving sets are equipped, some with 6, some with 8, some with 10, and some with 11, active, fully functioning tubes; and that said radio receiving sets have the power and capacity to and will bring in programs broadcast from stations located in Europe,

South America, and the Orient every day and that they are guaranteed to and will bring in broadcasts from London, Paris, Berlin, Moscow, Rome, and points in South America and the Orient in sufficient volume, free from static, so as to be distinctly heard at all times and under all conditions.

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.

PAR. 3. In truth and in fact respondent Zenith Radio Corporation's aforesaid Zenith radio receiving sets are not equipped with 6, 8, 10 or 11, active, necessary, fully functioning tubes, respectively, but have installed therein 1 or 2, or more ballast nonfunctioning, or tuning beacon tubes, or rectifier tubes. Such ballast or tuning beacon tubes, or rectifier tubes, devices and accessories do not serve as amplifying, detecting, or oscillating tubes and do not perform any recognized and customary function of a radio receiving tube in the detection, amplification, and reception of radio signals and said Zenith radio sets equipped with such radio tubes will not bring in broadcasts from London, Paris, Berlin, Moscow, Rome, and other points in Europe and from South America and the Orient in sufficient volume, free from static, to be distinctly heard at all times and under all conditions.

PAR. 4. Each and all of the foregoing false and misleading statements and representations made by the respondent as aforesaid, in describing said Zenith radio receiving sets and their power and capacity for foreign reception and the number of tubes contained therein, 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 portion of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of this erroneous and mistaken belief a substantial number of the purchasing public have purchased a substantial volume of respondent's said products.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public 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 July 6, 1940, issued and subse-

Findings

quently served its complaint in this proceeding upon the respondent, Zenith Radio Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before trial examiners of the Commission theretofore duly designated by it, and such 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 the complaint, the answer thereto, and testimony and other evidence (the report of the trial examiners and briefs and oral argument having been waived); 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. The respondent, Zenith Radio Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 6001 West Dickens Street, Chicago, Ill. Respondent is now and for a number of years last past has been engaged in the business of manufacturing and assembling radio receiving sets, radio tubes and similar products, and in the sale and distribution of such products to dealers for resale to the purchasing public.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its 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 has maintained a course of trade in its products 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 business and for the purpose of inducing the purchase of its products by the public, respondent has circulated and has caused its dealers to circulate numerous advertisements among prospective purchasers, such advertisements being disseminated by means of newspapers and magazines, and also in advertising folders and circulars distributed to the public. Use has also been made by respondent of radio broadcasts in its advertising campaigns. Among and typical of certain of the statements appearing in respondent's advertisements are the following:

EUROPE IS TALKING TO YOU Every Night in ENGLISH ARE YOU LISTENING?

With Zenith, the short wave radio that gives you "Europe, direct" you can hear all the leaders * * * all the daily news broadcasts. You need not depend on rebroadcasts which bring you only a small part.

Europe, South America or the Orient every day guaranteed or your money back on all short wave Zeniths.

1940 ZENITH, The Guaranteed Short Wave RADIO (Com. Exs. 8, 33).

PAR. 4. Through the use of these statements and others of a similar nature, respondent has represented, directly or by implication, that its radio receiving sets are capable of bringing in programs broadcast from stations located in Europe, South America, and the Orient, every day, and that such programs will be reasonably audible and distinct at all times and under all conditions.

In fact, neither respondent's receiving sets nor any other radio receiving sets are capable of providing satisfactory reception of programs broadcast from foreign radio stations every day, or at all times or under all conditions. From time to time there exist various atmospheric conditions, electrical disturbances, and other obstacles to satisfactory radio reception which the radio industry has so far been unable to overcome. There are times when, due to these or other conditions, satisfactory reception of foreign broadcasts is impossible.

It is insisted by respondent that the purchasing public is fully acquainted with these facts and that the advertisements therefore are not misleading. The Commission is of the opinion, however, that while the public is to a limited extent aware of some of the difficulties encountered in radio reception, it does not possess sufficient information to enable it properly to evaluate respondent's representations. Respondent's advertisements are couched in such language as to lead the public to believe that respondent has succeeded in overcoming the various conditions which otherwise would interfere with satisfactory reception.

PAR. 5. Respondent has also made frequent reference in its advertising to the number of tubes contained in its various receiving sets. Typical of these statements are the following:

6-Tube Superheterodyne Table Model (Com. Ex. 3).

8-Tube Superheterodyne With Wavemagnet Aerial (Com. Ex. 3).

Ten-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 2, 3, 4).

Eleven-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 4).

PAR. 6. These statements imply that the tubes contained in the respective receiving sets referred to are active, necessary, and fully functioning tubes, and are for the purpose of performing the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

579

Order

One of the devices in certain of respondent's receiving sets thus referred to as a tube is not in fact a tube but is merely a tuning indicator device or "Magic Eye." Also, one or more of the other devices thus referred to as tubes are "rectifier" tubes which, while serving the auxiliary function of changing alternating electric current into direct current, do not perform the primary function of detecting, amplifying, or receiving radio signals.

A substantial portion of the purchasing public does not distinguish between radio tubes which perform the primary functions of detecting, amplifying, and receiving radio signals, and rectifier tubes and tuning indicator devices which perform only auxiliary functions and do not increase the power of the receiving set to detect or receive radio signals. Such portion of the public believes that the greater the number of tubes in a receiving set, the greater will be its power of detecting, amplifying, and receiving signals.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its receiving sets; as set forth herein, are erroneous and misleading.

PAR. 8. The Commission further finds that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's radio receiving sets possess capacities, qualities, and characteristics which they do not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's receiving sets as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute 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 respondent, and testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it (the report of the trial examiners and briefs and oral argument having been waived), and the Commission having made its findings as to the facts and its con-

EUROPE IS TALKING TO YOU Every Night in ENGLISH ARE YOU LISTENING?

With Zenith, the short wave radio that gives you "Europe, direct" you can hear all the leaders * * * all the daily news broadcasts. You need not depend on rebroadcasts which bring you only a small part.

Europe, South America or the Orient every day guaranteed or your money back on all short wave Zeniths.

1940 ZENITH, The Guaranteed Short Wave RADIO (Com. Exs. 8, 33).

PAR. 4. Through the use of these statements and others of a similar nature, respondent has represented, directly or by implication, that its radio receiving sets are capable of bringing in programs broadcast from stations located in Europe, South America, and the Orient, every day, and that such programs will be reasonably audible and distinct at all times and under all conditions.

In fact, neither respondent's receiving sets nor any other radio receiving sets are capable of providing satisfactory reception of programs broadcast from foreign radio stations every day, or at all times or under all conditions. From time to time there exist various atmospheric conditions, electrical disturbances, and other obstacles to satisfactory radio reception which the radio industry has so far been unable to overcome. There are times when, due to these or other conditions, satisfactory reception of foreign broadcasts is impossible.

It is insisted by respondent that the purchasing public is fully acquainted with these facts and that the advertisements therefore are not misleading. The Commission is of the opinion, however, that while the public is to a limited extent aware of some of the difficulties encountered in radio reception, it does not possess sufficient information to enable it properly to evaluate respondent's representations. Respondent's advertisements are couched in such language as to lead the public to believe that respondent has succeeded in overcoming the various conditions which otherwise would interfere with satisfactory reception.

PAR. 5. Respondent has also made frequent reference in its advertising to the number of tubes contained in its various receiving sets. Typical of these statements are the following:

6-Tube Superheterodyne Table Model (Com. Ex. 3).

8-Tube Superheterodyne With Wavemagnet Aerial (Com. Ex. 3).

Ten-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 2, 3, 4).

Eleven-tube superheterodyne with Rotor Wavemagnet Aerial (Com. Ex. 4).

PAR. 6. These statements imply that the tubes contained in the respective receiving sets referred to are active, necessary, and fully functioning tubes, and are for the purpose of performing the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

579

Order

One of the devices in certain of respondent's receiving sets thus referred to as a tube is not in fact a tube but is merely a tuning indicator device or "Magic Eye." Also, one or more of the other devices thus referred to as tubes are "rectifier" tubes which, while serving the auxiliary function of changing alternating electric current into direct current, do not perform the primary function of detecting, amplifying, or receiving radio signals.

A substantial portion of the purchasing public does not distinguish between radio tubes which perform the primary functions of detecting, amplifying, and receiving radio signals, and rectifier tubes and tuning indicator devices which perform only auxiliary functions and do not increase the power of the receiving set to detect or receive radio signals. Such portion of the public believes that the greater the number of tubes in a receiving set, the greater will be its power of detecting, amplifying, and receiving signals.

PAR. 7. The Commission therefore finds that the representations made by respondent with respect to its receiving sets; as set forth herein, are erroneous and misleading.

PAR. 8. The Commission further finds that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's radio receiving sets possess capacities, qualities, and characteristics which they do not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's receiving sets as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute 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 respondent, and testimony and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it (the report of the trial examiners and briefs and oral argument having been waived), and the Commission having made its findings as to the facts and its con-

clusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Zenith Radio Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's radio receiving sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any of respondent's radio receiving sets will bring in broadcasts from any foreign radio station "every day," or otherwise representing, directly or by implication, that such receiving sets are capable of providing reasonably audible and distinct reception of foreign broadcasts at all times or under all conditions.

2. Representing, directly or by implication, that any radio receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which do not perform the recognized and customary functions of radio receiving set tubes in the detection, amplification, and reception of radio signals.

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

E. B. MOLES, DOING BUSINESS AS MALONE & MOLES

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

Docket 4557. Complaint, Aug. 6, 1941—Decision, Oct. 12, 1942

Where an individual, engaged in interstate sale and distribution of a mechanical automobile device designated by him as "Gas-Miser"; by means of advertisements in newspapers and periodicals and other advertising literature, directly and by implication—

- (a) Represented that his device would supercharge an automobile engine, was a gas and oil saver which increased the mileage, power, speed, and pep of automobiles, saved upkeep and provided easier and quicker starting;
- (b) Represented that the device reduced the thinning-out process in the cylinder oil, eliminated cylinder wash, lengthened the life of the engine, and provided a smoother-running car; and
- (c) Represented that it solved motoring problems, eliminated carbon, distributed gas vapors evenly to all cylinders, and eliminated waste;

The facts being it was incapable of supercharging an automobile engine, or lengthening the life thereof; did not possess the merits and qualities claimed therefor; afforded no solution of motoring problems; and said various representations were false, erroneous, and misleading;

With tendency and capacity of misleading a substantial portion of the purchasing public into the mistaken belief that said device possessed qualities and values which it did not, thereby inducing purchase thereof:

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

As respects evidence offered in support of vendor-advertiser's representations that his device "Gas-Miser" would supercharge an automobile engine and constituted a gas and oil saver which increased mileage, power, etc., which evidence consisted principally of testimony of several members of the public to the effect that they had received beneficial results from use of such device: Said evidence was without substantial probative value where the record contained no definite information with respect to the conditions under which, or the period of time during which, the device was used, and where there was no indication that purported results were checked on other occasions to verify their accuracy; and was insufficient to overcome evidence showing the false and misleading nature of said representations, based on comprehensive tests of the device made by the National Bureau of Standards and the testimony of the expert of the Bureau who supervised them.

Before *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Joseph C. Fehr and *Mr. John W. Carter, Jr.* for the Commission.