

Complaint

IN THE MATTER OF
SETCHELL CARLSON, INC.

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

Docket 5639. Complaint, Feb. 18, 1949—Decision, Feb. 2, 1950

A substantial portion of the purchasing public is not able to, and does not, distinguish or recognize the difference between radio receiving tubes, which perform the primary function of detecting, amplifying, and receiving broadcast radio signals, and rectifiers or "rectifier" tubes, which perform only the auxiliary function of converting alternating current into direct current and which do not increase the power of a radio receiving set to detect, amplify, or receive broadcast radio signals; and believes that the power of a radio receiving set to detect, amplify, and receive broadcast radio signals is increased by the extent to which the number of tubes is increased.

Where a corporation engaged in manufacturing and assembling radio receiving sets, and in the interstate sale and distribution thereof to the purchasing public and to dealers; in advertising their sets through folders, price lists, pamphlets, circulars, and other advertising material—

Represented directly and by implication that some of said sets were equipped with five necessary, active and fully functioning tubes which performed the recognized and customary functions of radio receiving set tubes in detecting, amplifying, and receiving radio signals broadcast by radio transmitters, and that others of such sets were equipped with six such tubes, through such statements as "Five G. T. Tubes, Including Rectifier," "Six G. T. Tubes, Including Rectifier," and others of similar import;

The facts being that one or more of the devices in each of its sets referred to as a tube was not a radio receiving tube and did not perform the recognized and customary function of such a tube in detecting, amplifying, and receiving radio signals broadcast by a radio transmitter, but performed the auxiliary function of converting alternating current into direct current and was known as a rectifier or "rectifier tube," and did not increase the power of the set to detect, amplify, and receive broadcast radio signals;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, and with effect of thereby inducing purchase by it of its said sets:

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

Mr. Charles S. Cox for the Commission.

Smith & Sehm, of St. Paul, Minn., for respondent.

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Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal

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Trade Commission, having reason to believe that Setchell Carlson, 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 Setchell Carlson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at 2233 University Avenue, St. Paul, Minn. The respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing, assembling, selling, and distributing radio receiving sets.

PAR. 2. In the course and conduct of its said business, respondent corporation sells and distributes its radio receiving sets to dealers for resale and to buyers among the purchasing public. Said respondent now causes, and for more than 2 years last past has caused, its said products when sold to be transported from its place of business in St. Paul, Minn., to purchasers thereof located in the various States of the United States other than the State of Minnesota and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of its business for the purpose of inducing the purchase of respondent's radio receiving sets, respondent has circulated by mail, and otherwise, advertising folders, price lists, pamphlets, circulars, and otherwise, many statements and representations concerning its said radio receiving sets. By said means, respondent has made false and misleading statements and representations in describing said radio receiving sets, their power, capacity, and reception, and the number of active, fully functioning tubes in said radio sets. Among such statements and representations so made and circulated by respondent are the following:

Five G. T. Tubes, Including Rectifier.

Six G. T. Tubes, Including Rectifier.

6 Tubes—Including Rectifier.

6 Tubes—2-12SK7, 1-2SA7, 1-12SQ7, 1-50L6, 1-35Z5.

Tubes used are: 1-12SA7, 1-12SK7, 1-12SQ7, 1-50L6, 1-35Z5.

The aforesaid statements and representations together with similar statements and representations of respondent not herein set out, purport to be descriptive of respondent's radio receiving sets, the number of necessary functioning tubes with which they are equipped and serve as representations on the part of the respondent to members of said purchasing public and to dealers that said radio receiving sets are equipped, some with five and some with six active, fully functioning tubes.

A substantial number of the purchasing public believe that radio means the reception and transmission of sound waves and their audible reproduction, and believe that the greater the number of active, fully functioning tubes in the radio receiving set, the better the performance and the greater its power of detection, amplification and reception of sound waves, and a substantial number of the purchasing public buy radio sets under that belief.

PAR. 4. In truth and in fact, the foregoing statements and representations made by the respondent are false, deceptive and misleading. Respondent's aforesaid radio receiving sets are not equipped with five or six active, necessary, fully functioning tubes, respectively, but have installed therein, one or more ballast nonfunctioning, 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, customary function of radio tubes in the detection, amplification and reception of radio signals.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by respondent describing its said radio receiving sets and the number of tubes contained therein, were and are calculated to, and have had and now have the tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true. As a result of these erroneous and mistaken beliefs, a substantial number of the purchasing public have purchased a substantial volume of respondent's radio receiving sets.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the injury and 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 18, 1949, issued and sub-

sequently served its complaint in this proceeding upon the respondent, Setchell Carlson, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. No answer has been filed by respondent. On July 21, 1949, a stipulation as to the facts was entered into by and between the respondent and Daniel J. Murphy, Chief of the Trial Division, subject to approval by the Commission, whereby it was stipulated that the statement of facts set out in said stipulation might be made a portion of the record herein and taken as the facts in this proceeding and in lieu of evidence in support of, and in opposition to, the charges stated in the complaint and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts, including inferences which might be drawn from said stipulated facts, and its conclusion based thereon and enter its order disposing of this proceeding without the presentation or oral argument or the filing of briefs. Respondent expressly waived the filing of a recommended decision by a trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and stipulation. The Commission, having approved, accepted, and filed said stipulation, and having duly considered the matter and 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. Respondent, Setchell Carlson, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2233 University Avenue, St. Paul, Minn. It is now, and for more than 2 years last past has been, engaged in the business of manufacturing and assembling radio receiving sets, which it has sold and distributed, and now sells and distributes, to buyers among the purchasing public and to dealers for resale.

PAR. 2. In the course and conduct of its aforesaid business, respondent causes, and has caused, its said radio receiving sets, when sold, to be shipped and transported from its place of business in the State of Minnesota to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia; and maintains, and at all times mentioned herein has maintained, a course of trade in said radio receiving sets in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. (a) In the course and conduct of its business and for the purpose of inducing the purchase of the radio receiving sets sold and distributed by it, respondent has circulated, by means of the United States mails and by various other means, advertising folders, price lists, pamphlets, circulars, and other advertising material in which it has made various statements and representations with respect to the power and capacity of said radio sets to detect, amplify, and receive signals broadcast by radio transmitters and with respect to the number of necessary, active, fully functioning tubes contained in such radio sets. Among such statements and representations are the following:

Five G. T. Tubes, Including Rectifier.

Six G. T. Tubes, Including Rectifier.

6 Tubes—Including Rectifier.

6 Tubes—2-12SK7, 1-12SA7, 1-12SQ7, 1-50L6, 1-35Z5.

Tubes used are: 1-12SA7, 1-12SK7, 1-12SQ7, 1-50L6, 1-35Z5.

(b) Through the use of the foregoing statements and representations and others of similar import and meaning not set out herein, all of which purport to be descriptive of the radio receiving sets sold and distributed by respondent and of the number of necessary, active, and fully functioning tubes contained in such sets, respondent represents, and has represented, directly and by implication, that some of said sets are equipped with five necessary, active, and fully functioning tubes which perform the recognized and customary functions of radio receiving set tubes in detecting, amplifying, and receiving radio signals broadcast by radio transmitters, and that other of such radio sets are equipped with six such tubes.

PAR. 4. (a) The aforesaid statements and representations are false, misleading, and deceptive. One or more of the devices in each of respondent's respective radio receiving sets referred to as a tube is not a radio receiving tube and does not perform the recognized and customary function of such a tube in detecting, amplifying, and receiving radio signals broadcast by a radio transmitter, but, in fact, performs the auxiliary function of converting alternating current into direct current and is known as a rectifier or "rectifier" tube. Thus, each of respondent's respective radio receiving sets contains one or more rectifiers or "rectifier" tubes which have been designated, described, or referred to as a radio receiving tube. Such tubes do not increase the power of a radio receiving set to detect, amplify, and receive broadcast radio signals.

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(b) A substantial portion of the purchasing public is not able to, and does not, distinguish or recognize the difference between radio receiving tubes, which perform the primary function of detecting, amplifying, and receiving broadcast radio signals, and rectifiers or "rectifier" tubes which perform only the auxiliary function of converting alternating current into direct current and which do not increase the power of a radio receiving set to detect, amplify, or receive broadcast radio signals. Such a portion of the purchasing public believes that the power of a radio receiving set to detect, amplify, and receive broadcast radio signals is increased by the extent to which the number of tubes is increased.

PAR. 5. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that these statements and representations are true and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's radio receiving sets.

CONCLUSION

The acts and practices of respondent as herein found are all to the injury and 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 and a stipulation of facts entered into by and between respondent and Daniel J. Murphy, Chief of the Trial Division, and said stipulation providing among other things, that the statement of facts set forth therein may be made a part of the record herein and taken as the facts in this proceeding and in lieu of evidence in support of, and in opposition to, the charges stated in the complaint and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts, including inferences which may be drawn from said stipulated facts, and its conclusion and enter its order disposing of this proceeding without the presentation of oral argument or the filing of briefs; and respondent having expressly waived a recommended decision by a trial examiner and the Commission having approved and accepted said stipulation of facts and having made its findings as to

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the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Setchell Carlson, Inc., a corporation, its officers, agents, representatives, 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 any radio receiving set, do forthwith cease and desist from directly or indirectly representing that any such radio receiving set is equipped with or contains a designated number of tubes or is of a designated tube capacity unless each and every one of the tubes referred to is capable of performing the recognized or customary function of detecting, amplifying, and receiving broadcast 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.

IN THE MATTER OF
NATIONAL MODES, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTIONS C AND D OF SEC. 2 OF AN ACT OF CONGRESS APPROVED
OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5338. Complaint, June 23, 1945—Decision, Feb. 3, 1950

Where 11 concerns engaged in the the manufacture of women's apparel and in the sale thereof to some 14 retailers in large cities, and to numerous other such retailer clients of a purchasing corporation, which acted as their agent, under the direction of individual B and as associated with a company owned by said retailers and said B, in carrying out a group buying and promotion scheme or program, including national advertising, directed to the resale of women's apparel bearing trade-marks and trade names controlled by the corporation, such as "Caroline" and "Jeanne Barrie"; and which were agents or intermediaries acting in fact for such buyers, exclusively engaged in furnishing to them purchasing and other valuable services in return for certain contract service charges which the buyers obligated themselves to pay—

- (a) From June 19, 1936, until 1942, paid or granted allowances to aforesaid buyers, on sales for the buyers' own accounts, through (1) paying to said purchasing corporation sums which were equal or substantially equal to said contract service fees and were accepted in lieu thereof; (2) paying to an advertising agency of said corporations so-called advertising allowances credited to the corporations, which were not used, in whole or part, to advertise the apparel concerned, and which, to the extent not used, were equal or approximately equal to and in lieu of the direct payments above set forth, and similarly credited; and (3) granting discounts or allowances to such buyers which were substantially equal to the direct payments above set out to the then separately collected contract service fees; and after 1942, when such apparel was in short supply, continued such practices in connection with fewer, but many similar transactions; and

Where said intermediaries, namely, (1) said company, organized in 1925 by representatives of a group of women's apparel retailers and said B, to engage in the group buying and promotion of the resale of women's apparel under the aforesaid trade-marks and trade names, the stock of which was owned exclusively by such retailers and B; (2) said purchasing corporation, organized and controlled by B as an instrumentality for the accomplishment of the aforesaid purposes; and (3) B, himself, who was also a director and secretary of said first company and its exclusive agent in the consumation of its purposes—

- (b) Received and accepted from aforesaid sellers allowances or discounts upon purchases made from them in connection with which said intermediaries acted for their buyer-clients, and transmitted such allowances to the buyers in the form of services and benefits undertaken under the aforesaid contracts and arrangements; and,

Where some 14 retailers of women's wearing apparel, and numerous other similar retailer stockholders in said first company—