

Complaint

IN THE MATTER OF

CONTINENTAL RADIO TUBE CO. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5725. Complaint, Dec. 20, 1949—Decision, Apr. 19, 1951*

Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

Where a corporation and its four officers, engaged in the interstate sale and distribution of radio tubes—

- (a) Removed from radio tubes purchased by them the identification number or symbols placed thereon by the manufacturers or others, substituted in lieu thereof other numbers or symbols, and delivered said tubes in commerce as and for the tubes which are commonly identified in the trade by the substituted numbers and symbols;
- (b) Buffed away the service numbers of symbols on war surplus tubes which they had purchased, substituted therefor commercial numbers or symbols, and caused said tubes to be delivered to their customers as the tubes commonly identified by such commercial markings; and
- (c) Falsely represented that they held a license from Radio Corp. of America and that they were master builders of radio tubes, through statements to such effect on cartons packaging their tubes;

With capacity and tendency to mislead and deceive the trade and public in said respects; and with the effect of placing in the hands of purchasers of their tubes for resale, a means whereby they might and did pass on to the ultimate users thereof incorrectly marked and delusively identified 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.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Kia Miller, Baar & Morris, of Chicago, Ill., for respondents.

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 Continental Radio Tube Co., a corporation, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 as its charges in that respect as follows:

PARAGRAPH 1. Respondent, Continental Radio Tube Co., is an Illinois corporation and has its principal office and place of business at 1800 Winnemac Avenue, Chicago, Ill. Respondents, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, are president, vice president, secretary, and treasurer, respectively, of the respondent, Continental Radio Tube Co. Said respondents are now, and for several years last past, have been engaged in selling radio supplies. In the course and conduct of said business, respondents use the trade names Concert Master Radio Tube Co., and Premier Radio Tube Co.

Respondents cause said products, when sold, to be transported from their aforesaid place of business to purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have 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.

PAR. 2. Respondents advertise their said products in trade publications, and sell the bulk of their products to jobbers, retail dealers, and repairmen.

PAR. 3. In the course and conduct of their business as aforesaid, and in promoting the sale of their products, the respondents have engaged in various deceptive and misleading practices. Among those practices, respondents purchase radio tubes from various sources, remove therefrom the identification number or symbol placed on the tubes by the manufacturer thereof, and substitute, in lieu of said number or symbol, another number or symbol signifying a more expensive tube or a tube of current manufacture. Respondents purchase war surplus tubes, buff away the service marking thereon, and substitute therefor a commercial number or symbol, and stamp thereon the legend "Made in U. S. A.," CC. The carton in which respondents package their aforesaid tubes for shipment to the purchasers thereof, are marked by respondents, "Licensed by Radio Corp. of America," or "Licensed by RCA," when in truth and in fact, respondents were never licensed by the Radio Corp. of America.

PAR. 4. By and through the aforesaid acts and practices, the respondents have sold their radio tubes and supplies to the purchasers thereof throughout the United States, who bought said tubes in the erroneous and mistaken belief that said tubes and supplies were correctly marked, and that they were buying current stock of the latest manufacture from a dealer duly licensed by the Radio Corp. of America. By said acts and practices, respondents have also placed in

the hands of the purchasers of their tubes for resale, a means or instrumentality whereby said purchasers may and do pass on to the ultimate users of the tubes and supplies incorrectly marked and identified products.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair or deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated April 19, 1951, the initial decision in the instant matter of trial examiner Clyde M. Hadley, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY CLYDE M. HADLEY, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 20, 1949, issued and subsequently served its complaint in this proceeding upon respondents, Continental Corp. (incorrectly designated in the complaint as Continental Radio Tube Co.), a corporation; and P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of such corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondents filed their answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondents and Randolph W. Branch, for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, counsel having duly waived presentation of proposed findings and conclusions or oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission such stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by said trial examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that

this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Continental Corp. (incorrectly named in the complaint as Continental Radio Tube Co.) is an Illinois corporation with its principal office and place of business now at 551-553 West Randolph Street, Chicago, Ill. During all the times mentioned herein, respondent P. D. Jackson was the president, respondent Jacob L. Gaber, the vice president, respondent Erwin F. Rempert, the secretary and treasurer of said corporation, and until March 31, 1950, respondent Martin Gaber was its manager to carry out the policies formulated by the officers as to advertising and other operations, and since then has been its vice president and participates in formulation of policies. At the present time, neither said P. D. Jackson nor Erwin F. Rempert is in any way connected with such Continental Corp.

PAR. 2. Respondents have been and now are engaged in selling radio supplies, including radio tubes, causing the same, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof in other States and in the District of Columbia, maintaining a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. In conducting said business, respondents have also used the trade names Concert Master Radio Tube Co. and Premier Radio Tube Co. They have advertised their said products in trade publications and sold the bulk of such products to jobbers, dealers, and repairmen.

PAR. 3. In the course and conduct of their business, and in promoting the sale of their products, respondents have purchased radio tubes from various sources, removed the identification numbers or symbols placed thereon by the manufacturers or by others prior to their acquisition by respondents, and have substituted in lieu thereof other numbers or symbols and delivered them in commerce as and for the tubes which are commonly and usually identified in the trade by the numbers and symbols thus substituted. While many of respondents' tubes with the substituted markings were in fact identical with tubes generally so identified, in other instances they were not.

Respondents have also purchased war surplus tubes, buffed away the service numbers or symbols thereon, substituted therefor commercial numbers or symbols, and caused them to be delivered to their customers in commerce as and for the tubes which are commonly and usually identified by such commercial numbers or symbols. Thus, a tube originally bearing the Army number "VT-131" is marked and

1277

Conclusion

offered commercially by them as "12S.K7." Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

Various cartons used by respondents in packaging their tubes shipped in commerce bear the following:

Concert Master

matched

Radio Tubes

Uniformly consistent

Licensed by R. C. A.

Concert Master Radio Tube Co.

Chicago, Ill. U. S. A.

Continental Radio Tubes

Licensed by

Radio Corporation of America

Continental Radio Tubes

designed and engineered by

Master Builders of Radio Tubes

PAR. 4. In truth and in fact, the Army surplus tubes thus sold by respondents with substituted commercial markings are not, as thereby connoted, current stock of recent manufacture; and certain other tubes sold by respondents bearing their substituted identification marks are not, in fact, the items which said substitute markings indicate to the trade and the public. Respondents do not hold and never have held any license from Radio Corporation of America, nor do they manufacture any of the tubes sold by them.

PAR. 5. The aforesaid acts and practices of respondents have had and now have the capacity and tendency to mislead and deceive the trade and the public as to their radio tubes, inducing purchasers to buy the same in the erroneous and mistaken belief that said tubes were correctly marked, were of current stock of the latest manufacture, and were offered by a concern duly licensed by the Radio Corp. of America, and that such corporate respondent is a master builder of radio tubes. By said acts and practices, respondents have also placed in the hands of the purchasers of their tubes for resale, a means or instrumentality whereby said purchasers may and do pass on to the ultimate users thereof incorrectly marked and delusively identified products.

CONCLUSION

The acts and practices of said respondents as herein found 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.

Order

47 F. T. C.

ORDER

It is ordered, That the respondents Continental Co., a corporation, trading under its own or by any other name, and P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, either individually or as officers thereof, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of radio tubes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from the following acts and practices:

1. Removing the manufacturers' or other identifying numbers or symbols on radio tubes purchased by them, substituting in lieu thereof other numbers or symbols, and delivering same to customers in commerce as products to which such substitute identification marks would not truthfully or properly apply, as understood in the trade and by the consuming public.

2. Buffing away the service numbers or symbols on war surplus radio tubes purchased by them, substituting therefor commercial numbers or symbols, and delivering same to customers in commerce, thereby representing directly or inferentially, that such war surplus tubes are current commercial stock of recent manufacture.

3. Representing that respondents have been licensed by Radio Corp. of America to make or distribute tubes, or for any other purpose.

4. Representing, by statement or by implication, that respondents are master builders of radio tubes or that they manufacture any tubes whatsoever.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of April 19, 1951].

Complaint

IN THE MATTER OF

EVERETT J. GRANGER ET AL. TRADING AS GARDNER
& COMPANY

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

Docket 4278. Complaint, Aug. 28, 1940—Decision, May 3, 1951

Where two individuals engaged in the manufacture and interstate sale and distribution of pushcards and punchboards which, bearing explanatory legends or spaces therefor, were designed for use in the sale and distribution of merchandise at retail to the public by means of a game of chance, under a plan whereby the purchaser of a push or punch who, by chance, selected a concealed winning number, secured an article of merchandise without additional cost at much less than its normal retail price, others receiving nothing for their money other than the privilege of a push or punch—

Sold such devices to dealers in candy, cigarettes, clocks, razors, cosmetics, clothing and other merchandise, assortments of which, along with said devices, were made up by said dealers, and exposed and sold by retail purchasers thereof to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied and placed in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of merchandise to the consuming public, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that members of the purchasing public were thus induced to trade with retailers who sold or distributed their merchandise through the use of such devices, and many retailers were thereby induced to trade with manufacturers, wholesalers and jobbers who thus sold and distributed their products; competitors of such retailers were faced with the alternative of using such devices or suffering the loss of substantial trade; and competitors of such suppliers, who did not use said devices, frequently had sales diverted to those who did:

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.

Before *Mr. John W. Addison*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mulliner, Prince & Mulliner, of Salt Lake City, Utah, for Bernice Feitler and Irwin Feitler.

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