

IN THE MATTER OF
NATIONAL ELECTRONIC DISTRIBUTORS ASSOCIATION,
INC. ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6090. Complaint, Apr. 1, 1953—Decision, Nov. 5, 1953

Where some 350 corporations, individuals, and partnerships, engaged in the interstate sale and distribution at wholesale of electronic equipment and supplies, purchased from the manufacturers, in competition with other electronic distributors similarly engaged except insofar as such competition had been lessened, restrained, and forestalled by the acts and practices below set forth; and members, subject to certain requirements as to minimum investment and gross annual dollar volume of business, of an association organized for the stated purpose, among others, of promoting cooperation among members and acquiring and disseminating among them information regarding conditions in the field of manufacture and wholesale distribution of such equipment and supplies; acting through and by means of their association, and its officers and directors, and in some instances between and among themselves—

- (a) Conspired and combined together and with others, and pursued a common and concerted planned course of action to adopt, carry out, and maintain certain policies and trade practices, executed and carried out as below set forth, which tended to and did restrict membership in said association to such distributors as said members were willing to compete with, and to prevent the acquisition of membership by other wholesalers, and

Where said association, officers, directors, and members, pursuant to said policies and practices—

- (b) Caused manufacturers of such equipment and supplies to sell the same only through said members or through established legitimate wholesale distributors recognized by said respondents;
- (c) Urged upon such manufacturers the policy and practice of protecting distributors against a price decline on unsold inventory of such merchandise purchased within 60 days prior thereto; and
- (d) Urged upon such manufacturers the adoption and granting to wholesale distributors of uniform cash discount terms of 2% 10th prox.; and the fixing and maintaining of suggested resale prices for such merchandise reflecting a uniform markup from distributors' costs; and

Where said association members, and, as the case might be, said association, its officers and directors, pursuant to and in furtherance of, and with result of effectuating the aforesaid objectives, policies, and trade practices, and pursuant to the aforesaid combinations, etc.; acting through and by means of said association—

- (e) Agreed to, and to a substantial extent did, formulate, adopt, follow, carry out, and make effective the policies and practices above set out; and agreed to, and did, hold meetings at which aforesaid policies and practices were adopted and agreed to; and

Where the directors of said association—

- (f) Agreed to and did hold regular and special meetings at which aforesaid policies and practices were adopted and agreed to; and

Where the said association members—

- (g) Agreed to and did appoint, through and by means of said association, its officers and directors as standing and special committees to carry out and make effective such policies and practices by various means and methods;
- (h) In a number of instances entered into agreements between and among themselves and with certain manufacturers as to the quantity discounts to be published by such manufacturers and maintained by said members;
- (i) Similarly entered into such agreements to maintain such resale prices and rates of trade discounts in the resale of electronic equipment and supplies as established by manufacturers;
- (j) Similarly entered into such agreements to publish and distribute, and did publish and distribute, substantially identical price lists for radio tubes in the same trade areas;
- (k) By threats of boycott, persuasion, and other means, induced and caused manufacturers and their representatives to agree to refrain from selling their respective lines of electronic equipment and supplies to wholesale distributors who were not members of their association or were not recognized by them as established legitimate wholesale distributors;
- (l) Gave sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agreed to refrain from selling such merchandise to wholesale distributors who were not members of their said association or who were not recognized by them as established legitimate wholesale distributors; and
- (m) Gave sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agreed to and did grant uniform cash discount terms and maintained suggested resale prices reflecting uniform markups from distributors' costs;

Held, That such acts and practices, under the circumstances set forth, were restrictive, compulsive, and coercive; were all to the prejudice of competitors of association members and of the public; had a dangerous tendency unduly to hinder competition and to create a monopoly of various types of electronic equipment and supplies in commerce; and constituted unfair methods of competition therein.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Paul R. Dixon for the Commission.

Mr. Edward L. Smith, of Washington, D. C., represented all respondents, other than the firm of Bruno-New York, Inc., which was represented by *Mr. William W. Prager*, of the firm of Spiro, Felstiner & Prager, of New York City.

Respondents were also represented as follows:

Mr. Glenn Catlin, of Chicago, Ill., for National Electronic Distributors Ass'n, Inc., and various members of said association.

Hoffman & Davis, of Chicago, Ill., for Allied Radio Corp.

Seyfarth & Atwood, of Chicago, Ill., for Walker-Jimieson, Inc.

Masters & Masters, of Portland, Oreg., for Tracey & Co., Inc.

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Mr. William D. Snow, of Toledo, Ohio, for Frank S. Hawley and Helen C. Hawley.

Winer, Einhorn & Somerson, of Philadelphia, Pa., for R. H. Wile.

Mr. Edward F. Rosiny, of New York City, for Hudson Radio & TV Corp. and Terminal Radio Corp.

Marsh, Spaeder, Baur & Spaeder, of Erie, Pa., for Jordon Electronic Co.

Mr. Charles C. Erasmus, of Milwaukee, Wis., for Marsh Radio Supply Co.

Mr. Samuel Fiandach, of Rochester, N. Y., for Rochester Radio Supply Co.

Athearn, Chandler & Hoffman, of San Francisco, Calif., for Millers Radio & Television.

Mr. Dodd M. McRae, of San Francisco, Calif., for Pacific Wholesale Co.

Severson, McCallum & Davis, of San Francisco, Calif., for Sacramento Electronic Supply.

Nilles, Oehlert & Nilles, of Fargo, N. Dak., for Dakota Electric Supply.

Mr. Herbert N. Skidell, of Jamaica, N. Y., for Chanrose Radio Distributors, Inc.

Mr. Irving C. Maltz, of New York City, for National Radio Parts Dist. Co.

Mr. Irving M. Rosen, of New York City, for O. & W. Radio Co.

Mr. Samuel M. Sprafkin, of New York City, for Arrow Electronics, Inc.

Austin & Hinderaker, of Watertown, S. Dak., for Bughardt Radio Supply.

Mr. Morris Siegel, of New York City, for H. L. Dalis, Inc.

Mr. Isaac Putterman, of New York City, for Milo Radio & Electronics Corp.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 1, 1953, issued and subsequently served its complaint on the respondents named and referred

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on November 5, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

to in the caption hereof, charging them with the use of unfair methods of competition and unfair acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby :

1. Admit all the jurisdictional allegations set forth in the complaint. The address and principal office of respondent Association, as stated in Paragraph 1 of the complaint, is 221 North La Salle Street, Chicago, Illinois, due to a recent move is and should be 228 North La Salle Street, Chicago, Illinois; and the office of Executive Secretary of respondent Association as stated in Paragraph 2 of the complaint has been abolished and a new office of Executive Vice President created; and the individually named respondent, Western Electronic Supply Corporation, has been changed to R. V. Weatherford Co., a corporation.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, and each of them, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent National Electronics Distributors Association, Inc., hereinafter referred to as respondent Association or NEDA, is a membership corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 228 North LaSalle Street,

Chicago, Illinois. The membership of said respondent Association, for the purpose of convenience, is divided into twenty-five district chapters, established by its Board of Directors within geographic trading areas fixed by the Board, each of which is composed of members of the respondent Association operating within the designated area of such district chapter. Each district chapter operates under its own rules and regulations for its government, including the election of district officers, a director and an alternate director to serve on the Board of Directors of respondent Association, provided that such rules and regulations do not contravene any of the provisions of the charter, constitution, and by-laws of the Association. Any district chapter may be disbanded by the Board of Directors of said Association when the Board, in its discretion, determines that the existence of such district chapter is not necessary or advantageous for the said NEDA.

The said respondent Association was organized for the stated purpose of advancing the interest of and promoting cooperation among its members, and to acquire and disseminate among its members information regarding conditions in the field of manufacture and wholesale distribution of electronic equipment and supplies.

Membership in said respondent Association is limited to wholesale distributors of electronic equipment and replacement supplies who, generally speaking, maintain a minimum investment in electronic equipment and supplies in their principal warehouse, not on consignment, of \$25,000, and have a gross annual dollar volume of business of at least \$75,000 a year.

PAR. 2. The control direction and management of respondent Association's affairs, policies, practices and actions are vested in respondent Association officers, respondent Association directors, and respondent Association members.

The officers of respondent Association consist of a President, an Executive Vice President, a First Vice President, a Second Vice President, a Secretary, a Treasurer, and a Chairman of the Board, who are, with the exception of the Executive Vice President, members of the respondent Association, and are elected annually by the respondent Association's Board of Directors.

The Board of Directors of respondent Association consists of twenty-five of respondent Association members, who are elected annually by respondent Association members. Respondent Association members in each of the twenty-five district chapters elect one director annually, the aggregate making up the total directorate.

The entire membership of respondent Association for the year 1951-1952 consisted of the list appearing in Appendix (A) attached hereto

and made a part hereof.² The membership of said Association consists of approximately 350 corporations, individuals, and partnerships with the number varying from year to year so that it is impracticable to name as respondents and bring before the Commission each and all of the members of respondent Association without manifest delay and inconvenience. Included among those members listed in Appendix (A) are those members of respondent Association which were named and included by the Commission in the complaint as respondents both individually and as representatives of the entire membership of the respondent Association, and all of the members of respondent Association are made respondents hereto and brought before the Commission in this proceeding by representation; and it is here so found.

PAR. 3. The term "electronic equipment and supplies," as used herein, shall be deemed to mean the various electronic and radio parts, supplies, accessories, attachments, component units and appurtenances, and equipment which are used to construct, resell, replace and improve electronic and radio sets and equipment owned and operated by private persons, radio broadcast stations, laboratories, amateur radio operators and experimenters, commercial and industrial plants, and State and governmental agencies and institutions.

As used herein the term also includes radio communications receivers and transmitters, wire and tape recorders, record changers, amplifiers, loud speakers and other items of public address and sound equipment.

The term "wholesale distributors" or "distributors," as used herein, shall be deemed to mean those persons, firms, partnerships and corporations engaged in the business of purchasing electronic equipment and supplies from manufacturers thereof and reselling said equipment and supplies to retail dealers, governmental agencies, institutions, and others.

The term "manufacturer," as used herein, shall be deemed to mean those persons, firms, partnerships and corporations engaged in the business of manufacturing and selling electronic equipment and supplies.

The term "manufacturers' representatives," as used herein, shall be deemed to mean those persons, firms, partnerships and corporations engaged in the business of acting as selling agents for two or more manufacturers of electronic equipment and supplies, and engaged in the business of selling said equipment and supplies of said manufacturers on a commission basis to wholesale distributors.

PAR. 4. In the course and conduct of their respective businesses, respondent Association members purchase electronic equipment and

² Not published.

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supplies for the purpose of resale, from various manufacturers thereof, and cause such equipment and supplies to be transported to said respondent Association members from the States of origin into the various other States of the United States and in the District of Columbia.

Some of said respondent Association members, likewise in the course and conduct of their respective businesses, resell and distribute such electronic equipment and supplies to purchasers, and as part of said sales transport, or cause to be transported, such equipment and supplies from their respective place of business to said purchasers, some of whom are located in States of the United States other than the State of origin of such equipment, and in the District of Columbia.

PAR. 5. Respondent NEDA, respondent NEDA officers and directors, all aided, abetted, furthered and cooperated with other respondents in establishing and carrying out the understandings, agreements, combinations and conspiracies, hereinafter set forth, and actively participated in furtherance thereof, in the manner and to the extent hereinafter set forth.

PAR. 6. Respondent Association members are in competition with each other and with other electronic distributors, some of whom sell and seek to sell in commerce between and among the several States of the United States and in the District of Columbia, to purchasers, various electronic equipment and supplies which is manufactured and sold to said respondent Association members by manufacturers of such equipment and supplies, except insofar as actual and potential competition has been hindered, lessened, restricted and restrained, and forestalled by the unfair methods and practices hereinafter set forth.

Those wholesale distributors who are in competition with respondent Association members in selling and seeking to sell such electronic equipment and supplies in the manner hereinbefore described, likewise purchase, or seek to purchase, such equipment and supplies from the manufacturers thereof, and as part of such purchases, the said manufacturers transport, or cause to be transported, such equipment and supplies to the various places of business of said competitors which are located in States of the United States, other than the States of origin of such shipment, and in the District of Columbia.

PAR. 7. Respondent Association members, acting through and by means of respondent Association, respondent Association officers, respondent Association directors, and in some instances, acting between and among themselves, since 1947, have, by means of agreements, understandings, combinations and conspiracies between and among themselves, conspired and combined together and with others, and have united in and pursued a common and concerted planned course of action to adopt, carry out and maintain in commerce between and

among the several States of the United States and in the District of Columbia, certain policies and trade practices hereinafter described, which they have executed and carried out by the means and methods hereinafter set forth.

PAR. 8. Among the said policies and trade practices, referred to in the preceding paragraphs, which were so formulated, adopted and put into effect by the respondents, are the following:

(1) A policy and practice which tends to, and does, restrict and confine membership in respondent Association by means of other arbitrary rules or standards, to such wholesale distributors of electronic equipment and supplies as respondent members of said Association membership are willing to compete with in the sale and distribution of said electronic equipment and supplies, and to prevent the acquisition of membership in said respondent Association by other wholesale distributors with whom the said respondent members do not desire such competition;

(2) A policy and practice by respondent Association, respondent Association officers and directors, and respondent Association members, to cause manufacturers of electronic equipment and supplies to sell such equipment and supplies only through respondent Association members or through established legitimate wholesale distributors recognized by respondents;

(3) A policy and practice by respondent Association, respondent Association officers and directors, and respondent Association members, of urging upon manufacturers of electronic equipment and supplies a policy and practice of protecting distributors against a price decline on unsold inventory of such merchandise purchased within sixty days prior to a price decline;

(4) A policy and practice by respondent Association, respondent Association officers and directors, and respondent Association members, of urging upon manufacturers of electronic equipment and supplies the adoption and granting to wholesale distributors uniform cash discount terms of 2% 10th proximate;

(5) A policy and practice by respondent Association, respondent Association officers, and directors, and respondent Association members, of urging upon manufacturers of electronic equipment and supplies to fix and maintain suggested resale prices for such merchandise which reflects a uniform mark-up from distributors' costs.

PAR. 9. Pursuant to, and in furtherance of, and with the result of effectuating the aforesaid objectives, policies, trade practices and purposes of the hereinbefore-mentioned combinations, conspiracies, agreements and common courses of action, respondent Association, respondent Association officers and directors, and respondent Association

members, and each of them, have done and performed, among other acts and things, as follows:

(1) Respondent Association members, acting through and by means of respondent Association, agreed to formulate, adopt, follow, carry out, and make effective, and have to a substantial extent formulated, adopted, followed, carried out, and made effective the policies and practices described in Paragraph 8 hereof;

(2) Respondent Association members agreed to hold, and have held, meetings, at which the aforesaid policies and practices were adopted and agreed to;

(3) Respondent Association directors agreed to hold, and have held, regular and special meetings, at which the aforesaid policies and practices were adopted and agreed to;

(4) Respondent Association members have agreed to appoint, and have appointed, through and by means of respondent Association, respondent Association officers and directors, standing and special committees to carry out and make effective the aforesaid policies and practices by various means and methods;

(5) Respondent Association members, in a number of instances, have entered into agreements between and among themselves and with certain manufacturers as to the quantity discounts to be published by such manufacturers and maintained by said members;

(6) Respondent Association members, in a number of instances, have entered into agreements between and among themselves, to maintain such resale prices and rates of trade discounts in the resale of electronic equipment and supplies, as established by manufacturers;

(7) Respondent Association members, in a number of instances, have entered into agreements between and among themselves, to publish and distribute, and did publish and distribute, substantially identical price lists for radio tubes in the same trade areas;

(8) Respondent Association members, by threats of boycott, persuasion and other means, did induce and cause manufacturers and manufacturers' representatives to agree to refrain from selling their respective lines of electronic equipment and supplies to wholesale distributors not members of respondent Association or not recognized by respondents as established legitimate wholesale distributors;

(9) Respondent Association members give sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agree to refrain from selling said merchandise to wholesale distributors who are not members of respondent Association or who are not recognized by respondents as established legitimate wholesale distributors;

(10) Respondent Association members give sales and other preferences to the types of electronic equipment and supplies sold by manufacturers who agree to grant, and who do grant, uniform cash discount terms, and who do maintain suggested resale prices reflecting uniform mark-ups from distributors' costs.

CONCLUSION

The acts and practices of the respondents, as hereinabove set out, are restrictive, compulsive and coercive, are all to the prejudice of competitors of respondent Association members and to the public, and have a dangerous tendency unduly to hinder competition and to create a monopoly of various types of electronic equipment and supplies in commerce within the intent and meaning of the Federal Trade Commission Act, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent National Electronic Distributors Association, Inc., sometimes hereinafter referred to as respondent Association, a membership corporation, its representatives, its respondent officers, directors and members, directly or indirectly, jointly or severally, or through any corporate or other means or device, in connection with the purchase, offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of electronic equipment and supplies, do forthwith cease and desist from entering into, cooperating in or carrying out any planned common course of action, agreement, understanding, combination or conspiracy, whether express or implied, between any two or more of said respondents or between any one or more of said respondents and any other respondents named or referred to in this order, or with two or more persons not parties hereto, to do or perform any of the following acts, policies or practices:

(1) Restricting membership in respondent National Electronic Distributors Association, Inc., by denying membership therein to wholesale distributors in electronic equipment and supplies for competitive reasons, or for any other reason which departs from respondent National Electronic Distributors Association, Inc.'s then published or generally accepted standards governing admission of new members;

(2) Compelling, or attempting to compel, by any means or method, manufacturers of electronic equipment and supplies, to sell such products solely through members of the respondent National Electronic Distributors Association, Inc., or through established legiti-

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mate wholesale distributors, not members of respondent Association, but recognized by respondents;

(3) Preventing, or attempting to prevent, manufacturers of electronic equipment and supplies from selling such products to any wholesale distributors in same because such wholesale distributors are not members of respondent Association, or because they are not recognized by respondents as legitimate wholesale distributors;

(4) Compelling, or attempting to compel, by any means or methods, manufacturers of electronic equipment and supplies to protect distributors against price decline on unsold inventory, or to grant uniform discounts or terms and conditions of sale;

(5) Adopting, enforcing or utilizing any means or method which has as its purpose or effect the compelling, or attempting to compel, any manufacturer of electronic equipment and supplies to fix or maintain resale prices suggested by respondents;

(6) Originating, compiling, publishing and distributing, or attempting to originate, compile, publish and distribute, by any means or methods, substantially identical price lists for electronic equipment or supplies;

(7) Adopting, enforcing or utilizing any means or methods (including, without limitation, the means and methods referred to in paragraph (6) foregoing) to fix or maintain, or attempt to fix or maintain the prices, terms or conditions of sale at which wholesalers of electronic equipment and supplies offer for sale or sell any such products;

(8) Giving sales or any other promotional preferences to the types of electronic equipment and supplies sold by manufacturers who agree to refrain from selling merchandise to wholesale distributors who are not members of respondent Association or who are not recognized by respondents as legitimate wholesale distributors;

(9) Giving sales, or any other promotional preferences, to the types of electronic equipment and supplies sold by manufacturers who agree to grant and who do grant uniform cash discounts, terms, conditions of sale, or who agree to maintain resale prices, terms or conditions of sale suggested by respondents.

Provided that nothing contained in the foregoing provisions of this order shall be construed to prohibit any of the respondents from acting independently, and not in combination with others, in doing any of the acts prohibited by this order.

It is further ordered, That the respondents 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 said order.

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Order

(Sgd) By EDWARD L. SMITH,
Counsel for all Respond-
ents, and each of them,
other than Respondent,
Bruno-New York, Inc.
Spiro Felstiner & Prager

(Sgd) By WILLIAM W. PRAGER,
Counsel for Respondent,
Bruno-New York, Inc.

Date: October 2, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 5th day of November, 1953.

IN THE MATTER OF
SUNSET APPLIANCE STORES, INC. ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6116. Complaint, Aug. 7, 1953—Decision, Nov. 10, 1953

Where a corporation and its two officers, engaged in the competitive interstate sale and distribution of room air conditioners and television sets; in advertising their said products through radio continuities—

- (a) Represented and implied that they were offering for sale and would demonstrate air conditioners of a nationally known manufacturer in the homes of prospective purchasers free of charge and without obligation to purchase; that said air conditioners were thoroughly reconditioned and rebuilt and delivered in reconditioned and repolished cabinets; and that they were available for immediate sale; and
- (b) Represented and implied that they were offering for sale and would give free demonstration of television sets of well-known national manufacturers at the homes of prospective purchasers without obligation to purchase; that said sets were completely rebuilt and reconditioned, with beautiful repolished cabinets; were available at greatly reduced prices and would be delivered to the homes of prospects either within an hour of or on the day following receipt of telephonic inquiries or requests for demonstrations; and urged prospects to call for such demonstration immediately upon hearing the broadcast, for the reason that the supply was limited;

The facts being that said offers to demonstrate were not made in good faith but to obtain, for their salesmen, names and addresses of interested persons; said salesmen did not bring with them appliances described—of which respondents had no supply whatsoever—but represented such products as inferior and undesirable and urged prospects to purchase others at substantially higher prices; and respondents failed to answer a substantial number of requests for demonstration; to deliver specific orders for the air conditioner advertised or to deliver promptly or within a reasonable time television sets, sold by their salesmen, which were brands not generally known, offered and sold at substantially higher prices than those advertised, and which, neither completely nor thoroughly reconditioned and rebuilt, and either functioning imperfectly or not at all, they failed or refused to put in proper working order:

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

Mr. Michael J. Vitale for the Commission.

Mr. Harry Kwestel, of New York City, for respondents.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on August 7, 1953, issued and subsequently served its complaint upon respondents Sunset Appliance Stores, Inc., a corporation, and Joseph Rudnick and Morris Sobel (erroneously named in the complaint as Lawrence Sobol) individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

(1) Admit all the jurisdictional allegations set forth in the complaint. Respondent Morris Sobel was erroneously named in the complaint as Lawrence Sobol. Respondents agree that the name Morris Sobel may be substituted for the name Lawrence Sobol, with the same effect as if the said Morris Sobel had been named in the complaint.

(2) Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of the law.

(3) Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on November 10, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sunset Appliance Stores, Inc., is a corporation chartered and doing business under the laws of the State of New York, with its principal place of business located at 92-24 Queens Boulevard, Rego Park, Long Island, New York. Respondents Joseph Rudnick and Morris Sobel (erroneously named in the complaint as Lawrence Sobol) are respectively President and Secretary and Vice President and Treasurer of said corporation. These individuals formulate, direct and control the activities, and policies of said corporate respondent. Their office and principal place of business is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been engaged in the sale and distribution of appliances including, among others, room air conditioners and television sets. In the course and conduct of their business, respondents cause and have caused their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said products in commerce among and between the various States of the United States, and such course of trade has been and is substantial.

PAR. 3. Respondents are now, and at all times mentioned herein have been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the sale and distribution of appliances and other products intended for the same use and purpose as the products sold and distributed by respondents.

PAR. 4. In the course and conduct of their business as aforesaid, respondents, for the purpose of inducing the purchase of their said merchandise have made certain representations and statements concerning said merchandise. Said statements and representations have been and are disseminated by respondents to prospective purchasers by means of radio continuities transmitted over radio stations having sufficient power to carry them across State lines. Among and typical of such statements and representations, but not all inclusive, are the following:

* * * Friends, why suffer with the heat * * * when for just \$99, you can actually own a powerful, modern MITCHELL Air Conditioner! A full-size MITCHELL Room Air Conditioner, thoroughly reconditioned and rebuilt * * * delivered to your home, in a beautiful reconditioned and repolished cabinet! Phone for your FREE Home Demonstration, no cost or obligation * * *.

* * * here's thrilling news from Sunset Appliance Stores * * * As a "World Series Special" and for a short time only Sunset has slashed the price of big

name television to just \$59 for Admiral, Westinghouse, Philco, Motorola, and Dumont Television * * * Each set is completely reconditioned in a beautifully repolished cabinet * * * only \$59 for big name television that will thrill you with sharp clear pictures * * * Sunset says try before you buy. Within an hour. In time for the World Series you can have free demonstration in your home * * * without obligation. If you don't think the big name set for \$59 is the greatest bargain in TV, Sunset will thank you for the privilege of demonstration * * * Supplies are limited * * * so call now for your free home demonstration * * *

* * * How would you like to own a big name television set for \$68? Yes, Sunset offers you wonderful reconditioned Big Name television sets for \$68.—This is your chance to get in on the biggest TV buy of all time. All you have to do is call Hickory 6-400 or visit one of the five Sunset stores in the metropolitan area. Call right now—you can have a big name television set you'll be proud to own for only \$68. A rebuilt, reconditioned receiver in a beautifully repolished cabinet * * * sharp, clear pictures, excellent performance.—Call Sunset right now—your set will be delivered tomorrow.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, respondents represent and imply and have represented and implied to the purchasing public that they are offering for sale and will demonstrate air conditioners of a nationally known manufacturer in the homes of prospective purchasers free of charge and without obligation to purchase; that said air conditioners are thoroughly reconditioned and rebuilt and delivered in reconditioned and repolished cabinets. That they are available for immediate sale.

Respondents further represent and imply and have represented and implied as aforesaid, that they are offering for sale and will give free demonstrations of television sets of well-known national manufacturers at the homes of prospective purchasers without obligation to purchase; that said television sets are completely rebuilt and reconditioned with beautifully repolished cabinets, are available at greatly reduced prices and will be delivered to the homes of said prospects either within an hour of, or on the day following, the receipt of telephonic inquiries or requests for demonstrations; that prospects are urged to call for said demonstrations immediately upon hearing said radio broadcasts for the reason that the supply of said television sets is limited.

PAR. 6. The statements and representations as set forth in Paragraph Four hereof were and are false, misleading and deceptive. In truth and in fact, respondents said offers to demonstrate air conditioners of well-known make and television sets of nationally known manufacture are not made in good faith but for the purpose of obtaining the names and addresses of persons who, in responding to said radio advertisements, indicate an interest in said electric appli-

Conclusion

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ances and thereby become prospective purchasers who are visited by respondents' salesmen. Moreover, said salesmen, when calling upon prospects do not bring with them any air conditioners or television sets described in said broadcasts for demonstration purposes, but on the contrary, represent that the appliances specifically named in said broadcasts are inferior and undesirable and that said prospects should purchase other air conditioners and television sets substantially higher in price.

Furthermore, a substantial number of inquiries of requests for demonstrations made in response to said radio advertising are not answered by respondents. When respondents receive specific orders for said Mitchell air conditioner, they fail to sell and deliver said appliance to the persons ordering the same. When television sets are sold by respondents' salesmen, deliveries thereof are not made promptly or within a reasonable time but only after delays and repeated inquiries by the purchasers thereof.

The nationally known brands of television sets specifically named in said radio broadcasts are not offered for sale by respondents' salesmen and the sets offered and sold at substantially higher prices than those stated in said broadcasts are brands not generally known to the purchasing public.

Respondents do not have a limited supply of said appliances but on the contrary, have no supply whatever of the brands specifically named by them. Moreover, the television sets sold by them are not completely or thoroughly reconditioned and rebuilt and either function imperfectly or not at all and respondents fail or refuse to put in proper working order said television sets so sold and installed by them.

PAR. 7. The use by respondents of the aforesaid false, deceptive and misleading statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial number of prospective purchasers of respondents' products into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result, substantial trade in commerce has been unfairly diverted to respondents from their said competitors, and as a consequence thereof, substantial injury has been and is being done to competition in commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and

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Order

unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Sunset Appliance Stores, Inc., a corporation, and its officers, and Joseph Rudnick and Morris Sobel, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of television sets or other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That any product is offered for sale when such offer is not a bona fide offer to sell the product so offered.

2. Offering for sale or demonstration any television set or other appliance unless such set or appliance is in stock or otherwise available to customers under the conditions stated in such offer and at such price as may be designated therein.

3. That air conditioners, television sets or other electric appliances will be demonstrated in the homes of prospective purchasers or will be demonstrated without charge or obligation, contrary to the fact.

4. That air conditioners, television sets or other electric appliances are completely or thoroughly reconditioned or rebuilt or are in perfect working order when such is not the fact.

It is further ordered, That respondents 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 this order.

Sunset Appliance Stores, Inc.

(Sgd) By Morris Sobel, Pres.

(Sgd) Joseph Rudnick

Joseph Rudnick, individually and
as Officer of Sunset Appliance
Stores, Inc., a corporation.

(Sgd) Morris Sobel

Morris Sobel, individually and as
Officer of Sunset Appliance
Stores, Inc., a corporation.

Date: Oct. 19, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 10th day of November, 1953.

IN THE MATTER OF
GARDEN RESEARCH LABORATORIES ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6093. Complaint, Apr. 17, 1953—Decision, Nov. 13, 1953

Where a corporation and its president, engaged in the competitive interstate sale and distribution of a chemical fertilizer, designated "RX-15", designed for use as a liquid fertilizer by the addition of water; its advertising agency; and the secretary-treasurer of the corporate manufacturer of its said "RX-15" and the owner or controller of 50% of its stock; through advertisements in newspapers of national circulation and radio broadcasts—

- (a) Falsely represented that "RX-15" was the scientific designation of a plant food and that the product was the result of atomic research and a new discovery or new product; and
- (b) Represented that scientists at a Michigan college and at Rutgers University discovered said product in their laboratory and conducted tests and published records with respect thereto and that scientists at said University made photographs showing the results of said tests;

The facts being that liquid fertilizers have been known and experimented with for years; said product was not discovered by scientists at any educational institution; and while such fertilizers have recently been made in sufficiently large quantities as to be available to the retail trade, and persons identified with colleges, universities, and agricultural experimental stations have conducted tests and made reports on the effectiveness thereof and photographs were made in connection with tests conducted at Rutgers, the liquid fertilizer used therefor was not said product;

- (c) Represented that photographs used by them in their advertising were taken by the U. S. Atomic Energy Commission, were reproduced by them in their advertisements with the special permission of said Commission, and that a photograph designated as "Atomic Photograph" and "Test No. 1" was taken 15 minutes after plant food was applied to the roots of the plant;

When in fact the photographs used were not taken by said commission; they did not authorize them to use any photographs in their advertisement; and the photograph last referred to above was taken one hour after plant food was applied to the roots and not, as claimed, after 15 minutes;

- (d) Falsely represented that their product contained radioactive materials; the facts being that while radioactive isotopes were used in the tests referred to, to trace the pattern of a plant nutrient so as to determine the rate of accumulation of liquid fertilizer, they are not intended to benefit plants in any way; while isotopes used as tracers by scientists at Rutgers were made available to them by said commission, it was in no way connected with the tests; and photographs made in connection therewith were taken to show through radioactivity results obtained with liquid fertilizer;
- (e) Represented that through the use of said product anyone could produce an abundance of flowers and vegetables on a small patch of ground with little or no work, merely by sprinkling plants with water containing said product,