

Decision

IN THE MATTER OF
EMERSON RADIO AND PHONOGRAPH CORPORATION
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6614. Complaint, Aug. 20, 1956—Decision, May 18, 1957

Consent order requiring a manufacturer of radios in Jersey City, N.J., to cease representing falsely in advertising in newspapers, periodicals, etc., and in advertising matter furnished to dealers, that its products were "transistor" radios, did not contain vacuum tubes, and were the smallest pocket radios ever made.

Edward F. Downs, Esq. in support of the complaint.

Marw Leva, Esq., and *Alexander B. Hawes, Esq.*, of the firm of *Fowler, Leva, Hawes & Symington*, of Washington, D.C., for the respondent.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued August 20, 1956, charges the respondent Emerson Radio and Phonograph Corporation, a corporation existing by virtue of the laws of the State of New York, with violation of the Federal Trade Commission Act in connection with the offering for sale, sale or distribution of radios in commerce, as "commerce" is defined in said Act.

After the issuance of said complaint, respondent entered into an agreement for consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and the Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the Hearing Examiner or the Commission, the making of findings of fact or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the Hearing Examiner and the Commission to which respondent may be entitled under the

Order

53 F.T.C.

Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement, respondent further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondent Emerson Radio and Phonograph Corporation, is a corporation existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 14th and Coles Streets, Jersey City, New Jersey.

The Hearing Examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent, Emerson Radio and Phonograph 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 or distribution of radios in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that radios containing vacuum tubes are "transistor radios" or that they do not contain vacuum tubes.
2. Representing that certain of its radios are the smallest radios on the market unless such is the fact.

1047

Decision

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of May, 1957, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF
CHESTNUT FARMS CHEVY CHASE DAIRY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE
CLAYTON ACT

Docket 6465. Complaint, Nov. 21, 1955—Decision, May 21, 1957

Order requiring a large manufacturer and distributor of dairy products in Washington, D.C., to cease discriminating in price in violation of sec. 2(d) of the Clayton Act through granting advertising allowances to some of its customers on unequal terms and paying none at all to other customers, competing with those favored.

Mr. Andrew C. Goodhope and Mr. Frederic T. Suss for the Commission.

Whiteford, Hart, Carmody & Wilson, of Washington, D.C., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint in this matter issued November 21, 1955, charging respondent with granting advertising allowances to some, but not to all, of its customers competitively engaged in the resale of respondent's products in violation of subsection (d) of section 2 of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act. Answer filed January 20, 1956, admitted descriptive and jurisdictional facts but denied the substance of the charge. After various postponements, hearing for the reception of evidence was held May 14, 1956, at which time the case in support of the complaint was completed, motion to dismiss made and denied, and, on June 4, 1956, respondent offered its evidence and the case was completed on that day, resulting in a transcript of 313 pages and 13 exhibits. The case was then closed for proof taking, counsel for both sides having waived the right to submit proposed findings and conclusions, and the hearing examiner now, upon consideration of the record, makes the following:

FINDINGS OF FACT

1. Respondent is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2535 Pennsylvania Avenue, N.W., Washington, D.C. Respondent's correct corporate name is not that given in the caption, but is Chestnut Farms-Chevy Chase Dairy Company.