

IN THE MATTER OF
SIDNEY FINK ET AL. DOING BUSINESS AS MAJOR
BRAND TUBE CO., ETC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7019. Complaint, Dec. 31, 1957—Decision, June 7, 1958

Consent order requiring mail order sellers with office in Harrison, N.J., to cease representing falsely in newspapers and other advertising media that all the receiving radio and television tubes listed in their advertisements were new, unused, and of first quality; that they tested and had tested all the tubes they sold; that the cathode-ray picture tubes they offered were new; and failing to disclose in said advertisements, on cartons, on tubes, or in invoices or shipping memoranda, that some of their receiving tubes were used, factory seconds and rejects, or that the cathode-ray tubes contained used envelopes or shells.

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder* for the Commission.

Mr. Jack E. Brown, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on December 31, 1957, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents, Sidney Fink and Jack Fink, individuals doing business as Major Brand Tube Co., Teltron Electric Co., Video Electric Co. and Solar Electronics. The complaint charges respondents with having violated in certain particulars the provisions of said act. The respondents were duly served with process.

On April 7, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an agreement containing consent order to cease and desist, which had been entered into by and between respondents, their counsel, and counsel supporting the complaint, under date of April 1, 1958, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and an Assistant Director of that Bureau.

On due consideration of the said agreement containing consent order to cease and desist, the hearing examiner finds that said agreement, both in form and in content, is in accord with section

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3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed that:

1. Respondent Sidney Fink is an individual doing business as Major Brand Tube Co., Teltron Electric Co., Video Electric Co., and Solar Electronics, with his office and principal place of business located at 428 Harrison Avenue, in the city of Harrison, State of New Jersey.

According to the affidavits attached to the agreement and made a part thereof, respondent Jack Fink has had no part in the formulation, direction or control of the policies, practices and acts of said businesses. It is accordingly recommended that the complaint should be dismissed as to this individual respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 31, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law;

(c) All of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law, as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondent; that when so entered it shall have the same force and

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effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said agreement containing consent order to cease and desist, the latter is hereby approved, accepted and ordered filed, if and when it shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement containing consent order to cease and desist that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondent signatory to the agreement, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Sidney Fink, individually and doing business as Major Brand Tube Co., Teltron Electric Co., Video Electric Co., Solar Electronics, or under any other name, and respondent's representative, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used tubes and factory rejects or seconds and cathode-ray tubes containing used parts 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 any used products or products containing used parts, are new;
2. Representing, directly or by implication, that any factory rejects or seconds are first-quality, provided, however, that nothing herein will prohibit respondent from representing the true or actual quality thereof;
3. Representing, directly or by implication, that respondent has tested said products, unless such is the fact;
4. Failing to clearly disclose with respect to tubes which are used or factory rejects or seconds, in advertising, on the cartons in which the tubes are packaged, on invoices and shipping memoranda and on the tubes themselves, that such tubes are used or are factory rejects or seconds; or

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5. Failing to clearly disclose in advertising, on the cartons in which they are packaged, on invoices and shipping memoranda and on such tubes themselves, that such cathode-ray tubes contain used envelopes or shells, or any other used parts, when such is the fact.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Jack Fink.

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 7th day of June 1958, become the decision of the Commission; and accordingly:

It is ordered, That the above-named respondents except respondent Jack Fink 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
R. H. WHITE CORP.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6884. Complaint, Sept. 11, 1957—Decision, June 9, 1958

Order dismissing complaint charging misbranding of fur products in violation of the Fur Products Labeling Act for the reason that the practices complained of were discontinued over a year before it was filed and there was no likelihood that they would be resumed in the future.

Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth supporting the complaint.

Mr. Richard K. Lyon of Lyon, Wilner & Bergson, of Washington, D.C. for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On September 11, 1957, the Federal Trade Commission issued a complaint charging respondent with misbranding and falsely and deceptively invoicing and advertising fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After service of the complaint on respondent, respondent by and through its attorneys, filed an answer and motion to dismiss the complaint. Respondent admitted and explained the violations charged against it and, as grounds for its motion to dismiss, stated the following:

During the early part of 1956, respondent entered into an arrangement with S. Mann Furs, Inc. of New York, N.Y., a manufacturer of fur products, whereby Mann would ship fur products to respondent on consignment for promotion and sale in the basement of respondent's department store in Boston, Mass. (At that time and prior thereto respondent also conducted a highly reputable fur business in its upstairs fur department.) Mann agreed to pay for transportation and promotional advertising and to accept the return of any fur products not sold. Mann's personnel were to supervise and assist in the pricing and selling of the furs and respondent was to pay only for the merchandise actually disposed of during the promotion.