

Decision

IN THE MATTER OF
THE FRY KING CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7029. Complaint, Jan. 14, 1958—Decision, July 12, 1958*

Consent order requiring New York City manufacturers of small household electrical appliances, including deep fat fryer-cookers and fry pan skillets, to cease representing falsely in advertising and upon cartons packaging the appliances, which were disseminated to purchasers for use in retail sale, that an exaggerated and fictitious price was the usual retail price; that certain of their appliances had been approved or guaranteed by Good Housekeeping magazine; and, through prominent use of the word "Westinghouse," that their appliances were manufactured by Westinghouse Electric Corporation.

Ames W. Williams, Esq., for the Commission.

Louis Drell, Esq., of New York City, for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 14, 1958, charging them with having violated the Federal Trade Commission Act by fictitious pricing and falsely representing that their products have been approved by Good Housekeeping magazine and manufactured by the Westinghouse Electric Corporation. Respondents entered into an agreement, dated March 20, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity

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of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent The Fry King Corporation is a corporation existing and formerly doing business under and by virtue of the laws of the State of New York, with its office and principal place of business formerly located at 110 East 129th Street, in the city of New York. An assignment for the benefit of its creditors was made by the corporate respondent prior to the issuance of the complaint in the premises.

Respondents Max Fain and Isaac Steinbook are individuals and officers of the corporate respondent, serving respectively as president and secretary, with their office and principal place of business located at the same place as that of corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject-matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, The Fry King Corporation, a corporation, and its officers, and Max Fain and Isaac Steinbook,

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individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fryer-cookers and skillets or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) That any amount is the retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail;

(b) That their merchandise has been advertised in Life Magazine or Good Housekeeping Magazine; or has been advertised in any other magazine or publication, unless such is the fact;

2. Using the name of any company in connection with merchandise which has not been manufactured in its entirety by said company; or representing, directly or indirectly, that merchandise not manufactured in its entirety by a specified company was so manufactured, provided, however, that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been manufactured by a specified company when such part is clearly and conspicuously identified;

3. Using the Good Housekeeping seal of approval in connection with their merchandise; or representing in any manner that their merchandise has been awarded said seal of approval; or that their merchandise has been approved by any other group or organization, unless such is the fact, provided, however, that this prohibition shall not be construed as prohibiting a truthful statement that a part of an article of merchandise has been approved by a group or organization, when such part is clearly and conspicuously identified.

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 12th day of July 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, The Fry King Corporation, a corporation, and its officers, and Max Fain and Isaac Steinbook, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with

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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.

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IN THE MATTER OF
MUNTZ TV, INC., ET AL.¹CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6928. Complaint, Nov. 6, 1957—Decision, July 15, 1958*

Consent order requiring a Chicago seller to cease exaggerating, in newspaper advertising and by markings on sets and otherwise, the size of the picture tubes of television sets, and representing falsely that TV sets were sold directly to the consumer from "factory outlets."

INITIAL DECISION AS TO EARL W. MUNTZ, INDIVIDUALLY

Before *John B. Poindexter*, Hearing Examiner.

Mr. Michael J. Vitale and *Mr. Thomas Z. Ziebarth* supporting the complaint.

Mr. Emil N. Levin of Chicago, Ill., for respondent Earl W. Muntz.

On November 6, 1957 the Federal Trade Commission issued a complaint charging Muntz TV, Inc., a corporation, and Earl W. Muntz, individually and as an officer of said corporation with having violated the provisions of the Federal Trade Commission Act by the dissemination in commerce of advertisements and statements exaggerating the size of the picture tubes in the television receivers manufactured by said respondent corporation and misrepresenting that the receivers were sold directly to the consumer from the factory.

After issuance and service of the complaint, each respondent answered, and the individual respondent Earl W. Muntz also filed a motion requesting that the complaint as to him be dismissed. This motion was denied by the Hearing Examiner. Thereafter the respondent Muntz TV, Inc., its counsel, and counsel supporting the complaint, entered into an agreement for a consent order. Accordingly, upon the basis of such agreement, the undersigned Hearing Examiner, on April 18, 1958, issued an Initial Decision with respect to the respondent Muntz TV, Inc., dismissing the complaint as to the respondent Earl W. Muntz in his capacity as an officer of Muntz TV, Inc., inasmuch as Mr. Muntz was no longer an officer of the said corporate respondent Muntz TV, Inc., but leaving the complaint pending

¹ Respondent corporation accepted the same consent settlement on June 18, 1958, 54 F.T.C. 1825.