

Decision

IN THE MATTER OF
CONCORD RADIO CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7097. Complaint, Mar. 27, 1958—Decision, Dec. 2, 1958

Consent order requiring two affiliated mail order distributors of electronic equipment in New York City to cease advertising falsely as "BRAND NEW" television and radio tubes which contained used envelopes or shells, and to make adequate disclosure on cartons, tubes, invoices, or shipping memoranda when such tubes were Government surplus or contained used parts.

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

Trause, Saltzman, Lesser & Perlman, of New York, N.Y., by
Mr. Daniel D. Trause, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued March 27, 1958, charges the respondents with violation of the Federal Trade Commission Act in the sale and distribution of television and radio tubes, parts and other electronic equipment by mail order and otherwise.

Respondent Concord Radio Corporation is a corporation organized and existing under the laws of the State of New York with its office and place of business located at 45 Warren Street, New York, N. Y.

Respondent William Abramowitz, individually and as an officer of said corporation, maintains his office at the same address as the corporate respondent. Said individual respondent also does business under the name of Fay-Bill Distributing Co., a sole proprietorship, at 418 Broome Street, New York, N. Y.

Respondent Theodore Black, individually and as an officer of Concord Radio Corporation, had his office at the same address as the corporate respondent.

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint disposing of all the issues as to all parties in this proceeding, except the charges relating to the advertising of their products as "first quality" and the failure to disclose that some of their products are factory

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seconds or rejects for the reason that on the basis of the now available evidence it appears that these charges cannot be sustained.

Attached to and made a part of said agreement was an affidavit of respondent Theodore Black to the effect that he was a former officer and director of said corporation, but severed his connection with said corporation in November 1957, having resigned as said officer and director, and since that time has had nothing to do with the formulation, direction or control of its policies, practices or acts. The agreement contemplates dismissal of the complaint as to respondent Theodore Black, and the term "respondents" as used hereinafter will not include this individual.

Said agreement was duly approved by the director and 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 respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the respondents expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents 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.

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 said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

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

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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 respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That Concord Radio Corporation, a corporation, and its officers, and William Abramowitz, individually and as an officer of said corporation, and as an individual doing business as Fay-Bill Distributing Co., or under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of receiving tubes and cathode-ray or picture tubes 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 said products are new or brand new unless such is the fact;
2. Failing to disclose in advertising, on invoices or packing slips, on the cartons in which the products are packaged and on the products themselves that they are JAN, VT, or other government surplus, or that they contain a used part or parts when such is the fact.

It is further ordered, That the complaint herein be, and the same is, dismissed as to respondent Theodore Black and as to the charge relating to the sale of used and factory seconds or rejects as "first quality" tubes and the failure to reveal said fact.

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 2d day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That Concord Radio Corporation, a corporation, and William Abramowitz, individually and as an officer of said corporation and doing business as Fay-Bill Distributing Co., shall

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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.

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IN THE MATTER OF
ZOYSIA FARM NURSERIES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7130. Complaint, Apr. 23, 1958—Decision, Dec. 2, 1958*

Consent order requiring Baltimore mail order sellers to cease advertising falsely the rate of growth of their "Amazoy" and "Green Beauty" Zoysia grass, U.S. Government and Department of Agriculture approval of the grasses, endorsement by official experts as superior to other grasses, as providing a carefree lawn, requiring less watering or fertilization than other grasses, etc.

Mr. Frederick McManus and Mr. Robert E. Vaughan, for the Commission.

Gordon, Feinblatt & Rothman, by Mr. Donald N. Rothman, of Baltimore, Md. for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 23, 1958, issued and subsequently served its complaint in this proceeding against the above-named respondents.

On October 10, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents Zoysia Farm Nurseries, Inc., Herbert L. Friedberg, Sidney M. Friedberg, Sylvia Friedberg Nachlas, and R. Stuart Armiger and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless