

IN THE MATTER OF
B & C DISTRIBUTORS CO. ET AL.

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

Docket 7077. Complaint, Feb. 28, 1958—Decision, Dec. 13, 1958

Order requiring a Paterson, N.J., distributor of radio and television tubes, principally to jobbers, to disclose clearly on cartons, in advertising, invoicing, and shipping memoranda, when the tubes sold were used, pull-outs, factory rejects, or JAN surplus.

All other respondents in the proceeding signed a consent agreement with the same provisions on Nov. 18, 1958, p. 741, preceding.

Mr. Kent P. Kratz for the Commission.

Brenman and Susser, by *Mr. Herbert Susser*, of Paterson, N.J., for all respondents except Edward Chernela.

INITIAL DECISION AS TO RESPONDENT EDWARD CHERNELA
BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with failure to disclose the true nature of the used, pull-out, factory reject and JAN surplus radio and television tubes which they sell and distribute in commerce, thereby misleading and deceiving the public into the erroneous belief that such tubes are unused, new, and first quality tubes, in violation of the provisions of the Federal Trade Commission Act.

In this proceeding, all respondents except Edward Chernela entered into an agreement containing consent order to cease and desist, and an initial decision based thereon has heretofore been issued.

Respondent Edward Chernela was duly served with a copy of the complaint, but filed no answer thereto. On August 2, 1958, said respondent was served with a copy of a notice that a hearing for the reception of evidence upon the issues as they relate to him would be held, beginning at 10:00 a.m. on September 26, 1958, in Room 332, Federal Trade Commission Building, Washington, D.C. No appearance was made at this hearing by Edward Chernela or by anyone else in his behalf. Said respondent is therefore, in default for answer and appearance in this proceeding, and, under the Rules of Practice of the Federal Trade Commission the hearing examiner is authorized without further notice to

respondent to find the facts to be as alleged in the complaint, and to enter an initial decision containing such findings, appropriate conclusions and order.

Accordingly, the following findings are made, conclusions reached, and order issued:

1. Respondents B & C Distributors Co. and Revere Labs., Inc., are New Jersey corporations with their principal office and place of business located at 840 Main Street, Paterson, N.J. Individual respondent Edward Chernela is treasurer of respondent B & C Distributors Co., and exercises a substantial degree of control and direction over the policies, affairs and activities of said respondent corporation. His office and principal place of business is located at 840 Main Street, Paterson, N.J.

2. Respondent corporations and individual respondent Edward Chernela, through his exercise of control and direction of the policies and activities of B & C Distributors Co., are now, and for more than two years last past have been, engaged in the sale and distribution of radio and television tubes principally to jobbers. In the course and conduct of such business they have caused and now cause their products, when sold, to be shipped from their place of business in the State of New Jersey to customers located in other States of the United States; and they maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

3. Said respondents are now, and at all times mentioned herein have been, in substantial competition with firms, persons, corporations and partnerships engaged in the sale and distribution of television and radio tubes in commerce, between and among the various States of the United States.

4. In the course and conduct of their business, said respondents have offered for sale, sold and distributed a large number of used, pull-out, factory reject and JAN surplus radio and television tubes without disclosing on the tube, box, carton, invoice or in advertising the nature of these tubes. By failing to disclose these material facts, said respondents place in the hands of their customers, and others, means and instrumentalities by which the purchasing public may be misled into believing that said tubes are new, unused and first quality tubes.

5. When such tubes are offered to the purchasing public without being clearly and conspicuously marked, labeled and advertised as used, pull-outs, factory rejects or JAN surplus tubes,

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they are readily accepted by members of the purchasing public as new, unused and first quality tubes.

6. The failure of said respondents to disclose the true nature of their tubes as aforesaid has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such tubes were new, unused and first quality tubes, and into the purchase of respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

7. The aforesaid acts and practices of said respondents, as herein found, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

8. This proceeding is in the public interest. Therefore,

It is ordered, That respondent Edward Chernela, individually and as an officer of B & C Distributors Co., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of television or radio tubes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling, offering for sale, or distributing used, pull-outs, factory rejects or JAN surplus radio or television tubes without clearly disclosing on the tubes or on individual cartons in which each tube is packaged when sold this way, and in advertising, invoices and shipping memoranda that they are used, pull-outs factory rejects, or JAN surplus tubes as the case may be;

2. Selling, offering for sale, or distributing any radio or television tube which is not new or first quality without clearly and conspicuously disclosing that fact on the tube or the individual carton in which such tube is packaged when sold this way, and in advertising, invoices and shipping memoranda.

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 13th

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

It is ordered, That respondent Edward Chernela, individually and as an officer of B & C Distributors Co., shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF
KOCHTON PLYWOOD
AND VENEER COMPANY, INC., ET AL.

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

Docket 7114. Complaint, Apr. 10, 1958—Decision, Dec. 17, 1958

Consent order requiring Chicago sellers of plywood paneling imported from Japan and grained or finished in the United States which was not made from either walnut or oak, to cease misrepresenting the paneling by distributing to retailers samples identified as "Blond Walnut," "Silver Oak," "Natural Walnut," etc.; and to cease distributing said samples, stamped with their name and address, without clearly disclosing that the paneling was made in Japan.

William A. Somers, Esq., for the Commission.

Mr. Lawrence J. West, of Chicago, Ill. for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued April 10, 1958, charges the respondents Kochton Plywood and Veneer Company, Inc., a corporation, and Emil J. Kochton, individually and as an officer of the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in connection with the sale and distribution of plywood paneling.

After the issuance of said complaint respondents, on October 6, 1958, entered into an agreement for a 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 assistant director of the Bureau of Litigation of the Federal Trade Commission. 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 of 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