

Decision

IN THE MATTER OF
ROBERT A. LYONS ET AL. TRADING AS
"TAB" AND TECHNICAL APPARATUS BUILDERS

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

Docket 7125. Complaint, Apr. 18, 1958—Decision, Apr. 16, 1959

Consent order requiring a concern in New York City selling radio and television tubes—many of them military and manufacturers' surplus, used, pull-out, and factory reject—to the public by mail order and also to industrial establishments and manufacturers, to cease representing falsely in advertising brochures, magazine advertising, etc., that all their tubes were new, unused, and of first quality and were unconditionally guaranteed, and to disclose conspicuously—in advertising, packaging, and shipping memoranda—when their tubes were used, reject, or surplus.

Mr. Kent P. Kratz for the Commission.

Wiesenthal & Wiesenthal, of New York, N.Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued April 18, 1958, charges respondents Robert A. Lyons and Morton C. Blumberg, copartners trading as "TAB" and Technical Apparatus Builders, located at 111 Liberty Street, New York, N.Y., with violation of the Federal Trade Commission Act in the sale and distribution of radio and television tubes.

After the issuance of the complaint 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, which 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.

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By said agreement, the parties 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 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 respondents Robert A. Lyons and Morton C. Blumberg, individually or trading as "TAB" or as Technical Apparatus Builders, or trading under any other name, and their 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. Representing, directly or indirectly, that any used tubes are new.
2. Representing, directly or indirectly, that used, pull-out

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(sometimes referred to as "removed from equipment"), factory rejects, military surplus or manufacturers' surplus are first quality tubes, provided, however, that nothing herein will prohibit respondents from representing the true or actual quality thereof.

3. Selling, offering for sale or distributing used, pull-out (sometimes referred to as tubes "removed from equipment"), factory rejects, military surplus or manufacturers' surplus radio or television tubes without clearly and conspicuously disclosing on the tube, the individual carton in which such tube is packaged and in advertising and shipping memoranda that they are used, pull-out or removed from equipment, factory rejects, military surplus or manufacturers' surplus tubes, as the case may.

4. Representing, directly or by implication, that their tubes are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder, are clearly and conspicuously disclosed.

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 16th day of April 1959, become the decision of the Commission; and, accordingly:

It is ordered, That 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
RUSSEKS FIFTH AVENUE, INC.

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

Docket 7262. Complaint, Sept. 19, 1958—Decision, Apr. 16, 1959

Consent order requiring a New York City department store to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose the names of animals producing certain furs or the country of origin or the fact that some fur products contained artificially colored fur, and which represented prices as reduced from "original retail" prices that were in fact fictitious; and by failing to designate the time at which said "original retail" prices were in effect, and to keep adequate records as a basis for said pricing claims.

Mr. John T. Walker supporting the complaint.

Mr. Herbert S. Keller of Weisman, Allan, Spett & Sheinberg,
of New York, N.Y., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on September 19, 1958, charging it with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by falsely and deceptively advertising certain of their fur products and failing to maintain full and adequate records disclosing the facts upon which they base their pricing claims and representations referred to in paragraph 4 of the complaint.

After being served with the complaint respondent entered into an agreement, dated February 5, 1959, 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 assistant director and 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.

Respondent, pursuant to the aforesaid agreement, has 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 duly made in accordance with such allegations. Said