

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 July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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
SPARTAN ELECTRIC RADIATOR CORPORATION

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

Docket 7839. Complaint, Mar. 21, 1960—Decision, July 16, 1960

Consent order requiring a New York City distributor of chrome-plated brass shower heads imported from Japan to cease furnishing to its retailer-customers advertising material—in payment of the cost of which it participated—setting out various fictitious amounts as “Value” or as “Usually”, together with lesser sales prices, thereby falsely representing the “Value” and “Usually” prices as the usual retail selling prices, and the difference between the larger and smaller amounts as the purchaser’s savings.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Spartan Electric Radiator Corporation, a corporation, hereinafter referred to as the respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Spartan Electric Radiator Corporation is a New York corporation with its office and principal place of business located at 52-55 74th Street, Maspeth 78, N.Y.

PAR. 2. Respondent is the distributor of chrome-plated brass shower heads imported from Japan and causes and has caused such

items, when sold, to be shipped from the State of New York to dealers located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said shower heads in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the conduct of its business, the respondent has been, and is now, in competition, in commerce, with corporations, firms and individuals engaged in the sale of shower heads.

PAR. 4. Respondent, in the course and conduct of its business, furnishes advertising material to the retailers of its shower heads located in various states which sets out various amounts in connection with the several sizes thereof, which amounts are sometimes designated as "Value" and in other instances as "Usually" together with lesser sales prices. Respondent participates in the payment of the cost of the advertising when said material is used by retailers.

PAR. 5. Retailers using the aforesaid advertising matter represented, through the use of the amounts designated as "Value", that such amounts were the customary and usual retail selling prices of the products advertised in the trade area where the representations were made and that the amounts designated as "Usually" were the prices at which the retailers had sold the products advertised in the recent regular course of business. By means of the aforesaid advertisements the retailers further represented that the differences between the larger amounts and the smaller amounts represented savings from the customary and usual retail prices, or the advertisers' customary and usual prices, as the case may be.

In truth and in fact, the amounts designated as "Value" were fictitious and in excess of the prices at which the products were usually and customarily sold at retail in the trade area where the representations were made; the amounts designated as "Usually" were fictitious and in excess of the prices at which the retailers had sold the products advertised in the recent regular course of business.

The differences between the larger and smaller amounts did not represent savings either from the customary and usual retail prices or the retail advertisers' customary and usual prices.

PAR. 6. By furnishing the retailers of its products with the various forms of material containing the fictitious prices, as aforesaid, respondent placed in the hands of said retailers the means and instrumentalities by and through which they were and are enabled to mislead and deceive the public as to the usual and customary retail prices of their products, as aforesaid, and as to the savings which accrue to them when purchasing at less than the designated prices and values.

PAR. 7. The use of the aforesaid practices by the respondent 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 the listed prices were the usual and regular retail prices of respondent's shower heads and that by purchasing at lesser prices, they were afforded savings from the usual and regular retail prices, and into the purchase of respondent's shower heads by reason of said erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to the respondent from its competitors and injury has thereby been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's 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.

Ames W. Williams, Esq., for the Commission.
Respondent, *pro se*.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint on March 21, 1960, against the above-named respondent, charging it with having violated the Federal Trade Commission Act, by misrepresenting the price of its product. Respondent appeared and entered into an agreement dated April 26, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the appropriate officials 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 § 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 made duly in accordance with such allegations. Said agreement further provides that respondent waives 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 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 respondent that it has 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 §§ 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 Spartan Electric Radiator Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 52-55 74th Street, Maspeth 78, N.Y.

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

ORDER

It is ordered, That respondent Spartan Electric Radiator Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of shower heads, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Placing in the hands of retailers any means or instrumentality by and through which they may represent that any amount is the usual and customary retail price of respondent's product in a trade area, when such amount is in excess of the price at which said product is usually and customarily sold at retail in the trade area or areas where the representation is made;

2. Placing in the hands of retailers any means or instrumentality by and through which they may represent that any amount is the retailer's usual and customary price of respondent's product when

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such amount is in excess of the price at which said product is usually and customarily sold by said retailers in the recent regular course of business;

3. Placing in the hands of retailers of its product any means or instrumentality by and through which they may misrepresent the savings available to their customers from the retailer's usual and customary price or from the price at which said product is usually and customarily sold in the trade area or areas in which the representation is made.

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 July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Spartan Electric Radiator Corporation, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.
