

Complaint

57 F.T.C.

IN THE MATTER OF
BUDCO, INCORPORATED, ET AL.

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

Docket 7904. Complaint, May 20, 1960—Decision, Sept. 21, 1960

Consent order requiring three affiliated corporate manufacturers of television picture tubes, two in Pittsburgh, Pa., and one in Cleveland, Ohio, to cease selling television tubes with no notice on the tubes or the packaging cartons or invoices to show that they were reconditioned or rebuilt and contained previously used parts, or were defective when such was the case.

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 Budco, Incorporated, a corporation, and Hymen Kotovsky and Robert Kotovsky, individually and as officers and directors of said corporation; and Metropolitan Electronic Distributors, Inc., a corporation, and Hymen Kotovsky, Harry Kotovsky and Jack Rosenblum, individually and as officers of said corporation; and K. M. K. Corporation, a corporation, hereinafter referred to as respondents, have 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 in that respect as follows:

PARAGRAPH 1. Respondent Budco, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business located at 113 S. Beatty Street, Pittsburgh, Pa. Respondents Hymen Kotovsky and Robert Kotovsky are officers, directors and major stockholders of this corporate respondent. Their address is the same as this corporate respondent.

Respondent Metropolitan Electronic Distributors, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 113 S. Beatty Street, Pittsburgh, Pa. Respondents Hymen Kotovsky, Harry Kotovsky and Jack Rosenblum are officers, directors and major stockholders of said corporation. Their address is the same as that of this corporate respondent.

Respondent K.M.K. Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3323 Superior Avenue, Cleveland, Ohio.

The individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent of which they are officers, directors and stockholders. All of the aforementioned corporate respondents and individuals cooperate and act together in carrying out the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of television picture tubes, some of which are reconditioned and some of which are rebuilt, containing used parts, to wholesalers, distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the States of Pennsylvania and Ohio to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents do not disclose on the tubes or on the cartons in which they are packed or on invoices that said television picture tubes are reconditioned or are rebuilt and contain previously used parts.

PAR. 5. When television tubes are reconditioned or rebuilt containing previously used parts, in the absence of a disclosure to the contrary, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 6. Certain of respondents' television picture tubes contain known defects. The fact that such tubes are defective is not disclosed on the tubes or on the cartons in which they are packed or on invoices. In the absence of said disclosure, such tubes are understood to be free from defects.

PAR. 7. By failing to disclose the facts, as set forth in paragraphs 4 and 6, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature and condition of their said television picture tubes.

PAR. 8. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 9. The failure of the respondents to disclose on their television picture tubes, on the cartons in which they are packed and on invoices that they are reconditioned or are rebuilt containing previously used parts and are defective has had, and now has, the ten-

dency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that their said picture tubes are new in their entirety and are free from defects and into the purchase of substantial quantities of respondents' said tubes, by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, 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.

Mr. Michael J. Vitale for the Commission.

Wilner, Wilner and Kuhn, of Pittsburgh, Pa., by *Mr. Arnold D. Wilner*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale of reconditioned and rebuilt television picture tubes. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement

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Order

is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Budco, Incorporated, is a Kentucky corporation, with its principal office and place of business located at 113 South Beatty Street, Pittsburgh, Pa. Individual respondents Hymen Kotovsky and Robert Kotovsky are officers, directors and major stockholders of said corporate respondent with their address the same as that of the corporate respondent.

Respondent Metropolitan Electronic Distributors, Inc., is a Pennsylvania corporation located at 113 South Beatty Street, Pittsburgh, Pa. Individual respondents Hymen Kotovsky, Harry Kotovsky and Jack Rosenblum are officers, directors and major stockholders of said corporate respondent with their address the same as that of the corporate respondent.

Respondent K.M.K. Corporation is an Ohio corporation located at 3323 Superior Avenue, Cleveland, Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That Budco, Incorporated, a corporation, and its officers, and Hymen Kotovsky and Robert Kotovsky, individually and as officers and directors of said corporation; Metropolitan Electronic Distributors, Inc., a corporation, and its officers, and Hymen Kotovsky, Harry Kotovsky and Jack Rosenblum, individually and as officers and directors of said corporation; and K.M.K. Corporation, a corporation, and its officers, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of defective, reconditioned, and rebuilt television picture tubes containing used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices and in advertising, that said tubes are reconditioned or are rebuilt containing used parts, as the case may be.

2. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices and in advertising that tubes are defective, when such is the fact.

3. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on August 2, 1960, having filed an initial decision in this proceeding, wherein he accepted an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, and issued an order in conformity with the agreement; and

Pursuant to the provisions of § 3.21 of the Commission's Rules of Practice, said initial decision, on September 21, 1960, having become the decision of the Commission:

It is ordered, That the respondents, Budco, Incorporated, a corporation, and Hymen Kotovsky and Robert Kotovsky, individually and as officers and directors of said corporation; Metropolitan Electronic Distributors, Inc., a corporation, and Hymen Kotovsky, Harry Kotovsky and Jack Rosenblum, individually and as officers and directors of said corporation; and K.M.K. Corporation, a corporation, 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 contained in the aforesaid initial decision.
