

ingly:
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
THETA ELECTRONICS, INC., ET AL.

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

Docket 7916. Complaint, June 3, 1960—Decision, Oct. 13, 1960

Consent order requiring a manufacturer in Greensburg, Pa., to cease selling television picture tubes with no notice on the tubes or on containers or invoices to show that they were reconditioned or rebuilt and contained previously used parts.

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 Theta Electronics, Inc., a corporation, and Hymen Berkowitz, individually and as an officer of said 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 Theta Electronics, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 123 Stark Avenue, Greensburg, Pennsylvania.

Complaint

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Respondent Hymen Berkowitz is an individual and officer of said corporation. He formulates, controls and directs the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of television picture tubes, some 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 products, when sold, to be shipped from their place of business in the State of Pennsylvania 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 or in any other manner that said television picture tubes are reconditioned or rebuilt containing 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. By failing to disclose the facts as set out in Paragraph Four, 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 of their said television picture tubes.

PAR. 7. 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. 8. The failure of respondents to disclose on their television picture tubes, on the cartons in which they are packed, on invoices or in any other manner, that they are reconditioned or rebuilt containing used parts, has had and now has, the tendency 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 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. 9. 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.

Mr. Joseph Martin Gelman, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 3, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the manufacture, offering for sale, sale and distribution of television picture tubes, some of which are rebuilt containing used parts. On August 9, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming

part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Theta Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 123 Stark Avenue, Greensburg, Pennsylvania.

Respondent Hymen Berkowitz is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of said corporate respondent. His address is the same as the corporate respondent.

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

ORDER

It is ordered, That respondents, Theta Electronics, Inc., a corporation, and its officers, and Hymen Berkowitz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of television picture tubes which have been reactivated or reconditioned, or which contain 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 reactivated or reconditioned, or contain used parts, as the case may be.

2. 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on August 23, 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 October 13, 1960, having become the decision of the Commission:

It is ordered, That the respondents, Theta Electronics, Inc., a corporation, and Hymen Berkowitz, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing,