

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on for hearing by the Commission upon its own motion, and the Commission having determined that the public interest will be better served by instituting a new proceeding under a different form of complaint and that the complaint in this matter should therefore be dismissed without prejudice:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice.

IN THE MATTER OF

MERCURY TUBE CORPORATION ET AL.

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

Docket 8155. Complaint, Oct. 24, 1960—Decision, Mar. 16, 1961

Consent order requiring a Newark, N. J., manufacturer of rebuilt television picture tubes containing used parts, to cease selling such tubes with no disclosure on the tubes themselves or on invoices, and without any

adequate notice on the cartons in which they were packed, that they were rebuilt and contained 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 Mercury Tube Corporation, a corporation, and Joseph Weckstein, 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 Mercury Tube Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 173 Newark Street, Newark, New Jersey.

Respondent Joseph Weckstein is an individual and an 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 rebuilt television picture tubes containing used parts to radio and television repair shops and distributors 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 State of New Jersey to purchasers thereof located in various other States of the United States, and maintained, 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. The television picture tubes sold by respondents are rebuilt and contain used parts. Respondents do not disclose on the tubes, or on invoices, or in an adequate manner on the cartons in which they were packed, or in any other manner, that said television picture tubes are rebuilt and contain used parts.

PAR. 5. When television picture tubes are rebuilt containing used parts, in the absence of any disclosure to the contrary, or in the

absence of an adequate disclosure, 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 forth 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 invoices, or in an adequate manner on the cartons in which they are packed, or in any other manner, that they are rebuilt containing used parts, had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of said tubes by reason of said 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 supporting the complaint.

Mr. Herman B. J. Weckstein, of Newark N.J., for Respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 24, 1960 charging them with unfair and deceptive acts and practices in the sale in commerce of rebuilt television tubes within the intent and meaning and in violation of the Federal Trade Commission Act.

On December 28, 1960 counsel submitted to the undersigned hearing examiner an agreement dated December 21, 1960 among respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a consent order.

The agreement was duly approved by the Director, the Assistant Director and the Associate Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts:

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

(2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said 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.

Having considered said agreement including the proposed order and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Mercury Tube Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 173 Newark Street, in the City of Newark, State of New Jersey.

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2. Respondent Joseph Weckstein is an individual and an officer of said corporation. His address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Mercury Tube Corporation a corporation, and its officers, and Joseph Weckstein, individually and as an officer of said corporation, 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 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 rebuilt and contain used parts.

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 picture tubes.

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 March, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the 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.
