

IN THE MATTER OF
LIBERTY ELECTRONICS, INC., ET AL.

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

Docket 8089. Complaint, Aug. 24, 1960—Decision, Mar. 21, 1961

Consent order requiring a Union, N. J., manufacturer of rebuilt television picture tubes containing used parts, to cease making, on labels on such rebuilt tubes and by other media, such statements as "This Is a Fully Guaranteed NEW Tube", ". . . a Brand New . . . Electronic World TV Picture Tube", and representing falsely thereby that the tubes were new in their entirety; and to disclose clearly, on the tubes themselves and on cartons and invoices and in advertising, that such tubes 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 Liberty Electronics, Inc., a corporation and Mary Garrubbo, 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 Liberty Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 2436 Morris Avenue, Union, New Jersey.

Complaint

58 F.T.C.

Respondent Mary Garrubbo is an individual and an officer of said corporation. She formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Her 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 manufacturing, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to distributors who in turn sell to 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 New Jersey to purchasers thereof who are 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 products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their products, respondents made certain statements concerning their products on labels and by other media. Among and typical of such statements are the following:

This Is a
Fully Guaranteed
NEW Tube
This is a Brand New Electronic
World TV Picture Tube

PAR. 5. Through the use of the aforesaid statements, respondents represented that certain of their picture tubes were new in their entirety.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact the television picture tubes represented as being "new" were not new in their entirety.

PAR. 7. The television picture tubes sold by respondents are rebuilt and contain used parts. 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 rebuilt and contain used parts.

When television picture tubes are rebuilt containing 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. 8. By failing to disclose the facts as set forth in Paragraph Seven, 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. 9. 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. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and the failure of respondents to disclose on their television picture tubes, and on the cartons in which they are packed, on invoices, or in any other manner that they are rebuilt containing used parts, has 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 respondents' 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. 11. 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. Franklin C. Phifer, of East Orange, N. J., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on August 24, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act, and the respondents were duly served with process.

On November 14, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorneys for the respective parties, under date of November 1, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord

with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Liberty Electronics, Inc., 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 2436 Morris Avenue, Union, New Jersey.

Respondent Mary Garrubbo is an officer of said corporate respondent. She formulates, directs and controls the acts and practices of said corporate respondent. Her address is the same as the corporate respondent.

2. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

(a) Any further procedural steps before the Hearing Examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered, it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission

has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Liberty Electronics, Inc., a corporation, and its officers, and Mary Garrubbo, 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 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. Representing, directly or by implication, that said television picture tubes are new;
2. 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;
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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed November 17, 1960, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that the order contained in said initial decision departs from the proposed order set forth in the agreement of the parties in that a comma was omitted from paragraph 2, creating an ambiguity in the order which should be corrected; and, accordingly

It is ordered, That paragraph 2 of the order contained in the initial decision be, and it hereby is, revised to read:

"2. 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."

It is further ordered, That the initial decision, as so modified, shall, on the 21st day of March 1961, become the decision of the Commission.

Complaint

58 F.T.C.

It is further ordered, That the respondents, Liberty Electronics Inc., a corporation, and Mary Garrubbo, 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, 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, as modified.

IN THE MATTER OF
JOHN BACALL

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

Docket 8133. Complaint, Oct. 7, 1960—Decision, Mar. 23, 1961

Consent order requiring a seller in Los Angeles to cease violating the Wool Products Labeling Act by falsely labeling woolen fabrics as "100% Virgin Wool" and by failing to comply with other labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that John Bacall, an individual, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling 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, John Bacall, is an individual whose office and principal place of business is at 704 South Spring Street, Los Angeles, California.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since September 1, 1958, respondent has introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products, namely woolen fabrics, were misbranded by respondent within the intent and meaning of Section

4(a)(1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were woolen fabrics labeled or tagged by respondent as consisting of "100% Virgin Wool", whereas, in truth and in fact, said woolen fabrics in each instance contained substantially less than 100% wool.

PAR. 4. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act in the manner and form as prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. The respondent in the course and conduct of his business, as aforesaid, was and is in substantial competition in commerce with firms and individuals likewise engaged in the sale of said wool products of the same general nature as those sold by respondent.

PAR. 6. The aforesaid acts and practices of the respondent were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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. DeWitt T. Puckett supporting the complaint.

Mr. John Bacall, respondent in person.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Commission issued its complaint October 7, 1960 against respondent charging him with misbranding Wool Products in violation of the Wool Products Labeling Act of 1939.

Counsel submitted to the undersigned hearing examiner on January 19, 1961 an agreement dated January 17, 1961 between the respondent in person and DeWitt T. Puckett, counsel supporting the complaint, providing for the entry without further notice of a cease and desist order. Said agreement has been 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 respondent of all jurisdictional facts alleged in the complaint.

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 respondent 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 respondent that he has 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 John Bacall is an individual whose principal place of business is located at 704 South Spring Street, in the City of Los Angeles, State of California.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That the respondent John Bacall, an individual, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal

Trade Commission Act and the Wool Products Labeling Act of 1939 of wool fabrics or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding of such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise falsely or deceptively identifying such products as to the character or amount of the constituent fibers included therein;
2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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 23rd day of March, 1961, 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.
