

IN THE MATTER OF
ELECTRONIC VIDEO, INC., ET AL.

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

Docket 7914. Complaint, June 3, 1960—Decision, Apr. 13, 1961

Consent order requiring Brooklyn, N. Y., manufacturers of rebuilt television picture tubes containing used parts to cease representing falsely that such tubes were entirely new and were guaranteed by attaching tags stating "THIS IS A BRAND NEW FULLY GUARANTEED T. V. PICTURE TUBE", or by other means; and to disclose clearly 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 Electronic Video, Inc., a corporation, and Jerome D. Farkas, 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 at follows:

PARAGRAPH 1. Respondent Electronic Video, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1946 Pitkin Avenue, Brooklyn, New York.

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Respondent Jerome D. Farkas is president of said corporate respondent. He formulates, directs and controls the 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 manufacturing, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to wholesalers who in turn sell to retailers and television repairmen 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 York to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said product, 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 tags and labels and by other media. Among and typical of such statements is the following:

THIS IS A BRAND NEW
FULLY GUARANTEED
T. V. PICTURE TUBE

PAR. 5. Through the use of the aforesaid statement, respondents represented:

1. That certain of their television picture tubes were new in their entirety.

2. The guarantee provided for respondents' television picture tubes was limited both as to time and extent.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. The television picture tubes represented as being "brand new" are not new in their entirety.

2. The guarantee provided for respondents' television picture tubes was limited both as to time and extent.

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 Paragraphs Six and 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 statements and representations were and are true 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 directed 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. George I. Cohen, of New York, N. Y., 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 manufacturing, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts.

On January 25, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to

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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 Electronic Video, Inc., is a corporation organized, 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 1946 Pitkin Avenue, Brooklyn, New York.

Respondent Jerome D. Farkas 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 that of 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 Electronic Video, Inc., a corporation, and its officers, and Jerome D. Farkas, 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. Representing, directly or by implication, that such television picture tubes are new.
2. Failing to 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. Representing, directly or by implication, that said tubes are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.
4. 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

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of April 1961, become the decision of the Commission; and, accordingly:

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

BRUCE A. GRAVES DOING BUSINESS AS
BRUCE A. GRAVES & SON

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(c) OF THE CLAYTON ACT

Docket 8063. Complaint, Aug. 3, 1960—Decision, Apr. 13, 1961

Consent order requiring a dealer in Nashville, Tenn., to cease violating Sec. 2(c) of the Clayton Act by accepting on substantial purchases of citrus fruit from a number of Florida packers, a commission or brokerage, usually at the rate of 10 cents per 1-3/5 bushel box, and in many instances a lower price reflecting such commission.

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COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby assues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Bruce A. Graves is an individual doing business as Bruce A. Graves, under and by virtue of the laws of the State of Tennessee, with his office and principal place of business located at 815 Fourth Avenue, North, Nashville, Tennessee.

PAR. 2. Respondent is now, and for the past several years has been, engaged primarily in the business of buying, selling and distributing, for his own account, citrus fruit and produce and other food products, all of which are hereinafter referred to as food products. Respondent purchases his food products from a large number of suppliers located in many sections of the United States, particularly in the State of Florida. The annual volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of his business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Tennessee, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of his suppliers located in various other States of the United States to respondent who is located in the State of Tennessee, or to respondent's customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and his respective suppliers of such products.

PAR. 4. In the course and conduct of his business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for his own account for resale from some, but not all, of his suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives on said purchases, a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1 $\frac{3}{5}$ bushel box, or equivalent. In many instances respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on his own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Cecil G. Miles, Esq., and *Ernest G. Barnes, Esq.*, supporting the complaint.

D. L. Lansden, Esq., of *Waller, Davis & Lansden*, of Nashville, Tenn., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On August 3, 1960, the Federal Trade Commission issued a complaint against the above-named respondent, in which he was charged with violating §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), by, among other things, receiving and accepting a brokerage or commission or an allowance or discount in lieu thereof, on the purchases of food products which he sells and transports in interstate commerce, as "commerce" is defined in the Clayton Act. A true and correct copy of the complaint was served upon respondent as required by law. Thereafter respondent agreed to dispose of this proceeding without a formal hearing, pursuant to the terms of an agreement dated February 2, 1961, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on February 9, 1961, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondent and contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the respondent, his attorney and by counsel supporting the complaint, and has been approved by the Associate Director and the Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondent admits all of the jurisdictional facts alleged in the com-

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plaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (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 rights respondent may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the 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 Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondent, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders, and the complaint may be used in construing the terms of the order.

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding; and this proceeding is in the public interest;

2. Respondent Bruce A. Graves is an individual doing business as Bruce A. Graves & Son, incorrectly named in the complaint as Bruce A. Graves, under and by virtue of the laws of the State of

Tennessee, with his office and principal place of business located at 815 Fourth Avenue, North, in the City of Nashville, State of Tennessee;

3. Respondent is engaged in commerce as "commerce" is defined in the pertinent statutes which are invoked by the complaint herein. Now, therefore,

It is ordered, That Bruce A. Graves, an individual doing business as Bruce A. Graves & Son, and respondent's agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship, or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for his own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed February 21, 1961, accepting an agreement containing a consent order theretofore executed by the respondent and counsel in support of the complaint; and

It appearing that the first sentence in the initial decision, purporting to summarize the charge in the complaint is in error; and the Commission being of the opinion that this error should be corrected:

It is ordered, That the initial decision be, and it hereby is, modified by striking from the sixth and seventh lines of the first paragraph on page two of said decision the words "which he sells and transports" as they appear immediately following the word "products" in the sixth line.

It is further ordered, That the initial decision, as herein modified, shall on the 13th day of April, 1961, become the decision of the Commission.

It is further ordered, That the respondent 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 contained in the aforesaid initial decision, as amended.

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IN THE MATTER OF

BERNARD M. HAMBERG DOING BUSINESS AS
TRU-SITE OPTICAL COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8166. Complaint, Nov. 8, 1960—Decision, Apr. 13, 1961*

Consent order requiring a Philadelphia seller of contact lenses to cease representing falsely in advertising that his contact lenses could be worn successfully all day without discomfort by all persons, that they would correct all defects in vision, afford protection to the eye, and were unbreakable.

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 Bernard M. Hamberg, individually and trading and doing business as Tru-Site Optical Company, hereinafter referred to as 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 in that respect as follows:

PARAGRAPH 1. Respondent Bernard M. Hamberg is an individual trading and doing business as Tru-Site Optical Company, with his office and principal place of business located at 107 North 9th Street, Philadelphia, Pennsylvania. He also trades and does business under the name of Tru-Site Optical Company at the following addresses: 4615 Frankfurt Avenue and 67 West Cheltenham Avenue, in Philadelphia, Pennsylvania; 509 Market Street, Chester, Pennsylvania; and 28 North Main Street, Souderton, Pennsylvania.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the advertising, offering for sale and sale to the public of, among other things, corneal contact lenses. Corneal contact lenses are designed to correct errors and deficiencies in the vision of the wearer and are devices, as "device" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent causes said contact lenses, when sold, to be transported from his places of business in Philadelphia, Pennsylvania, to purchasers thereof located in various other states of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said contact lenses in