

IN THE MATTER OF
NATIONAL TUBE CORPORATION ET AL.

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

Docket 8126. Complaint, Sept. 26, 1960—Decision, June 16, 1961

Consent order requiring South Norwalk, Conn., distributors to cease selling to dealers television tubes which were reactivated, reconditioned, or rebuilt containing used parts, without disclosing clearly on the tubes, on the carton containers, and on invoices that 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 National Tube Corporation, a corporation, and Ernest Kochies, Frank Cooke and Milton Mitchell, individually and as officers 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 National Tube Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 7 Lexington Avenue, South Norwalk, Connecticut.

Respondents Ernest Kochies, Frank Cooke and Milton Mitchell are individuals and officers of said corporation. They formulate, control and direct the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 which have been reactivated or

reconditioned, and which have been rebuilt containing used parts, to 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 products, when sold, to be shipped from their place of business in the State of Connecticut 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents do not disclose on the tubes, on the cartons in which they are packed, on invoices, or in any other manner, that said television picture tubes are reactivated or reconditioned, or rebuilt containing previously used parts.

PAR. 5. When television tubes are reactivated or 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 reactivated or 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 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 com-

petition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael J. Vitale supporting the complaint.

Mr. Sidney Vogel, of Norwalk, Conn., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by failing to disclose that television picture tubes manufactured and sold by them are reactivated or reconditioned, or rebuilt containing previously used parts. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated February 24, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Associate Director, and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order,

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and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent National Tube Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 7 Lexington Avenue, in the City of South Norwalk, State of Connecticut.

Respondents Ernest Kochies, Frank Cooke and Milton Mitchell are individuals and officers of said corporation. They formulate, control and direct the policies, acts and practices of the corporate respondent. Their 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, National Tube Corporation, a corporation, and its officers, and Ernest Kochies, Frank Cooke and Milton Mitchell, individually and as officers 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 rebuilt 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 reactivated or reconditioned, or rebuilt and 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

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

It is ordered, That the respondents herein shall within sixty (60)