

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

Docket C-289. Complaint, Dec. 28, 1962—Decision, Dec. 28, 1962

Consent order requiring a Washington, D.C., company engaged in the measurement of television audiences and the publication and sale to broadcasters

and advertisers of data and reports based thereon, to cease representing falsely that the television station and program "ratings" and audience "totals" compiled by it—which did not disclose the number that failed to cooperate and included hearsay reports and estimates—were accurate measurements arrived at through the use of techniques and procedures free from error other than sampling error.

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 C-E-I-R, Inc., a corporation, 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 C-E-I-R, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One Farragut Square South, Washington, D.C.

PAR. 2. Respondent, through its American Research Bureau Division, is now, and since September 30, 1961, has been, engaged in the measurement of television audiences and in the compilation, analysis and publication of data and reports containing television audience size and composition information and in the sale of such data and reports to broadcasters, advertisers and advertising agencies.

PAR. 3. Respondent causes the said data and reports, when sold, to be transported from its places of business in the District of Columbia, and in the State of Maryland to purchasers thereof located in various states of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said data and reports in commerce as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in such commerce is and has been substantial.

PAR. 4. In the course and conduct of its business, at all times mentioned herein, respondent has been and is in substantial competition in commerce with corporations, firms and individuals in the sale of data and reports containing television audience information.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent publishes and sells data and reports compiled by it which include television station and program "ratings" expressed in mathe-

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mathematical terms to the exactness of one per cent and audience "totals" in mathematical terms to the exactness of one hundred homes. Respondent represents directly or by implication that such "ratings" and "totals" are accurate measurements of television station and program audiences, arrived at through the use of techniques and procedures that are free from error other than sampling error when such "ratings" and "totals" are in fact estimates.

PAR. 6. In truth and in fact respondent uses techniques and procedures that result in bias or error other than sampling error which adversely affect the accuracy of its "ratings" and "totals". Among and typical of respondent's techniques and procedures are the following:

1. It fails to disclose the number or percentage of a sample that refuses or fails to respond or cooperate, or otherwise to account for the statistical effect of nonresponse.

2. It uses data derived from diaries, some of which contain hearsay reports and estimates of the diarykeeper.

3. It projects from a sample composed entirely of telephone homes to "all" television homes, both telephone and nontelephone.

The techniques and procedures above set forth result in bias or error and adversely affect the accuracy of respondent's "ratings" and audience "totals". Therefore, the representations that respondent's "ratings" and audience "totals" are other than estimates and that they are accurate to any precise mathematical value or definition are false, misleading or deceptive.

PAR. 7. In the further course and conduct of its business, as aforesaid, respondent has represented directly or by implication in its reports:

1. That its measurements are based upon a probability sample.

2. That the only error to which its data are subject is sampling error.

3. That the accuracy or reliability of its data can be fully determined by the use of a statistical reliability chart which is set forth in its reports.

4. That repeated contacts are made with diarykeepers for the purpose of assuring that the diary is understood and properly maintained by them.

5. That all viewing by all members of the family is recorded in diaries at the time of viewing.

6. That respondent's techniques and procedures produce measurements, data and reports that are accurate to a precise mathematical value or definition.

PAR. 8. In truth and in fact:

1. Respondent's measurements are not based upon a true probability sample.
2. Respondent's data are subject to errors in addition to sampling error.
3. The statistical reliability chart set forth in respondent's reports is applicable to data obtained by means of a probability sample, and since respondent does not use a true probability sample, the reliability of its data cannot be fully determined by the use of the aforesaid chart.
4. In some instances the only subsequent contact made with diary-keepers after the initial contact is to provide them with a diary.
5. All viewing by all members of the family is not always recorded in the diary at the time of the viewing.
6. Respondent's techniques and procedures do not produce measurements, data or reports that are accurate to any precise mathematical value or definition.

Therefore the representations contained in paragraph 7 above are false, misleading or deceptive.

PAR. 9. In the course and conduct of its business respondent by publishing and selling the aforesaid reports and data places instrumentalities in the hands of some television stations thereby enabling them to compete unfairly with other television stations.

PAR. 10. The use by respondent of the aforesaid false, misleading or deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead the purchasers and sellers of television time into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's data and reports by reason of said erroneous and mistaken belief. Said practices of respondent also have had, and now have, the capacity and tendency to mislead purchasers of television time into the purchase thereof because of the aforesaid erroneous and mistaken belief that the aforesaid statements and representations were and are true. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondent, and to sellers of television time 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 respondent, as herein alleged, were, and are, all to the prejudice and injury of the public, of respondent's competitors and of sellers competing in the sale of television advertising time, and constituted and now constitute unfair

methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent C-E-I-R, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at One Farragut Square South, Washington, D.C.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent C-E-I-R, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the publication, offering for sale, sale or distribution of television or other audience measurements, whether in the form of reports, data or otherwise, in commerce as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Representing directly or by implication:

(a) That its measurements, data or reports are based on a probability sample unless the term "probability sample" is properly qualified in immediate conjunction therewith, and

unless the difference between a probability sample and respondent's sample is clearly described in its reports.

(b) That sampling error or any other single error is the only error to which its measurements, data or reports are subject.

(c) That the accuracy or reliability of its measurements, data or reports can be fully determined by the use of any chart or formula which is not wholly applicable to such measurements, data or reports.

(d) That any steps or precautions are taken to assure the proper maintenance diaries unless such steps or precautions are in fact taken.

(e) That dairies used or relied upon by it reflect or contain all viewing by all members of a family as recorded at the time the viewing is done.

(f) That the numerical terms in which respondent's measurements, data or reports are expressed are other than estimates or that its techniques and procedures assure that its measurements, data or reports are accurate to any precise mathematical value or definition.

2. Failing to disclose the statistical effect of nonresponse unless the number or approximate percentage of a sample that refuses or fails to respond or cooperate is clearly disclosed in each report, together with a statement that such nonresponse may affect the accuracy of such report.

3. Using data derived from diaries without clearly disclosing in each report that the diaries may have been maintained in part on the basis of hearsay or the estimate of the diarykeeper.

4. Projecting samples to "all" television homes when certain of such homes have been excluded from the universe without clear disclosure in its reports that such projections have been made.

5. Misrepresenting in any manner the accuracy or reliability of its measurements, data or reports.

6. Using any technique or procedure in making measurements or compiling data or reports that impairs the accuracy or reliability of such measurements, data or reports unless the deficiencies or limitations of such technique or procedure of which respondent is, or should be, aware are clearly disclosed in its reports.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

A. C. NIELSEN COMPANY

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

Docket C-290. Complaint, Dec. 28, 1962—Decision, Dec. 28, 1962

Consent order requiring a Chicago company engaged in the measurement of radio and television audiences and the publication and sale to broadcasters and advertisers of data and reports based thereon, to cease representing falsely that the radio and television station and program "ratings" and audience "totals" compiled by it were accurate measurements arrived at through the use of techniques that were free from error other than sampling error.

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 A. C. Nielsen Company, a corporation, 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 A. C. Nielsen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2101 Howard Street, Chicago 45, Ill.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the measurement of radio and television audiences and in the compilation, publication and sale of data and reports containing radio and television audience size and composition information, and in the sale of such data and reports to broadcasters, advertisers and advertising agencies.

PAR. 3. Respondent causes the said reports, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said reports in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in such commerce is and has been substantial.