

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.

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 reports containing radio and television audience information.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent publishes and sells reports and data compiled by it which include radio and television station and program "ratings" expressed in mathematical terms to the exactness of one-tenth of one percent, and audience "totals" expressed 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 radio and 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 and which adversely affect the accuracy of its "ratings" and audience "totals". Among and typical of respondent's techniques and procedures are the following:

1. It excludes segments of the population from the universe without making full disclosure thereof.
2. In its Nielsen Station Index Reports it fails to disclose the number or percentage of a sample that refuses or fails to respond or cooperate, or to otherwise account for the statistical effect of nonresponse.
3. In connection with its Nielsen Station Index Reports it assigns equal statistical value to data secured by means of meters, diaries and ballots, each of which has a different statistical reliability, and over which respondent exerts a different degree of control.
4. In connection with its Nielsen Station Index Reports it bases station total audience partly upon measurement and partly upon projection based on obsolete ballot surveys.
5. In connection with its Nielsen Station Index Reports it bases area definition upon obsolete ballot surveys.
6. In connection with its Nielsen Station Index Reports it combines data secured at different times into consolidated rating and audience size values as though all of such data had been derived during the time period embraced by a given report when some of such data were derived during a different time period.
7. In its Nielsen Station Index Reports it uses data obtained from samples disproportionately dispersed through the universe.

8. In its Nielsen Station Index Reports it uses data derived from diaries containing hearsay reports and estimates of the diarykeeper.

9. In its Nielsen Station Index Radio Reports it publishes what purports to be complete radio audience data although it does not measure portable and transistor radio listening or tuning.

10. In its Nielsen Station Index Radio Reports it uses automobile radio listening data obtained from areas larger than the areas reported on.

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

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

1. That the sample sizes set forth in its reports are the effective sample sizes governing the data contained in such reports, and that all data obtained from such samples are of equal statistical value.

2. That data contained in its Nielsen Station Index Radio Reports are based upon the "Base Cases" figures set forth therein and that such "Base Cases" figures are respondent's sample sizes for such reports.

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

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

5. That the accuracy or reliability of its data can be fully determined by the use of a sampling error formula which is set forth in its reports.

6. That all data contained in its Nielsen Station Index Reports were derived within the time period embraced by such reports.

7. That the data contained in its Nielsen Station Index Reports are based upon information obtained from diaries and an approximately equal number of meters.

PAR. 8. In truth and in fact:

1. The sample sizes set forth in respondent's reports are larger than the effective sample sizes governing the data contained in such reports, and all of the data obtained from such sample sizes are not of equal statistical value. In some of respondent's reports the data contained therein are obtained from diaries and ballots and have less statistical value than do the data contained therein which are obtained from a few meters.

2. The data contained in respondent's Nielsen Station Index Radio Reports are not based upon the "Base Cases" figures set forth therein, but instead are based upon sample sizes smaller than the stated "Base Cases" figures.

3. Respondent's measurements are not based upon a probability sample.

4. Respondent's data are subject to errors in addition to sampling error.

5. The sampling error formula set forth in respondent's reports is applicable to data obtained by means of a probability sample, and since respondent does not use a probability sample, the accuracy or reliability of its data cannot be fully determined by the use of the aforesaid formula.

6. Not all of the data contained in respondent's Nielsen Station Index Reports were derived within the time period embraced by such reports.

7. While the data contained in respondent's Nielsen Station Index Reports are based upon information obtained from diaries and meters, the number of meters from which such information is obtained is substantially smaller than the number of diaries from which such information is obtained.

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 radio and television stations thereby enabling them to compete unfairly with other radio and 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 the sellers of radio and/or 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 radio and/or 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 radio and/or 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 radio and 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, 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 office and principal place of business located at 2101 Howard Street, in the city of Chicago, State of Illinois.

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 A. C. Nielsen Company, 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 radio or television audience measurements, whether in the form of data, reports or otherwise, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the numerical terms in which its measurements, data or reports are expressed are other than estimates, or otherwise representing that such measurements, data or reports are accurate to any precise mathematical values or definitions.

(b) That all data obtained from a sample that is made up of diaries and/or ballots and meters are derived from sources which are of equal statistical reliability.

(c) That its measurements, data or reports are based upon a probability sample.

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

(e) 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.

(f) That the data contained in any report are based upon information obtained from diaries and meters unless such diaries and meters are approximately equal in number or unless the approximate percentage of each is clearly disclosed in such report.

2. Misrepresenting the size of its effective sample through the use of "Base Cases" figures or otherwise.

3. Using data or information gathered by it as a basis for reports, which data or information is not reliable due to the lapse of time.

4. Using data in a report that were derived during a time period other than the time period embraced by said report unless the time period during which such data were derived is clearly disclosed in its reports.

5. Using in report automobile radio listening data that were obtained from an area larger than the area covered by said report without clearly disclosing such fact and without clearly disclosing when such is the case, that such automobile radio listening data are not measurements of individual station shares of automobile radio listening.

6. Publishing radio audience measurements without disclosing that such measurements do not include portable and/or transistor radio listening or tuning, if it be a fact.

7. 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.

8. Using data obtained from diaries disproportionately dispersed throughout the universe, without clear disclosure thereof.

9. 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.

10. Excluding segments of the population from the universe, unless each category of the population excluded from measurement is clearly disclosed in each report.

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

12. 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.