

done so, be dismissed:

It is therefore ordered, That the initial decision and the complaint be, and they hereby are, dismissed.

By the Commission, Commissioner Anderson concurring in the result and Commissioner MacIntyre not concurring.

IN THE MATTER OF
WM. H. WISE & CO., INC.

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

Docket C-694. Complaint, Jan. 22, 1964—Decision, Jan. 22, 1964

Consent order requiring a New York City distributor to retail dealers and directly to the public of electric tools and a volume entitled "Wise Garden Encyclopedia", to cease representing falsely in advertising in periodicals and otherwise that said encyclopedia was newly revised and brought up-to-date, with a "complete new supplement", and included latest developments and methods in garden and lawn care, when the volume had undergone no general revision since its original publication; and to cease representing falsely that its portable electric jig saw was "guaranteed for a full year" when limitations on the guarantee were not disclosed.

Complaint

64 F.T.C.

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 Wm. H. Wise & Co., 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 Wm. H. Wise & Co., 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 370 Seventh Avenue, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and distribution, directly to the public and also to retail dealers for resale to the public, of electric tools, including portable electric jig saws, and of various books, including a volume entitled "Wise Garden Encyclopedia".

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of New York, to purchasers thereof located in the various States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of its said business, and for the purpose of inducing the purchase of the said book "Wise Garden Encyclopedia" has made many statements and representations concerning the contents and subject matter of said book in advertisements inserted in periodicals and in other advertising material. Typical, but not all inclusive of such statements and representations, are the following:

NOW READY. The world's greatest, most comprehensive Garden Encyclopedia.

EVERYTHING YOU NEED TO KNOW ABOUT ANYTHING YOU WANT TO GROW.

Bigger and Better than Ever.

* * * also a complete new supplement * * *

Include Latest Developments, Methods, etc. You get the latest facts about the miracles of Chemical Gardening, Modern Insecticides and Weed Killers; Plant Hormones. Learn about New Plants and Flowers; Wild Flower Gardening at home; new ways with Indoor Flower Arrangements and House

Plants; all about Rock Gardens and Water Gardens * * * Every word and picture up to date.

PAR. 5. By means of the aforesaid statements and representations, and others of similar import not specifically set forth herein, respondent has represented, and now represents, directly or by implication:

1. That the Wise Garden Encyclopedia has been newly revised and brought up-to-date;
2. That said book contains a complete new supplement;
3. That the Wise Garden Encyclopedia contains information as to the latest developments and methods in garden and lawn care.

PAR. 6. In truth and in fact:

1. The said Wise Garden Encyclopedia was not newly revised and brought up-to-date, as of December 1962;
2. The supplement described as "a complete new supplement" was added in 1951 and had undergone no changes or revisions when so described in advertising material disseminated in 1961 and 1962;
3. Said Garden Encyclopedia did not contain information as to the latest developments and methods in gardening and lawn care. In fact, said encyclopedia had undergone no general revision since its original publication in 1936 through 1962.

Therefore, the statements and representations set forth in Paragraphs 4 and 5 above are false, misleading and deceptive.

PAR. 7. Furthermore, in the course and conduct of its business and for the purpose of inducing sales of its portable electric jig saw, respondent made certain statements and representations with respect to the guarantee of said product, of which the following is typical:

FULLY GUARANTEED. Your saw is Underwriters' Approved. It comes with warranty and service card—guaranteed for a full year by the world famous PORTABLE ELECTRIC TOOL COMPANY.

PAR. 8. By and through the use of the representations set forth in Paragraph 7, respondent has represented, directly or by implication, that its said portable electric jig saw is guaranteed in every respect for a year.

PAR. 9. In truth and in fact, the guarantee for respondent's said portable electric jig saw is not unconditional; but is limited in certain respects. These limitations are not disclosed in the advertising and are not made known to the purchaser prior to sale.

Therefore, the representations set forth in Paragraphs 7 and 8 were and are, false, misleading and deceptive.

PAR. 10. In the conduct of its business, and at all times mentioned herein, the respondent has been in substantial competition in commerce with corporations, firms and individuals engaged in the

sale of garden encyclopedias and tools of the same general kind and nature as those sold by respondent.

PAR. 11. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitutes, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 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 Wm. H. Wise & Co., 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 370-7th Avenue, in the city of New York, State of New York.

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.

It is ordered, That respondent Wm. H. Wise & Co., Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the Wise Garden Encyclopedia or any other books or publications, and of portable electric saws or any other products, do forthwith cease and desist from representing, directly or by implication:

1. That the Wise Garden Encyclopedia has been revised when in fact said book has not undergone any material revision and is the same or substantially the same volume previously sold and offered for sale by respondent.

2. That the Wise Garden Encyclopedia contains a new supplement when in fact such supplement is the same or substantially the same supplement previously included with the said garden encyclopedia.

3. That the Wise Garden Encyclopedia contains information as to the latest developments and methods and in gardening and lawn care when in fact said book does not contain such information.

4. That any article of merchandise is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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

NATIONAL ALLIANCE OF TELEVISION AND
ELECTRONIC SERVICE ASSOCIATIONS ET AL.

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

Docket C-695. Complaint, Jan. 22, 1964—Decision, Jan. 22, 1964

Consent order requiring a national association of television repair men and its members, including 100 local or state associations, "Affiliate" members and individual servicemen who were "Associate" members, to cease sup-

Complaint

64 F.T.C.

pressing competition in the repair and service of television and other electronic devices and in the distribution of parts and components used therein, through concertedly refusing to purchase from suppliers who sold directly to consumers or part-time servicemen or who offered warranties or service on devices, equipment and parts so sold; inducing, and entering into agreements with suppliers to refuse to sell to part-time servicemen; and using their "Affiliate" members as instrumentalities to monopolize trade and lessen competition in the repair and servicing of television, radio and electronic devices and equipment.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (15 U.S.C. Sec. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties hereinafter more particularly named, designated, described and 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 Alliance of Television and Electronic Service Associations, hereinafter sometimes referred to as NATESA, is a nonprofit trade association organized and existing as a corporation under the laws of the District of Columbia, with its principal office and place of business located at 5908 South Troy Street, Chicago, Illinois with operations in most of the several States of the United States.

Respondent NATESA was ostensibly organized for the purpose of correlating work and progress of regional, state and local television and electronic service associations; of representing servicemen before other segments of the industry and governmental agencies; and of encouraging the formation of local, state and regional associations. It is composed of a membership of three classes:

- (a) Affiliate which is composed of approximately 100 local and state television, radio and electronic service associations;
- (b) Associate which includes individuals who are members of a local or state Affiliate and are known as Affiliate Associate members and individuals who reside in areas where there is no Affiliate and are known as Non-Affiliate Associate members; and
- (c) Honorary which is composed of persons, companies or other entities not actively engaged in the television, radio and electronic service industry, but who are deemed to have rendered exceptional services to respondent NATESA. The said Honorary members have not participated in the acts and practices charged herein as unlawful

and therefore are specifically excluded as respondents in this proceeding.

Respondent NATESA is governed by a Board of Directors consisting of one Director chosen by each Affiliate and an Executive Council consisting of the following officials: the executive director, president, secretary-general, treasurer, eastern vice president, eastern secretary, east central vice president, east central secretary, west central vice president, west central secretary, western vice president, and western secretary. All of said officials except the executive director are elected by the membership for a term of one year. The executive director is selected by the Executive Council each even-numbered year for a term of two years.

The membership of respondent NATESA constitutes a class so numerous and changing as to make it impracticable to specifically name each and all of such members as parties respondent herein. The following, among others, are members of respondent NATESA, are fairly representative of the whole membership and have been responsible, in part, for the direction and control of said respondent. They are named as respondents herein in their individual capacities, as members of respondent NATESA, and as representatives of all members of respondent NATESA, including Affiliate members, Affiliate Associate members and Non-Affiliate Associate members, as a class, including those not herein specifically named, all of whom are made respondents herein:

Frank J. Moch, 5906 South Troy Street, Chicago, Illinois. Respondent Moch has served as executive director of respondent NATESA for the years, among others, 1959 to the present, and has served as publisher of the "NATESA Scope", official magazine of respondent NATESA prior to and from 1959 to the present.

Ralph H. Woertendyke, 235 North Santa Fe Road, Salina, Kansas. Respondent Woertendyke served as president of respondent NATESA from August 1961 to August 1962 and as west central vice president from 1960 to 1961.

Alphonse Benoit, Jr., 2637 Banks Street, New Orleans, Louisiana. Respondent Benoit served as president of respondent NATESA from 1960 to 1961 and as secretary-general from 1959 to 1960.

Valery Metoyer, 6017 Prospect Avenue, Kansas City, Missouri. Respondent Metoyer served as president of respondent NATESA from 1959 to 1960.

PAR. 2. Respondent Television and Electronic Service, Inc., also known as TESA-GREEN BAY, a corporation organized and doing business under the laws of the State of Wisconsin, with its offices and principal place of business located at 109 Garfield Street in

Complaint

64 F.T.C.

Green Bay, Wisconsin is an association of local television, radio and electronic servicemen or service organizations and is an "Affiliate" member of respondent NATESA.

The membership of respondent TESA-GREEN BAY constitutes a class so numerous and changing as to make it impracticable to specifically name each and all of such members as parties respondent herein. The following, among others, are members of TESA-GREEN BAY, are fairly representative of the whole membership and have been responsible, in part, for the direction and control of said respondent. They are named as respondents herein in their individual capacities, as members of respondent TESA-GREEN BAY, and as representatives of all members of respondent TESA-GREEN BAY, as a class, including those not herein specifically named, all of whom are made respondents herein:

Oliver Davis, 109 Garfield Street, Green Bay, Wisconsin. Respondent Davis has served as secretary of respondent TESA-GREEN BAY since 1956.

Don Beno, 1153 Main Street, Green Bay, Wisconsin. Respondent Beno served as president of respondent TESA-GREEN BAY in 1959, as a member of a committee to negotiate with local distributors in 1959, and as NATESA director in 1960.

Harold Juelich, 312 North Chestnut, Green Bay, Wisconsin. Respondent Juelich served as NATESA's director in 1959, as a member of a committee of respondent TESA-GREEN BAY to negotiate with distributors in 1959, and as treasurer of respondent TESA-GREEN BAY in 1962.

PAR. 3. Respondent NATESA, primarily through its executive director, disseminates to its members and representatives thereof located throughout the United States various communications, including, but not limited to, correspondence, directives, trade publication articles, technical material and other data. Respondent NATESA publishes the "NATESA Scope", a monthly trade magazine, which it has transmitted from the State of Illinois to members of NATESA, including members of respondent TESA-GREEN BAY, and to others located in various States of the United States.

All or virtually all of the members of respondent NATESA, including members of respondent TESA-GREEN BAY, in the course and conduct of repairing and servicing television, radio and electronic devices and equipment purchase various products such as radio and television tubes. Such products are sold and shipped by manufacturers thereof to wholesalers or distributors in States other than the States of manufacture or other than the States where shipment originated who in turn resell said products to members of respondent NATESA and also to ultimate consumers, located

in various States of the United States, and there has been, and now is, a constant current and course of trade in commerce in said products between and among the several States of the United States.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices alleged in this complaint, respondents have been in substantial competition with each other in that individual members of local Affiliates compete, and respondents have been in substantial competition with other corporations, firms, partnerships and individuals engaged in the sale and distribution of television, radio and electronic devices, equipment or parts in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 5. The said respondents, hereinbefore named and described, and each of them, and others not specifically named herein, during the period of time, to wit, from in or about August 1959, to date of this complaint, have formulated, adopted and placed into effect a plan, scheme, or policy between and among themselves and others not named herein to hinder, frustrate, suppress and eliminate competition in the repair and service of television and other electronic devices and in the distribution and sale of parts and components used in the service and repair of television and other electronic devices in the course of the aforesaid commerce.

Pursuant to, in furtherance of, and in order to make effective the purposes and objectives of the aforesaid plan, scheme or policy, said respondents or some of them with the acquiescence of all others, through combination, conspiracy, understanding, agreement or planned common course of action or course of dealing, between and among and in cooperation with each other, have utilized, among other things, the following policies, methods, acts and practices:

1. Refused, threatened refusal, or attempted to obtain the refusal of independent servicemen, including respondent members and nonmembers, to purchase from manufacturers, distributors or wholesalers who have sold or distributed television, radio or electronic devices, or equipment and parts directly to consumers or part-time servicemen.

2. Refused, threatened refusal, or attempted to obtain the refusal of independent servicemen, including respondent members and nonmembers, to purchase from manufacturers or distributors who, in connection with the offering for sale, distribution, or sale of television, radio and electronic devices, equipment and parts, have offered warranties or service upon such devices, equipment and parts.

3. Induced, influenced, and entered into agreements with, wholesalers or distributors of television, radio and electronic parts or

equipment to refuse to sell such parts or equipment to part-time servicemen.

4. Established and utilized local and state "Affiliate" members, and the officers, directors and members thereof, as instrumentalities in attempting to monopolize trade or lessen competition in the repair and servicing of television, radio or electronic devices and equipment.

PAR. 6. The plan, scheme, policy, combination, conspiracy, mutual understanding, agreement, planned common course of action or course of dealing, and the acts and practices and methods, as hereinabove alleged, are all singularly unfair and to the prejudice of the public and against public policy because of their dangerous tendency unduly to prevent and eliminate part-time servicemen from competing in the repair and service of television, radio or electronic devices and equipment, to limit and restrict channels of distribution of said devices and equipment or component parts thereof, to hinder competition, and to restrain and monopolize trade and commerce, and thereby constitute unfair methods of competition and unfair acts and practices in commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 National Alliance of Television and Electronic Service Associations, hereinafter sometimes referred to as NATESA, is a nonprofit trade association organized and existing as a corpora-

tion under the laws of the District of Columbia, with its principal office and place of business located at 5908 South Troy Street, Chicago, Illinois.

Respondent Frank J. Moch is executive director of NATESA and his address is 5906 South Troy Street, Chicago, Illinois.

Respondents Ralph H. Woertendyke, Alphonse Benoit, Jr., and Valery Metoyer are members of and are representatives of all the members of proposed respondent NATESA. The address of Ralph H. Woertendyke is 235 North Santa Fe Road, Salina, Kansas. The address of Alphonse Benoit, Jr. is 2637 Banks Street, New Orleans, Louisiana. The address of Valery Metoyer, is 6017 Prospect Avenue, Kansas City, Missouri.

Respondent Television and Electronic Service Association, Inc., is a nonprofit trade association organized and existing as a corporation under the laws of the State of Wisconsin, with its offices and principal place of business located at 109 Garfield Street, Green Bay, Wisconsin.

Respondents Oliver Davis, Don Beno and Harold Juelich are members of and are representatives of all the members of proposed respondent Television and Electronic Service Association, Inc. The address of Oliver Davis is 109 Garfield Street, Green Bay, Wisconsin. The address of Don Beno is 1153 Main Street, Green Bay, Wisconsin. The address of Harold Juelich is 312 North Chestnut, Green Bay, Wisconsin.

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

ORDER

It is ordered, That respondents National Alliance of Television and Electronic Service Associations, a corporation, its officers, representatives, agents, and members of its Board of Directors, the members of said National Alliance of Television and Electronic Service Associations, their agents, representatives and employees; Television and Electronic Service Association, Inc., a corporation, its officers, representatives, and agents, the members of said Television and Electronic Service Association, their agents, representatives or employees; Frank J. Moch; Ralph H. Woertendyke; Alphonse Benoit, Jr.; Valery Metoyer; Oliver Davis; Don Beno; and Harold Juelich, directly or indirectly, individually and as representatives of all members of National Alliance of Television and Electronic Service Associations, or as members, officers or directors of other respondents, or through any corporate or other device, in connection

Order

64 F.T.C.

with the repair, purchase or sale or with or in connection with the offer to repair, purchase or sell or distribute television, radio and electronic devices, equipment or component parts thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any planned common course of action, understanding, agreement or conspiracy between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices or things:

(1) Refusing, threatening refusal, or attempting to obtain the refusal of persons engaged in the repair and servicing of television, radio or electronic devices or equipment, to purchase from any manufacturer, distributor or wholesaler who sells or distributes such devices or equipment or component parts thereof to part-time repairmen or directly to consumers.

(2) Refusing, threatening refusal, or attempting to obtain the refusal of persons engaged in the repair and servicing of television, radio or electronic devices or equipment, to purchase from manufacturers or distributors who offer warranties or service on such devices or equipment.

(3) Inducing, influencing or entering into agreement with, wholesalers or distributors of television, radio or electronic devices and equipment or component parts thereof to refuse to sell to part-time repairmen or to any competitors of respondents.

(4) Inducing, persuading, coercing or attempting to induce, persuade or coerce any manufacturer, distributor or wholesaler to confine or limit the offering for sale, distribution or sale of television, radio or electronic devices, equipment or component parts thereof, to repairmen who are members of NATESA, including members of NATESA Affiliates, or to those who conform to any standard established by any of respondents.

(5) Utilizing the offices of any local, state or national association, or the officers, directors or members thereof, to do or perform or to aid or abet in doing or performing anything prohibited by any provision of this order.

It is further ordered, That the 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 this order.

Complaint

IN THE MATTER OF

LEONARD MARGOLIS ET AL. TRADING AS
SILVO HARDWARE COMPANY

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

Docket 8561. Complaint, Mar. 14, 1963—Decision, Jan. 24, 1964

Order requiring Philadelphia mail-order distributors of hardware, housewares, typewriters, toys, and other general merchandise, to cease representing falsely in catalogs distributed to prospective purchasers that higher prices quoted in juxtaposition with lower stated code prices were the usual retail prices in all the trade areas in which the catalogs were distributed; and by such statements in catalogs as "wholesalers and distributors," "BUY AT WHOLESALE PRICES," that they sold all their merchandise at wholesale prices.

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 Leonard Margolis and Norton Berger, individually and as copartners trading as Silvo Hardware Company, hereinafter referred to as the 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. Respondents Leonard Margolis and Norton Berger are individuals and copartners trading as Silvo Hardware Company, with their principal office and place of business located at 107-109 Walnut Street in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of hardware, housewares, typewriters, toys and other items of general merchandise 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 merchandise, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.