

which they have complied with the order to cease and desist.

Commissioner Elman concurring in the result, and Commissioner Reilly not participating.

IN THE MATTER OF
WESTINGHOUSE ELECTRIC CORPORATION

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

Docket 8545. Complaint, Nov. 21, 1962—Decision, Feb. 17, 1964

Order dismissing, for lack of evidence to sustain the allegations, complaint charging a manufacturer with selling rebuilt television picture tubes containing used parts to distributors, with inadequate disclosure of such used condition.

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 Westinghouse Electric Corporation, 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 Westinghouse Electric Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 3 Gateway Center, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, offering for sale, sale and distribution of rebuilt television picture tubes containing used parts to distributors who sell to others for resale to the public.

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 places of business in various states, including the State of New York, to purchasers thereof located in various other 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. In the course and conduct of its business, and for the purpose of inducing the sale of its products, respondent has made certain statements concerning its products in periodical advertisements and other media, of which the following are typical:

New Westinghouse Gold Star Picture Tubes.

"Glass-Gard" positively identifies the picture tube as new and fresh from the factory.

PAR. 5. Through the use of the aforesaid statements, respondent represented, directly or by implication, that certain of its television picture tubes were new in their entirety.

PAR. 6. In truth and in fact, the television picture tubes represented as new are not new in their entirety.

The aforesaid statements and representations were, therefore, false, misleading and deceptive.

PAR. 7. The television picture tubes sold by respondent are rebuilt and contain used parts. Respondent does not disclose in its advertising and on invoices, and has not adequately disclosed on the tubes and their cartons, that said television picture tubes are rebuilt and contain used parts.

When television picture tubes are rebuilt containing used parts, in the absence of any disclosure to the contrary, or in the absence of an adequate disclosure, such tubes are understood to be and are readily

accepted by the public as new tubes, a fact of which the Commission takes official notice.

PAR. 8. By failing to disclose the facts as set forth in Paragraph Seven, respondent places in the hands of uninformed or unscrupulous dealers the 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, respondent has been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of television picture tubes.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive statements and representations and the failure of respondent to disclose in its advertising and on invoices, and in an adequate manner on its television picture tubes, and on the cartons in which they are packed that such tubes 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 respondent's said tubes by reason of said erroneous and mistaken belief.

PAR. 11. 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 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.

OPINION OF THE COMMISSION

FEBRUARY 17, 1964

By the *Commission*:

The complaint herein charges respondent with violating the Federal Trade Commission Act by allegedly representing that its replacement television picture tubes containing a used glass bulb or envelope (*i.e.*, the outer glass covering) are entirely new tubes, and by placing into the hands of certain dealers the means or instrumentalities whereby they may mislead and deceive the purchasing public as to the nature of their tubes.

The hearing examiner found the charges sustained and entered an order to cease and desist. The parties have filed cross-appeals to the initial decision. Respondent mainly contends that the evidence does not support the allegations. Counsel supporting the complaint, in his appeal, is concerned principally with the form of the order.

As we view it, the only important issue here is whether or not respondent has adequately disclosed the reused nature of the envelope for its replacement television picture tubes. The record shows that respondent on the side of such tubes and on the cartons in which they are shipped places a notice disclosing that the envelope is reused. A like notice is put on the warranty which is designed to be given to the consumer or set owner by the dealer. We cannot say from the showing herein that respondent as to a disclosure notice should be doing more than it is now doing or was doing when this action was brought. The examiner erred when he found that respondent's notice was insufficient. There is no evidence that respondent has failed to adequately disclose that the aforementioned part is used and there is no sufficient evidence to sustain any of the allegations.

It is accordingly concluded that the complaint should be dismissed. In view of this action it is unnecessary for us to consider the merits of respondent's Motion for Official Notice and Completion of Record, filed January 14, 1954, and that motion is hereby denied. An appropriate order will be entered.

Commissioner Reilly did not participate for the reason that he did not hear oral argument.

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

This matter having been heard by the Commission upon the cross-appeals of respondent and counsel supporting the complaint to the hearing examiner's initial decision; and

The Commission for the reasons stated in the accompanying opinion having determined that the complaint should be dismissed:

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint be, and it hereby is, dismissed.

Commissioner Reilly not participating for the reason that he did not hear oral argument.
