

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

Docket C-788. Complaint, July 14, 1964—Decision, July 14, 1964

Consent order requiring a Long Island, N.Y., manufacturer of radios, phonograph equipment, radio electronic equipment and general merchandise, which operated its own retail stores in New York, Massachusetts, and New Jersey, and sold also to associated stores in various other States and by mail, to cease—in its catalogs and in advertising in magazines and newspapers—misrepresenting the regular and former prices of its products and savings

available to purchasers; representing falsely that TV tubes and stereo phonograph needles were guaranteed for a full year; and misrepresenting the quality and composition, unique nature, and testing of its phonograph needles and styli.

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 Lafayette Radio Electronics 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 Lafayette Radio Electronics Corporation 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 111 Jericho Turnpike, Syosset, Long Island, New York.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture, advertising, offering for sale, sale and distribution of radios, phonograph equipment, radio electronic equipment and general merchandise to the public, to retailers for resale to the public and to industrial concerns.

Respondent owns and operates retail stores in the States of New York, Massachusetts and New Jersey, distributes and sells its products and merchandise to the general public and to industrial concerns through the United States mails, and sells its merchandise to associated stores located in various other States of the United States 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 and merchandise, when sold, to be shipped from its place of business in the States of New York, Massachusetts and New Jersey, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade of said products and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of its business, and for the purpose of inducing the purchase of its products and merchandise, advertises the same by means of an annual catalogue with peri-

odic supplements and advertisements in magazines of national circulation and in newspapers of general interstate circulation. The newspaper advertising is primarily in conjunction with respondent's retail stores.

Said catalogues and their supplements are distributed through the United States mail to customers located throughout the United States. Said catalogue and magazine advertising is primarily in conjunction with the mail order phase of respondent's business.

PAR. 5. In its catalogue advertising respondent has made certain statements and representations with respect to prices, savings and the guarantees of its products and merchandise. Typical but not all inclusive of such statements and representations are the following:

NEW TELEFUNKEN 4-SPEED AUTOMATIC RECORD CHANGER
Regularly \$59.50 Special Price \$24.50

LAFAYETTE "TINY" 6-TRANSISTOR RADIO \$17.95 Regular \$48.50

AMPHENOL INDOOR TV ANTENNA \$2.59 Was \$14.95

LAFAYETTE TV PICTURE TUBES FULL ONE-YEAR GUARANTEE

LAFAYETTE HI-FI STEREO DIAMOND NEEDLES FULL ONE-YEAR GUARANTEE

On certain catalogues, in large conspicuous letters on the cover, appears the word "SALE."

PAR. 6. By and through the use of statements and representations set forth in Paragraph Five hereof and others of similar import not specifically set out herein, respondent represents and has represented directly and by implication that:

a. The higher stated prices set out in said advertisements in connection with the terms "Regularly," "Regular" and "Was" were the actual, bona fide prices at which the articles referred to were offered to the public at retail by respondent on a regular basis for a reasonably substantial period of time in the recent regular course of business and that the difference between the higher prices and the lower prices set out in conjunction therewith represented savings to purchasers.

b. A major portion of the items of merchandise contained in said catalogue with the word "SALE" on its cover, was offered at a reduction from the respondent's prior selling or offering price.

c. The TV tubes and stereo phonograph needles are guaranteed for one full year in every respect.

PAR. 7. In truth and in fact:

a. The higher stated prices set out in connection with the terms "Regularly," "Regular," and "Was," were in excess of the actual, bona fide prices at which the articles referred to were offered to the public at retail by respondent on a regular basis for a reasonably substantial period of time in the recent regular course of business

and the difference between the said higher prices and the lower prices set out in connection therewith and at which articles of merchandise are offered for sale did not represent savings to purchasers.

b. A major portion of the items of merchandise contained in said catalogue with the word "SALE" on its cover, was not offered at a reduction from the respondent's prior selling or offering price.

c. Respondent does not guarantee the articles of merchandise described in the advertisements in every respect. The terms, conditions and extent to which such guarantees apply, and the manner in which the guarantor will perform thereunder are not disclosed in the advertisements.

Therefore, the statements and representations as set forth in Paragraphs Five and Six hereof were and are false, misleading and deceptive.

PAR. 8. In conjunction with its retail stores located in the New York Metropolitan Area, respondent has made certain additional statements and representations with respect to prices and savings in advertising placed in newspapers having wide interstate circulation in the New York Metropolitan Area. Typical but not all inclusive of such statements and representations are the following:

PICKERING MODEL U38/AT HI-FI CARTRIDGE without trade-in \$46.50—
with your old cartridge \$17.95 SAVE 61%

FAMOUS "harman kardon" HI-FI STEREO SYSTEM Total Price If Purchased Separately \$394.90 LAFAYETTE SALE PRICE \$269.95 YOU SAVE \$124.95

PAR. 9. By and through the use of statements and representations set forth in Paragraph Eight hereof and others of similar import not specifically set out herein, respondent represents and has represented directly and by implication that:

a. The price set out in conjunction with the words "without trade-in" was the actual, bona fide price at which the advertised merchandise was being offered for sale by said retail stores without a trade-in, in the regular course of business and that the difference between the higher and lower prices represented savings to purchasers.

b. The price set out in conjunction with the words "Price If Purchased Separately" was the actual, bona fide price at which the advertised merchandise was being offered for sale by said retail stores if purchased separately, in the regular course of its business and that the difference between the higher and lower prices represented savings to purchasers.

PAR. 10. In truth and in fact:

a. The price set out in conjunction with the words "without trade-in" was in excess of the price at which the advertised merchandise was

Complaint

66 F.T.C.

being offered for sale by said retail stores without a trade-in, in the regular course of business and the difference between the higher and lower amounts did not represent savings to purchasers.

b. The price set out in conjunction with the words "Price If Purchased Separately" was in excess of the actual, bona fide price at which the advertised merchandise was being offered for sale by said retail stores if purchased separately, in the regular course of its business and the difference between the higher and lower prices did not represent savings to purchasers.

Therefore, the statements and representations as set forth in Paragraphs Eight and Nine hereof were and are false, misleading and deceptive.

PAR. 11. In the course and conduct of its business and for the purpose of inducing the sale of its phonograph needles and styli, respondent has made certain statements and representations in its advertising of which the following are typical but not all inclusive:

ALL DIAMOND STYLI ARE NOT ALIKE. Only Lafayette's Superior Diamond Styli are * * * MADE FROM WHOLE DIAMONDS, PRECISION GROUND AND POLISHED. VERTICALLY AND EDGE-WISE GRAIN ORIENTED. SHADOWGRAPHED. Each Lafayette's diamond stylus is * * * shadowgraph tested * * *

LAFAYETTE Diamond-sapphire styli \$1.69

PAR. 12. Through the use of the aforesaid statements and others of similar import not specifically set out herein, respondent represents, and has represented directly and by implication that:

a. Only Lafayette phonograph needles and styli are made from whole diamonds, are precision ground and polished, and are shadowgraph tested.

b. Lafayette phonograph needles and diamond styli are vertically and edgewise grain oriented and are individually shadowgraph tested.

c. Its diamond-sapphire phonograph styli or needles contain genuine sapphire.

PAR. 13. In truth and in fact:

a. Lafayette phonograph needles and styli are not the only needles or styli that are made from whole diamonds, are precision ground and polished, and are shadowgraph tested.

b. Lafayette phonograph needles or diamond styli are not vertically and edgewise grain oriented and are not individually shadowgraph tested.

c. The aforesaid diamond sapphire phonograph needles or styli advertised, offered for sale and sold by respondent contain synthetic sapphires and not genuine sapphires.

Therefore, the statements and representations set forth in Paragraphs Eleven and Twelve hereof were, and are, false, misleading and deceptive.

PAR. 14. In the conduct of its business, and at all times mentioned herein, respondent has been in substantial competition in commerce, with corporations, firms and individuals in the sale of the same general kind and nature of products and merchandise as that sold by respondent.

PAR. 15. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices and the failure to disclose the facts as hereinabove alleged 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 are true and into the purchase of substantial quantities of respondent's products and merchandise by reason of said erroneous and mistaken belief.

PAR. 16. 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 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 Lafayette Radio Electronics Corporation 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 111 Jericho Turnpike, Syosset, Long Island, 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.

ORDER

It is ordered. That respondent Lafayette Radio Electronics Corporation, a corporation and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of radios, phonograph equipment, radio electronic equipment or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. a. Using the words "Regularly," "Regular," "Was," or any other words or terms of similar import, to refer to any price which is in excess of the actual, bona fide price at which the article referred to was offered to the public by respondent in the recent, regular course of its business for a reasonably substantial period of time in the trade area where the representation is made;

b. Otherwise misrepresenting respondent's former offering price of such merchandise to the public in the recent, regular course of its business in the trade area where the representation is made;

c. Misrepresenting in any manner the savings available to purchasers of respondent's merchandise from the actual, bona fide prices at which such merchandise was offered to the public by respondent in the recent, regular course of its business for a reasonably substantial period of time in the trade area where the representation is made;

2. a. Using the expression "Price if Purchased Separately" or any other words or terms of similar import, to refer to any price which is in excess of the actual, bona fide price at which such merchandise is being offered to the public on a regular basis by respondent if purchased separately in the trade area where the representation is made;

b. Misrepresenting in any manner the savings available to purchasers of a combination or group of products from the total of the actual, bona fide prices at which such products are being

offered to the public on a regular basis by respondent if purchased separately in the trade area where the representation is made;

3. a. Using the expression "without trade-in," or any other words or terms of similar import, to refer to any price which is in excess of the actual, bona fide price at which such merchandise is being offered to the public on a regular basis by respondent without a trade-in in the trade area where the representation is made;

b. Misrepresenting in any manner the savings available to purchasers of respondent's merchandise by virtue of a trade-in from the actual, bona fide price at which such merchandise is being offered to the public on a regular basis by respondent without a trade-in in the trade area where the representation is made;

4. Using the term "SALE" or any other word of similar import or meaning, as a designation for any catalogue, circular, newspaper or direct mail advertising, unless the prices at which a major portion of the items of merchandise contained therein are offered constitute reductions from the actual, bona fide prices at which said items of merchandise were offered to the public by respondent in the recent, regular course of its business for a reasonably substantial period of time in the trade area where the representations are made and the amount of each such reduction is not so insignificant as to be meaningless, or represent reductions from the prices at which said items of merchandise or comparable merchandise are offered for sale in the trade area where the representations are made and, in the latter instances, the basis for the represented reductions are clearly and conspicuously stated and the amount of each such reduction is not so insignificant as to be meaningless;

5. Representing, directly or by implication, that such merchandise is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor (except when it is respondent), and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

6. a. Representing, directly or by implication that only respondent's phonograph needles or styli are:

- A. Made from whole diamonds;
- B. Precision ground and polished;
- C. Shadowgraph tested;

b. Representing, directly or by implication that respondent's phonograph needles or styli are:

- A. Vertically and edgewise grain oriented;

Complaint

66 F.T.C.

B. Individually shadowgraph tested;

c. Misrepresenting in any manner the exclusiveness of any feature or characteristic, or the method of manufacture, processing or testing of respondent's phonograph needles, styli or phonograph equipment;

7. Using the term "sapphire" or any other word or term connoting a precious stone to describe or designate a phonograph needle or stylus containing a synthetic stone unless the synthetic nature thereof is affirmatively and clearly disclosed.

Provided however, That respondent's use of its catalogues and flyers in its retail stores for the purpose of (A) distributing the same to its customers and (B) permitting its customers to use the same to serve themselves, shall not be deemed to be a violation of Paragraphs 1, 2, 3 or 4 of this order because of the circumstance that at the time one or more articles of merchandise listed in such catalogues or flyers may then be selling in respondent's retail stores at prices which may be under the prices shown for those articles of merchandise in said catalogues and flyers.

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

ARNOTH W. GODDARD ET AL., TRADING AS QUAD-CITY
SEWING MACHINE COMPANY, ETC.