

IN THE MATTER OF
THE MAGNAVOX COMPANY

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

Docket C-869. Complaint, Dec. 23, 1964—Decision, Dec. 23, 1964

Consent order requiring a Fort Wayne, Ind., manufacturer of television sets, radios, and phonograph equipment, sold through franchised retail dealers, to cease representing falsely in national advertising and in other promotional materials provided for dealer use that prices of its merchandise were substantially reduced during its annual "Factory Authorized Sale", and misrepresenting that its merchandise was unconditionally guaranteed for stated periods.

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 The Magnavox Com-

pany, 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, The Magnavox 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 2131 Bueter Road, in the city of Fort Wayne, State of Indiana.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of radios, television receivers, phonograph equipment and other merchandise to retailers 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 radios, television receivers, phonograph equipment and other merchandise, when sold, to be shipped from its place of business in the State of Indiana, and from other production and storage facilities in other States of the United States, 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 in said radios, television receivers, phonograph equipment and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, respondent offers its radios, television receivers, phonograph equipment and other merchandise for sale through franchised retail dealers located throughout the United States. For the purpose of promoting the sale of its aforesaid merchandise, respondent engages in the practice of sponsoring an annual "Factory Authorized Sale." In conjunction with this "Factory Authorized Sale" respondent places extensive advertising in national publications of general interstate circulation, provides its retail dealers with brochures, banners, price cards and similar materials for their use, and provides matrices and layouts for local dealer advertising. Respondent makes substantial advertising allowances to said local dealers where their advertising meets respondent's established requirements.

In the aforesaid advertising and other materials, respondent has made and placed in the hands of its retail dealers the means and instrumentalities for making certain statements and representations in regard to the price of its merchandise and the savings afforded pur-

1311

Complaint

chasers thereof. Typical, but not all inclusive of said statements and representations are the following:

SAVE UP TO \$100 DURING OUR BIG FACTORY AUTHORIZED ANNUAL SALE

YOUR ONCE-A-YEAR OPPORTUNITY TO ENJOY *BIG SAVINGS ON* * * * magnificent MAGNAVOX

True

- STEREO HIGH FIDELITY
- *Fully* Automatic BIG PICTURE TV
- STEREO THEATRE family entertainment centers
- PORTABLE Phonographs and Radios

For a limited time only * * * COME IN NOW!

SAVE \$100 * * * on this FM/AM and Stereo FM ASTRO-SONIC radio-phonograph. ASTRO-SONIC—model 2-ST650 * * * NOW ONLY \$595.

NOW ONLY \$495 * * * your choice of these styles. Astro-Sonic 30—model 1-ST 671. * * * Radio-Phonograph * * * SAVE \$55.

The COLONIAL—model 1-ST652. FM/AM radio-phonograph * * * SAVE \$60—NOW ONLY \$289.50.

SAVE \$100 * * * on this BIG PICTURE 330 Stereo Theatre family entertainment center * * * in mahogany finish (TV). The INTERNATIONAL model 1-MV 383 * * * NOW ONLY \$498.50.

The TRADITIONAL—model 1-MV 321 (TV). SAVE \$50—NOW ONLY \$279.50 * * *

The TRADITIONAL—model 1-ST642 AM/FM radio-phonograph * * * SAVE \$60—NOW ONLY \$279.50.

Magnavox * * * SAVE \$100 ANNUAL SALE.

Come in now! SAVE UP TO \$100 on a magnificent Magnavox during our factory authorized ANNUAL SALE FOR A LIMITED TIME ONLY.

For a limited time only * * * SAVE up to \$100 on a magnificent Magnavox COLOR TV * * * during our exciting factory authorized ANNUAL SALE.

The Italian Provincial—model 1-MV530 * * * now only \$595 * * * SAVE \$50 (Color TV).

The Danish Modern—model 1-MV529 * * * now only \$595 * * * SAVE \$50 (Color TV).

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, respondent represents and places in the hands of its retail dealers the means and instrumentalities for representing:

a. That an actual, bona fide offer to sell the merchandise referred to has been made by the retail dealers, in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made, at a price higher than the presently offered price by the amount of savings stated.

b. That purchasers of the merchandise referred to would realize a savings of the stated amount from the retail dealers' actual, bona fide price at which said merchandise was offered to the public in the recent

regular course of business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made.

c. That the represented reduced prices are available only during the limited period of the sale and would be returned to the retail dealers' pre-sale bona fide offering price or to some other substantially higher amount immediately after the completion of the sale.

PAR. 6. In truth and in fact :

a. An actual bona fide offer to sell the merchandise referred to had not been made by the retail dealers, in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made, at a price higher than the presently offered price by the amount of savings stated. Certain of said advertised merchandise was neither offered nor available for sale before the aforesaid statements and representations were made and other merchandise had not been offered for sale at said higher price.

b. The purchasers of the merchandise referred to would not realize a savings of the stated amounts from the retail dealers' actual, bona-fide price at which said merchandise was offered to the public in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representations is made.

c. Many of the represented reduced prices were not returned to the retail dealers' former bona fide offering prices or to some other substantially higher amount but remained at or substantially near the represented reduced sale prices. Thus the period during which the reduced prices were available on many items was not limited to the period of the sale.

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

PAR. 7. In its advertising and other materials, respondent has made certain other statements and representations of which the following are typical, but not all inclusive :

Big Factory Authorized Annual Sales Your Once-A-Year Opportunity to Enjoy
Big Savings On * * * (On the front of certain sale brochures.)

For a limited time only * * * SAVE up to \$100 on a magnificent Magnavox
COLOR TV during our exciting factory authorized ANNUAL SALE. (On the
front of certain sale brochures.) now only only SAVE

SAVE UP TO \$100 on a magnificent Magnavox COLOR TV during our big fac-
tory authorized ANNUAL SALE FOR A LIMITED TIME. (In certain
advertising.)

PAR. 8. By and through the use of the statements and representations set forth in Paragraph Seven, and others of similar import and meaning but not specifically set out herein, respondent represents and places in the hands of its retail dealers the means and instrumentalities to represent that the price of every item of merchandise contained in said advertising and materials represents a reduction, in an amount not so insignificant as to be meaningless, from the price at which respondent's retail dealers had made an actual, bona fide offer to sell said merchandise in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made.

PAR. 9. In truth and in fact, the offering price of each of the items of merchandise offered in the advertising and materials referred to in Paragraph Seven hereof has not been reduced from the retail dealers' actual, bona fide offering price at which such merchandise was offered to the public in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation was made. Certain items contained in said advertising had never previously been offered for sale at any price. Other items were offered at prices which did not represent a reduction from the retail dealers' former offering prices.

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

PAR. 10. Respondent in the course and conduct of its business has made certain statements and representations in advertising and in materials provided for retail dealer use in regard to the guarantee provided to the purchasers of respondent's merchandise. Typical of said statements and representations, but not all inclusive thereof, are the following:

Diamond Stylus is Guaranteed 10 years!
Astro-Sonic components guaranteed 5 years.
Picture tube guaranteed 3 years.
*Parts are guaranteed for five years * * **

PAR. 11. By and through the statements and representations set forth in Paragraph Ten hereof, respondent represents and has represented and has placed in the hands of its retail dealers the means and instrumentalities for representing that the merchandise or parts referred to are unconditionally guaranteed for the period stated.

PAR. 12. In truth and in fact, the guarantees provided with the merchandise and products referred to are subject to numerous conditions, limitations and qualifications which are not disclosed in said advertising and other materials.

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

PAR. 13. Respondent, by and through the use of the aforesaid practices, places in the hands of retail dealers the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove stated.

PAR. 14. In the course and 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 radios, television receivers, phonograph equipment and other merchandise of the same general kind and nature as that sold by respondent.

PAR. 15. The use by 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. 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 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 The Magnavox 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 2131 Bueter Road, in the city of Fort Wayne, State of Indiana.

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 The Magnavox Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, television receivers, phonograph equipment and other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. 1. Using in advertising or other promotional materials for dealer use the word "Save" or any other word or term of similar import or meaning in conjunction with a stated amount of savings unless respondent is able to establish as a fact that the sum of the offering price of the merchandise and the represented amount of savings equals:

a. The actual, bona fide price at which such merchandise was offered to the public by respondent's retail dealers in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made; or

b. If an introductory offer, the price at which respondent in good faith expects to offer such merchandise to the public at a later date through said retail dealers in the trade area where the representation is made and in this instance the basis for the represented saving is clearly stated;

2. Misrepresenting in any manner respondent's retail dealers' actual, bona fide offering price of such merchandise;

3. Representing, in advertising or other promotional materials for dealer use, in any manner that savings are afforded from respondent's retail dealers' former offering price to purchasers of such merchandise unless respondent is able to establish as a fact

that the price at which such merchandise is offered constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual, bona fide price at which such merchandise was offered to the public by respondent's retail dealers in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made;

4. Misrepresenting in any manner the savings afforded purchasers of respondent's merchandise;

5.

a. Representing, directly or by implication that the price of any merchandise is a reduction from respondent's retail dealers' former offering price unless respondent is able to establish as a fact that the price at which such merchandise is now offered constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual, bona fide price at which such merchandise was offered to the public by respondent's retail dealers in the recent regular course of their business on a regular basis for a reasonably substantial period of time in the trade area where the representation is made;

b. Using the statement "Big Factory Authorized Annual Sale—Your Once-A-Year opportunity to Enjoy *Big Savings* on * * *," "for a limited time only * * * SAVE up to \$100 on a magnificent COLOR TV * * * during our exciting factory authorized ANNUAL SALE," or any other words or expressions of similar import in catalogs, advertising or other promotional materials containing non-sale items without clearly and conspicuously revealing in immediate conjunction with said representations that non-sale items are contained therein and distinctively identifying said non-sale items;

Provided however, That:

a. Actual sales of an item of merchandise or actually having it physically in the store are not necessarily required to establish a bona fide offering price if, in fact, the item of merchandise is openly and actively offered for sale through dealer brochures or other material referring to the product;

b. The fact that a model number has been changed does not in and of itself foreclose respondent from establishing that an item of merchandise is the same as another for purposes of establishing the truthfulness of any price or savings representation herein, inasmuch as the nature and extent of changes in the item of merchandise, reflected by a change in the model number assigned to such item of merchandise,

might not be such as would destroy the validity of such representations;

B. Representing, directly or by implication that said articles of merchandise are guaranteed without clearly and conspicuously disclosing the nature, conditions and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder: *Provided, however*, That this provision would not be violated where a guarantee representation is made in a catalog and the disclosures of the nature, conditions and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously set forth at one place in the catalog, and each guarantee representation is clearly and conspicuously associated with the page in the catalog where such information is disclosed;

C. Representing, directly or by implication that any offer is limited in point of time or in any manner unless respondent is able to establish as a fact that any represented limitation or restriction was actually imposed and in good faith adhered to: *Provided, however*, That this provision would not be violated where the expression "Annual Sale" is properly utilized, and the duration of the sale is not directly or impliedly limited, but, after the sale, the prices of certain items of merchandise are not raised to their presale level;

D. Furnishing or otherwise placing in the hands of retail dealers or others the means and instrumentalities by and through which they may mislead or deceive the public as to the things or in the manner hereinabove prohibited.

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

B. R. PAGE COMPANY ET AL.

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