

Complaint

74 F.T.C.

IN THE MATTER OF

U.S. ELECTRONICS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 8747. Complaint, Nov. 8, 1967—Decision, Nov. 4, 1968*

Consent order requiring a Pine Lawn, Mo., distributor of radio and TV tube testing devices and supplies to cease misrepresenting the earnings of purchasers of its machines, the services furnished therewith, and the assistance in resale of the machines.

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 U.S. Electronics, Inc., a corporation, and Jerry Librach, individually and as an officer of said corporation, hereinafter 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 U.S. Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Respondent Jerry Librach is an individual and an officer of said corporation. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including the acts and practices hereinafter set forth. The principal office and place of business of the respondents is located at 6267 Natural Bridge Road, Pine Lawn, Missouri.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of advertising, offering for sale, sale and distribution of radio and television tube testing devices, tubes and the supplies and equipment used in connection therewith to purchasers. Said devices are located by the respondents in various places such as service stations, hardware stores and the like where the public will be induced to test the tubes from their radio and television sets and purchase replacements for defective tubes.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, said products, when sold, to be shipped and transported from their aforesaid place of business in the State of Missouri,

and from various places of business of their suppliers to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents' method of doing business is to insert advertisements in the classified advertisement section of newspapers and periodicals. Persons responding to said classified advertisements are then contacted by respondents or their employees, agents or representatives who display to the prospective purchaser a variety of promotional material and make various oral representations respecting the aforesaid articles of merchandise.

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of said articles of merchandise, respondents have made various statements and representations concerning said articles of merchandise and the business opportunity afforded. Such representations have been made and continue to be made by respondents, their employees, agents or representatives, through advertising and promotional material furnished by respondents to said employees, agents or representatives, through advertisements inserted in newspapers and periodicals, through letters and other advertising literature circulated generally among the purchasing public and through oral representations made by respondents, their employees, agents or representatives.

Typical and illustrative of the newspaper advertisements used by respondents, but not all inclusive thereof, is the following:

Reliable Party for Added Income for Part or Full Time Work.

We Secure Locations for Testers. Male or Female, wanted for this area to service route for Sylvania & R.C.A. television and radio tubes sold through our latest modern method free self-service tube testing and merchandising units. Will not interfere with your present employment. To qualify you must have \$1,476.60 to \$2,953.20 cash available immediately for inventory and equipment, investment secured. Car, 5 spare hours weekly, could net up to \$6,000.00 per year in your spare time, should be able to start at once. This company will extend financial assistance to full time if desired. Do not answer unless fully qualified for time and investment. Income should start immediately. Business set up for you. Selling, soliciting, or experience is not necessary. For personal interview in your city—please include your Phone Number and Write

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PAR. 6. Through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, and through statements and representations orally made by respondents, their employees, agents and representatives to prospective purchasers, respondents have represented, and do now represent, directly or by implication, to the purchasing public, that:

1. Persons investing \$2,953.20 in said articles of merchandise will receive a net income of \$6,000 per year.
2. Respondents obtain top sales producing locations for the placement of tube testing machines purchased from them.
3. The purchasers of said machines will be trained by the respondents as to the operation of the machines and the methods to be used in servicing them.
4. No selling or soliciting will be required.
5. If the purchaser becomes dissatisfied, or for any reason wishes to go out of the business, the respondents will either accept a return of the machines and tube stock or will help the purchaser to resell them.
6. The purchaser's investment in the machines and tube stock is secured.

PAR. 7. In truth and in fact:

1. Income in the foregoing amount will not be realized by persons investing the sum indicated. Persons investing the foregoing amount in said articles purchased from respondents receive appreciably smaller returns on their investments.
2. Respondents do not obtain top income producing locations, but place most of the machines in retail establishments such as service stations which have very little consumer traffic. The locations secured by respondents are usually undesirable, unsuitable and unprofitable.
3. Respondents do not train the purchasers of the tube testing machines in the operation of the machines or the methods to be used in servicing the locations where the machines are installed.
4. The purchasers of the machines are required to do selling and soliciting since it is frequently necessary to place machines in other locations because of the unprofitable nature of the locations selected by the respondents.
5. Respondents do not accept the return of the machines or tube stock and do not help the purchaser to resell them regardless of the purchaser's reasons for going out of business.
6. The purchaser's investment is not secured and if the purchaser finds it necessary to resell his machines, he will realize

very little, if anything, on such transaction.

Therefore, the statements and representations as set forth in Paragraphs 5 and 6 hereof, were and are false, misleading and deceptive.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of the same or similar products.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements and representations 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 respondents' products by reason of such mistaken and erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' 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 issued its complaint in this proceeding on November 8, 1967, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

Upon motion of respondents and for good cause shown, the Commission, having on February 5, 1968, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication and granted respondents opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

Respondents and counsel supporting complaint having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order to cease and desist in disposition of the proceeding:

1. Respondent U.S. Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 6267 Natural Bridge Road, Pine Lawn, Missouri.

Respondent Jerry Librach is an officer of said corporation and his address is the same as that of said corporation.

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 U.S. Electronics, Inc., a corporation, and its officers, and Jerry Librach, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of radio and television tube testing devices and the tubes, supplies and equipment for use in connection therewith, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Persons investing \$2,953.20 in respondents' tube testing devices and the tubes, supplies and equipment for use in connection therewith will earn a net income of \$6,000 per year.

2. Persons investing in respondents' products will derive any stated amount or gross or net profits or other earnings; or representing, in any manner, the past earnings of purchasers of respondents' products unless in fact the past earnings represented are those of a substantial number of purchasers and accurately reflect the average earnings of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

3. Respondents, their agents, representatives or employees will obtain satisfactory or profitable locations for the

machines purchased from them: *Provided, however,* That nothing herein shall be construed to prohibit respondents from truthfully and nondeceptively representing that they have obtained locations or assisted in obtaining locations if respondents clearly and conspicuously disclose, in immediate conjunction therewith, the average net or gross earnings realized by a substantial number of purchasers from machines in locations obtained by respondents or through their assistance under circumstances similar to those of the purchaser to whom the representation is made.

4. Purchasers of respondents' machines or other products will receive training, or other advice and assistance, in the operation of and the methods to be used in servicing respondents' said machines or any other products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that training, advice and assistance in the operation of and the methods to be used in servicing respondents' machines or other products were afforded to each purchaser to the extent of and in conformity with the representations made to the purchaser.

5. Selling, soliciting or experience is not required to establish, operate or maintain a route of respondents' machines, or other products; or misrepresenting in any manner, the amount of selling, soliciting or experience required to establish and operate or maintain the route.

6. Respondents or their representatives will accept return of, or will obtain or assist in obtaining a purchaser for, or will assist in the resale of machines or other products sold by them.

7. That the investment in respondents' machines, or other products, is secured or cannot be lost.

8. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other persons a signed statement acknowledging receipt of said 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.

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IN THE MATTER OF

OSCAR FINKEL

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-1443. Complaint, Nov. 4, 1968—Decision, Nov. 4, 1968

Consent order requiring a New York City fur manufacturer to cease
issuing false invoices on the sale of his fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Oscar Finkel, individually and trading as Oscar Finkel, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Oscar Finkle is an individual trading as Oscar Finkel.

Respondent is a manufacturer of fur products including fur collars and trim with his office and principal place of business located at 150 West 28th Street, New York, New York.

PAR. 2. Respondent is now and for some time last past has been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced by the respondent in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was