

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

COX BROADCASTING CORPORATION, ET AL.

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

Docket C-1581. Complaint, Aug. 11, 1969—Decision, Aug. 11, 1969

Consent order requiring an Atlanta, Ga., television broadcasting company and its TV station in Pittsburgh, Pa., to cease using "hypoing" practices in the Pittsburgh market area—that is, engaging in unusual promotional schemes designed to increase temporarily the size of their broadcast audience during rating 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 Cox Broadcasting Corporation, a corporation, and WIIC-TV Corporation, a 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 Cox Broadcasting Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1601 West Peachtree Street, NE., in the city of Atlanta, State of Georgia.

Respondent WIIC-TV Corporation 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 341 Rising Main Avenue in the city of Pittsburgh, State of Pennsylvania.

WIIC-TV Corporation is a wholly owned subsidiary of Cox Broadcasting Corporation which owns the entire capital stock of

WIIC-TV Corporation. Cox Broadcasting directs and controls the acts and practices of WIIC-TV Corporation.

PAR. 2. Respondents are now, and for some time last past have been engaged in television broadcasting and in the offering for sale and sale of television broadcast time to advertisers and advertising agencies.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now sell and offer for sale, and for some time last past have sold and offered for sale, broadcast time for advertising purposes to advertisers and advertising agencies located both in the State of Pennsylvania and in various other States of the United States, and respondents now cause, and for some time last past have caused, the broadcasting of television signals, including, among other things, the aforementioned advertising, from their transmitter and place of business in the State of Pennsylvania into various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in the sale of broadcast time and in broadcasting in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents and other TV broadcasters purchase audience measurement reports as compiled and sold by market research companies for use in the sale of broadcast time to advertisers and advertising agencies. These reports are compiled from audience surveys as conducted in each particular market, and purport to contain statistical estimates of the ratings, audience size and audience composition of each TV station attaining certain minimal audience levels in the measured market.

Such reports are used by the respondents and other TV broadcasters to demonstrate to the purchasers of advertising time, the size and composition of the audience that is tuned to their station at any particular time of the day, and how the size and composition of their station's audience compares with that of competing TV broadcasters in the same market.

Advertisers and advertising agencies purchase the same reports for use in determining from which TV broadcaster in a particular market they will purchase broadcast time for advertising purposes.

PAR. 5. In the further course and conduct of their aforesaid business respondents engaged in certain unusual promotional practices during a rating period, to wit:

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I. 1. Respondents conducted and broadcast a contest, designated "SPOT THE STARS," over their television station beginning on February 15, 1967, and ending February 28, 1967. During this entire fourteen (14) day period respondents' market was being surveyed and measured by both the "American Research Bureau" and "A.C. Nielsen Company." This contest was tied directly to, and required the viewing of, respondents' broadcasts. To participate one had to obtain certain names and numbers which were broadcast by respondents' at random times and in random order between the hours of 4:30 p.m. and midnight for the duration of the contest, and which could not be obtained elsewhere.

2. The value of each prize offered and awarded and the total value of all prizes offered and awarded during this contest was greater than that of prizes ordinarily offered and awarded by respondents in other contests.

3. No cosponsor or copromoter shared the cost of this contest or the cost of the prizes or participated in the promotion thereof whereas a cosponsor or copromoter does ordinarily share in the cost and in the promotion of respondents' contests.

4. Respondents placed fourteen (14) large (approximately $\frac{1}{2}$ page) advertisements in area newspapers promoting this contest whereas respondents do not ordinarily utilize the newspaper media in the promotion of their contests.

II. During the months of February and March 1967 the respondents placed an unusually large number of advertisements in the local newspapers. In addition to the 14 advertisements for the "SPOT THE STARS" contest aforementioned, 149 other advertisements were run in local newspapers. Of the total of these 149 non-contest advertisements, 142 were run in the 29 days (February 15 through March 15) during which respondents' audience was being measured.

The aforesaid advertisements constituted unusual promotional practices in that such advertisements were substantially greater in number than respondents usually placed during comparable periods of time; they were not used in connection with the promotion of new programs or changes in programming; they were not used in connection with a current event or special network or local news or public affairs program, nor were they run under circumstances beyond the control of respondents, such as when advertisements are run in cooperation with the station's network which specifies the time periods within which the advertisements

are to be placed, or advertisements the timing and placement of which are determined by the station's sponsors.

PAR. 6. The employment of short term and unusual promotional practices by a broadcaster has the tendency and capacity to effect a temporary increase in the size of that broadcaster's audience. Such a temporary increase in the size of a broadcaster's audience occurring during a period when that broadcaster's market is being measured or surveyed would cause the survey or rating company to measure an audience for such broadcaster that would be larger than would have been measured but for such short term and unusual promotional practices, thereby causing the rating or survey company to publish in its report, ratings and other data that would appear to be estimates of such a broadcaster's customary and usual audience.

As set forth in Paragraph Four hereof, audience survey reports are extensively used by broadcasters and purchasers of broadcast time as a tool for establishing the cost of broadcast time and for evaluating broadcast audiences. It is therefore an unfair act or practice for a broadcaster to employ any short term and unusual promotional practice which has the tendency or capacity to temporarily distort or inflate viewing levels in a broadcast market during a period when that market is being measured or surveyed. Engaging in such a practice is known as "hypoing."

Therefore, the unusual promotional practices of the respondents, as set forth in Paragraph Five hereof, constitute unfair acts or practices.

PAR. 7. The acts and practices of respondents as set forth in Paragraph Five hereof were calculated or designed to cause A.C. Nielsen Company and American Research Bureau to publish in their February-March 1967 reports for the Pittsburgh, Pennsylvania, market, ratings and other audience data that would appear to be estimates of respondents' customary and usual audience but which would in fact be estimates based upon the measurement of an audience larger than respondents customarily or usually have, and to cause such companies to place in the hands of purchasers of such reports audience ratings and other data which would have the tendency and capacity to mislead and deceive such purchasers as to the size and composition of respondents' customary and usual audience.

Therefore the aforesaid unusual promotional practices of respondents constitute deceptive acts or practices.

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PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale of broadcast time of the same general nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid unfair or deceptive acts and practices has had, and now has, the capacity and tendency to mislead the purchasers of broadcast time into the erroneous and mistaken belief that the ratings and other audience data contained in the aforementioned February-March 1967, Pittsburgh, Pennsylvania, reports are estimates of the usual audience of the TV stations reported therein and into the purchase of substantial quantities of respondents' broadcast time by reason of said erroneous and mistaken belief.

As a consequence thereof substantial trade in commerce has been and is being unfairly diverted to the respondents from their competitors, and substantial injury has thereby been, and is being, done to competition in commerce.

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 acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Cox Broadcasting Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 1601 West Peachtree Street, NE., in the city of Atlanta, State of Georgia.

Respondent WIIC-TV Corporation 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 341 Rising Main Avenue in the city of Pittsburgh, State of Pennsylvania.

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, Cox Broadcasting Corporation, a corporation, and WIIC-TV Corporation, a corporation, their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the broadcasting, and the advertising, offering for sale or sale of broadcast time in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Conducting or participating in any unusual contest or give-away, or engaging in any unusual advertising or promotional practice, in the Pittsburgh, Pennsylvania, market, which is calculated or designed to temporarily increase the size of their broadcast audience only during a rating or survey period or which is calculated or designed to cause any rating or survey company to publish and place in the hands of purchasers thereof, audience rating or other data which may mislead or deceive such purchasers as to the size or composition of respondents' audience.

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It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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.
