

IN THE MATTER OF

SHARP ELECTRONICS CORPORATION, ET AL.

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

*Docket C-1849. Complaint, Jan. 13, 1971—Decision, Jan. 13, 1971*

Consent order requiring a Carlstadt, N.J., distributor of television and radio sets and other electronic appliances to cease misrepresenting that the repair rate of respondent's products is based on data of the United States Department of Commerce, using an asterisk to refer to a footnote stating that the size of the picture is a diagonal measurement, and using any size measurement of the picture other than the viewable picture area measured on a single plane basis. Respondent's New York City advertising agency is also ordered to cease making the above misrepresentations, provided that it shall be a defense that it did not know that the data not sustain such representations.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by that Act, the Federal Trade Commission, having reason to believe that Sharp Electronics Corporation, a corporation, Wisser & Sanchez Inc., a corporation,

and Lawrence Wisser, as an officer of Wisser & Sanchez Inc., herein-after referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule relating to Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (16 CFR 410), and, by this and other means, have violated the provisions of the Federal Trade Commission 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. Sharp 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 178 Commerce Road in the city of Carlstadt, State of New Jersey.

Wisser & Sanchez Inc., 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 223 East 48th Street, in the city of New York, State of New York.

Respondent Lawrence Wisser is an individual and an officer of Wisser & Sanchez Inc. His address is the same as that of Wisser & Sanchez Inc.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondent Sharp Electronics Corporation is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of televisions, radios, and other appliances and electronic products to distributors, jobbers or others, for resale to the public.

Respondents Wisser & Sanchez Inc., and its officer Lawrence Wisser are in the advertising business. They are now, and for some time last past have been, engaged in formulating, preparing and placing for publication advertising copy for dissemination in publications of general circulation concerning televisions and other products of respondent Sharp Electronics Corporation.

PAR. 3. In the course and conduct of its business as aforesaid, respondent Sharp Electronics Corporation now causes, and for some time last past has caused, its said products, when sold, to be shipped from their State of origin or distribution 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 products in

commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Sharp Electronics Corporation has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as that sold by said respondent.

In the course and conduct of their aforesaid business and at all times mentioned herein respondents Wisser & Sanchez Inc., and its officer Lawrence Wisser have been, and now are, in substantial competition, in commerce, with corporations, firms, and individuals engaged in the advertising business.

PAR. 5. In the course and conduct of their respective businesses, and for the purpose of inducing the purchase of Sharp Electronics Corporation's products, the respondents have made, and are now making, statements and representations in advertisements disseminated in publications of general circulation with respect to the repair rate of "Sharp" products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, is the following: "Sharp's repair rate is much lower than the industry's. Based on U. S. Department of Commerce TV-Radio repair rate figures."

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that their claim that "Sharp" products have a lower repair rate than the industry's is based upon and supported by official data or statistics of the United States Department of Commerce.

PAR. 7. In truth and in fact, respondents' said claim is neither based upon nor supported by official data or statistics of the United States Department of Commerce.

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

PAR. 8. The use by respondents 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 Sharp Electronics Corporation's products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as alleged in Paragraphs Five through Seven hereof 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.

PAR. 10. In the further course and conduct of their respective businesses, and for the purpose of inducing the purchase of Sharp Electronics Corporation's products, the respondents have made, and are now making, numerous statements and representations in advertisements disseminated in publications of general circulation with respect to the size of the picture shown by "Sharp" televisions.

Typical and illustrative of said statements and representations, but not all inclusive thereof, is the following: "... like our 12 inch portable shown here. And our 14 inch portable, and our 18 inch table model.\*" On the bottom of the page, in print that is neither clear and conspicuous nor in close connection and conjunction with the size designations, the following notation appears: "\*Diagonal measurements."

PAR. 11. On February 24, 1966, after due notice and hearing, the Commission promulgated, effective July 1, 1967, its Trade Regulation Rule Relating to Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (16 CFR 410). On the basis of its findings, as set out in the "Accompanying Statement of Basis and Purpose" of the said Trade Regulation Rule, the Commission determined that:

[I]t is an unfair method of competition and an unfair and deceptive act or practice to use any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.

PAR. 12. Notice is hereby given that the presentation of evidence in the course of a hearing in this proceeding may be required to dispose of the issues that may arise as a result of the allegations contained in Paragraphs One, Two, Three, Four, and Ten herein, and that if the issues presented as a result of the allegations contained in those paragraphs should be resolved in substantiation of such allegations, then the above Trade Regulation Rule is relevant to the alleged practices of the respondents. Therefore, the respondents are given further notice that they may present evidence, according to

Section 1.12(c) of the Commission's Procedures and Rules of Practice, to show that the above Trade Regulation Rule is not applicable to the alleged acts or practices of respondents. And if the Commission should find that the above Rule is applicable to alleged acts or practices of the respondents, then it will proceed to make its findings, conclusions, and final order in this proceeding on the basis of that Rule. A copy of the Rule and Accompanying Statement of Basis and Purpose, marked Appendix A,\* is attached hereto and made a part of this pleading.

PAR. 13. The aforesaid methods of competition and acts and practices of respondents, as alleged in Paragraph Ten hereof, were and are contrary to the provisions and requirements of the Commission's Trade Regulation Rule Relating to Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets (16 CFR 410), and thereby 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 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 Consumer Protection 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

\* Appendix A was omitted in printing. Trade Regulation Rule relating to Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets effective January 1, 1967, appears in Title 16 of the Code of Federal Regulations Section 410.

record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Sharp 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 178 Commerce Road in the city of Carlstadt, State of New Jersey.

Wisser & Sanchez Inc., 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 223 East 48th Street, in the city of New York, State of New York.

Respondent Lawrence Wisser is an individual and an officer of Wisser & Sanchez Inc. His address is the same as that of Wisser & Sanchez Inc.

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 respondent Sharp Electronics Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of radios, televisions or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any claim respecting the repair rate of respondent's products is based on data or statistics of the United States Department of Commerce, or that any claim respecting the repair rate or any other attribute or characteristic of respondent's products or any other product is based upon, supported, or established by data or statistics from any source, unless such data or statistics are competent to sustain and do in fact sustain such representation and unless respondent shall retain and make readily available such data or statistics for not less than three years following the publication or dissemination of such representation.

2. Using an asterisk referral to indicate that the measurement of the size of the picture shown by a television receiving set is a diagonal measurement.

3. Using any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.

*It is further ordered*, That respondent Wisser & Sanchez Inc., a corporation, its officers, and respondent Lawrence Wisser, 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 radios, televisions or other products, in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any claim respecting the repair rate of "Sharp" products is based on data or statistics of the United States Department of Commerce, or that any claim respecting the repair rate or any other attribute or characteristic of "Sharp" products or any other product is based upon, supported or established by data or statistics from any source, unless such data or statistics are competent to sustain and do in fact sustain such representation and unless respondent shall retain and make readily available such data or statistics for not less than three years following the publication or dissemination of such representation: *Provided, however*, That it shall be a defense hereunder that respondents neither knew or had reason to know that the data or statistics do not sustain such representation.

2. Using an asterisk referral to indicate that the measurement of the picture shown by a television receiving set is a diagonal measurement.

3. Using any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the

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manner of measurement: *Provided, however,* That it shall be a defense hereunder that respondents neither knew nor had reason to know that the size indicated was other than the horizontal dimension of the actual viewable picture area.

*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 notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the 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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