

Complaint

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IN THE MATTER OF

THE ELMO COMPANY, INC.

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

Docket 5959. Complaint, Feb. 28, 1952—Decision, Mar. 18, 1971

Order granting complaint counsel's motion that the complaint in this matter,
48 F.T.C. 1379, be dismissed without prejudice.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

Complaint counsel, by motion filed December 2, 1970, having requested that the complaint in this matter be dismissed without prejudice, and respondent not having filed an answer to said motion;

It is ordered, That complaint counsel's motion, filed December 2, 1970, be, and it hereby is, granted.

IN THE MATTER OF

NORFOLK-HILL, LTD., ET AL.

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

Docket C-1879. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

Consent order requiring an inactive corporation now located in East Orange, N.J., which formerly sold MEMOCORD tape recorders, books, automatic coin banks, painting sets and other articles to cease failing to make proper refunds, failing to clearly reveal the nature of deductions from refunds, making deceptive guarantees, failing to make shipment of merchandise within ten days of receipt of order and misrepresenting the length of continuous operation of its tape recorders.

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 Norfolk-Hill, Ltd., a corporation, and Norman Eisner and Richard A. Jasper, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a preceeding 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 Norfolk-Hill, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York. When the corporate respondent was actively engaged in business its principal office and place of business was located at 35 Ninth Avenue, New York, New York.

Said corporate respondent is not now actively engaged in business and its only address is in care of its vice-president, 320 South Harrison Street, East Orange, New Jersey.

Respondents Norman Eisner and Richard A. Jasper are officers of the corporate respondent and when the said corporate respondent was actively engaged in business, they formulated, directed and controlled the acts and practices hereinafter set forth. The residence address of the respondent Norman Eisner is 16 Shady Brook Road, Great Neck, New York. The residence address of the respondent Richard A. Jasper is 320 South Harrison Street, East Orange, New Jersey.

PAR. 2. Respondents are not now, but for some time last past had been, engaged in the advertising, offering for sale, sale and distribution of MEMOCORD tape recorders, books, automatic coin banks, painting sets, records, toy cars and other articles of mail-order merchandise.

PAR. 3. In the course and conduct of their business, respondents caused said merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and at all times mentioned herein maintained a substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents were in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their mail-order business and for the purpose of inducing the sale of their said merchandise, respondents have made certain statements and representations with respect to performance, refunds, guarantees and delivery in advertisements in magazines, in brochures, in newspapers and through other advertising media.

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

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15 DAY FREE TRIAL

15-day trial with immediate
refund if not satisfied

3-DAY FREE TRIAL

30-day trial with immediate
refund if not satisfied

NO-RISK TRIAL

10-day FREE TRIAL OFFER

10 days free trial

Full money back at once fully guaranteed
refund guaranteed if you
decide to return the book

You can read this exciting book
entirely at our risk for 10
full days . . . After 10 days,
if you do not want to keep
the book . . . simply return it and
your money will be instantly refunded.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five herein, and others similar thereto but not expressly set forth herein, respondents have represented, directly or by implication, that they unconditionally guaranteed that the full purchase price of the merchandise will be refunded promptly and voluntarily upon demand by the purchaser and return of the merchandise.

PAR. 7. In truth and in fact:

1. In numerous instances the purchase price of merchandise was not refunded upon demand of the purchaser, or was refunded only after a delay of several months and after repeated requests to respondents and pleas for assistance to Better Business Bureaus and governmental agencies and substantial inconvenience, irritation and hardship to the purchaser.

2. In cases where refund was made of the purchase price, it was not in full but a deduction was made from the amount of the purchase price for a service charge including postage and handling.

3. Said refund guarantee was not unconditional but was subject to the foregoing and other conditions and limitations. Furthermore respondents by their aforesaid failure to make refunds substantially failed to perform under the represented terms of the guarantee.

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

PAR. 8. In addition to the representations set forth in Paragraph

Four as to all of the merchandise, the following additional statements and representations were made with respect to MEMOCORD tape recorders in the aforesaid advertising media:

One Hour on Single Tapes
Uninterruption for Two Hours

PAR. 9. By and through the use of the statements and representations quoted in Paragraph Eight hereof, and others of similar import and meaning but not expressly set forth herein, the respondents represented that one or two hours, as the case might be, of continuous and uninterrupted use can be recorded on a single tape by the said MEMOCORD tape recorder.

PAR. 10. In truth and in fact, it is necessary to make some adjustment or change of the tape approximately every fifteen minutes over the period of one or two hours.

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

PAR. 11. In the course and conduct of their mail-order business, as aforesaid, respondents, on numerous occasions and in a substantial number of instances either have failed altogether to deliver pre-paid merchandise or have delivered such merchandise after a long lapse of time and after several demands therefor have been made to respondents and pleas for assistance have been made to Better Business Bureaus and to governmental agencies. Such practices have resulted in substantial inconvenience, hardship and irritation to purchasers.

Therefore, the said practice was, and is, unfair and is misleading and deceptive.

PAR. 12. The use by respondents of the aforesaid unfair practices and false, misleading and deceptive statements and representations had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were all to the prejudice and injury of the public and of respondents' competitors and constituted 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 respondents named in the caption hereof with

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violation of the Federal Trade Commission Act, and the respondents 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 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 complaint to issue herein, 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 considered the agreement and having accepted the same, the agreement containing consent order was placed on the public record for a period of 30 days, and having duly considered the comments thereafter filed pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by this agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Norfolk-Hill, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York. When the corporate respondent was actively engaged in business its principal office and place of business was located at 35 Ninth Avenue, New York, New York.

Said corporate respondent is not now actively engaged in business and its only address is in care of its vice-president, Richard A. Jasper, 320 South Harrison Street, East Orange, New Jersey.

Respondents Norman Eisner and Richard A. Jasper are officers of the corporate respondent and when the said corporate respondent was actively engaged in business, they formulated, directed and controlled the acts and practices of said corporation. The residence address of the respondent Norman Eisner is 16 Shady Brook Road, Great Neck, New York. The residence address of the respondent Richard A. Jasper is 320 South Harrison Street, East Orange, New Jersey.

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 Norfolk-Hill, Ltd., a corporation, and its officers, and Norman Eisner and Richard A. Jasper, indi-

vidually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of tape recorders, books, coin banks, painting sets, records, toys, or any other product, in commerce as "commerce" is defined in the Federal Trade Commission Act, do hereafter forthwith cease and desist from:

1. Failing, when requested, pursuant to a guarantee (hereafter made) of satisfaction or a full refund, to refund the purchase price in full of merchandise together with all charges paid by purchasers in connection with such purchase (hereafter made) voluntarily and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 15 days; or failing to make any other refunds to which a purchaser is entitled within 15 days from the date of the receipt of the request for such refund.

2. Representing, directly or by implication, that respondents will make refunds in full for goods or merchandise which is returned when such refunds are subject to any deductions whatsoever; failing clearly and conspicuously to reveal in all advertising and promotional material the amount and nature of any deductions from refunds of purchase prices; or misrepresenting, in any manner, the amount of or deduction from refunds of purchase prices.

3. Representing, directly or by implication, that any product or service is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and the guarantor does in good faith promptly perform all of the actual and represented obligations under the terms of the guarantee.

4. Failing to make shipment of advertised goods or merchandise within 10 days from the date of receipt of the order and payment therefor or to return the full purchase price therefor to the purchaser.

5. Representing, directly or by implication, that tape recorders or any other kind of sound recording or reproduction device provide continuous or uninterrupted use when the user is required to make any change or adjustment whatsoever in the operation of the machine or device or when the sound recording or reproduction is in any manner interrupted during the represented period of time; or misrepresenting, in any manner, the

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performance or performance characteristics of respondents' products.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent by assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising of this order.

It is further ordered, That 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 of their compliance with this order.