

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.

IN THE MATTER OF
THE MAGNAVOX COMPANY

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

Docket 8822. Complaint, Oct. 12, 1970—Decision, June 9, 1971

Consent order requiring a major diversified manufacturer of consumer electronic products with headquarters in Fort Wayne, Ind., to cease fixing resale prices for dealers in non-fair trade states for a period of two years, and imposing exclusive dealing, full-line purchasing and tie-in sales requirements on its dealers, withholding earned cooperative advertising credits from certain dealers, fixing dealers' trade-in allowances, prohibiting the issuance of trading stamps, paying rewards to dealers to provide information on discounting dealers, and otherwise harassing or coercing dealers who do not cooperate with respondent in maintaining its retail prices.

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 party respondent named in the caption hereof, and hereinafter more particularly described, has been, and is now, violating the provisions of Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U.S.C. 45) 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 with respect thereto as follows:

PARAGRAPH 1. Respondent, The Magnavox Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware since February 20, 1930. Respondent has its main office and principal place of business located at 2131 Bueter Road, Fort Wayne, Indiana.

PAR. 2. Respondent is, and at all times mentioned herein has been, a diversified manufacturer of consumer electronic products, house-

hold furniture and communications systems for the military. Gross sales by respondent for the fiscal year ending June 30, 1967, were \$464,284,067.

PAR. 3. Within the continental limits of the United States, excluding Alaska, respondent sells and distributes its consumer electronic products directly to its franchised retail dealers. Sales and distribution of such products to retail dealers located in Alaska, foreign countries and outside the continental limits of the United States are made through distributors.

Where the term "consumer electronic products" is used in this complaint it is defined to include the radios, phonographs, television receiver sets and tape recorders manufactured, sold and distributed by respondent under the "Magnavox" trade name.

PAR. 4. To service its approximately 3,000 retail dealers, respondent maintains a comprehensive and integrated manufacturing, sales and distribution system throughout the United States. Sales of respondents' products, including consumer electronic products, are made from sales offices located in Dallas, Texas; Denver, Colorado; Washington, D.C.; Chicago, Illinois; Cincinnati, Ohio; Torrance, California; Cleveland, Ohio; Boston, Massachusetts; Minneapolis, Minnesota; Detroit, Michigan; San Francisco, California; Cherry Hill, New Jersey; St. Louis, Missouri; New York, New York and Atlanta, Georgia. Respondent also maintains showrooms for its consumer electronic products in New York, New York; Dayton, Ohio, and Washington, D.C.

Respondent and its subsidiaries also maintain manufacturing plants located in the States of Indiana, Illinois, California, North Carolina, Mississippi and Tennessee. Respondent transports its products, including consumer electronic products, from its manufacturing plants located in the states referred to hereinabove to warehouses located in Teterboro, New Jersey; Chicago, Illinois; Kansas City, Missouri; Dallas, Texas; Pasco, Washington and Los Angeles, California. Respondent distributes its products, including consumer electronic products, from its warehouses located in the States referred to hereinabove to its dealers located in every State of the United States including the District of Columbia. There is now and has been at all times mentioned in this complaint, a pattern and course of commerce in respondent's products, including consumer electronic products, by respondent within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint,

respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, sale and distributions of consumer electronic products similar to those listed and described in Paragraph Three hereinabove.

PAR. 6. In the course and conduct of its business as above described, respondent has for many years pursued a policy throughout the United States, the purpose of which is and has been to fix, control, establish and maintain the retail prices, including the minimum resale prices, at which its retail dealers advertise, offer for sale and sell its consumer electronic products.

In furtherance of this policy, respondent has, at least since January 1962, and continuing to the present time, engaged in one or more of the following acts and practices, but not necessarily limited thereto, in one or more of the various states of the United States without regard to whether or not such states have valid fair trade laws:

(a) Eliminating competition among dealers in the sale of respondent's products by limiting their number and controlling their locations;

(b) Requiring dealers to sign and be bound by the terms of resale price maintenance agreements and to adhere to minimum resale prices established by the respondent under such agreements, without regard to whether or not such dealers are located in states where resale price maintenance agreements are authorized by law;

(c) Requiring dealers to enter into oral agreements or understandings with the respondent that they will adhere to minimum resale prices established by respondent for its products as a condition to receiving and retaining dealer franchises from the respondent;

(d) Refusing to franchise dealers who operate discount houses for the reason that such dealers have a reputation or a potentiality for discounting or cutting prices;

(e) Requiring dealers to affix to current models of respondent's products on display at their stores, price tags which bear the minimum resale prices established by respondent;

(f) Inspecting the price tags which respondent requires its dealers to affix to its products to ascertain if they are complying with respondent's directive that such tags bear its established minimum resale prices;

(g) Supplying dealers with wholesale cost sheets, product guide books and other documents in which respondent's current established retail prices for its products are set forth;

(h) Encouraging and requiring dealers to use advertising mats

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and proof sheets furnished by respondent and bearing respondent's established retail prices for its products;

(i) Limiting reimbursements under respondent's cooperative advertising program to advertisements which bear respondent's established retail prices for its products;

(j) Requiring prior authorization of advertising in which respondent's products and other merchandise are offered in combination at a single price, as a condition for reimbursement under respondent's cooperative advertising program;

(k) Conducting annual nationwide retail sales of its products through its dealers in which respondent fixes the time and duration of such sales, preselects the products to be offered and establishes the resale prices and discounts therefor;

(l) Controlling the type of merchandise eligible for allowance and the amount of allowance to be granted by dealers on merchandise trade-in on the purchase of respondent's products;

(m) Prohibiting dealers from issuing trading stamps in connection with the sale of respondent's products;

(n) Requiring dealers to limit the terms and duration of repair service warranties they grant in connection with the sale of respondent's products;

(o) Inspecting sales and business records of dealers to ascertain if they are conforming to respondent's requirements that its products not be sold below established minimum resale prices;

(p) Reprimanding dealers found deviating from respondent's established retail prices and extracting promises from them that they will sell respondent's products in the future at those prices;

(q) Soliciting and encouraging the cooperation of dealers in helping to identify and report dealers who advertise, offer to sell and sell respondent's products at prices other than respondent's established retail prices for such products;

(r) Paying rewards to dealers who provide respondent with evidence of discounts from respondent's established retail prices which other dealers grant to purchasers of respondent's products;

(s) Levying fines upon dealers who grant discounts from respondent's established retail prices to purchasers of respondent's products;

(t) Threatening to discontinue doing business with dealers suspected of selling respondent's products at other than its established retail prices; or to other dealers or distributors; and

(u) Terminating business relationships with dealers suspected of failing to adhere to respondent's established retail prices or of selling to other dealers or distributors.

PAR. 7. In the course and conduct of its business as above described and beginning at least as early as January 1962 and continuing to the present time, respondent has made sales and entered into agreements for the sale of its products, including consumer electronic products, on the condition, agreement or understanding that the purchaser or purchasers thereof shall not sell or deal in the products of a competitor or competitors of the respondent.

PAR. 8. In the course and conduct of its business as above described and beginning at least as early as January 1962 and continuing to the present time, respondent has made sales and entered into agreements for the sale of its products, including consumer electronic products, on the condition, agreement or understanding that the purchaser or purchasers thereof shall purchase and display a full line of the respondent's products.

PAR. 9. In the course and conduct of its business as above described and beginning at least as early as January 1962 and continuing to the present time, respondent has refused to sell certain of its products, including consumer electronic products, to purchasers desirous of purchasing such products unless such purchasers also purchase certain other products manufactured by the respondent.

PAR. 10. The effect of respondent's use of the acts, practices, methods of competition and course of conduct hereinabove alleged has been and may be substantially to restrain, lessen, injure, destroy and prevent competition in the marketing, sale and distribution of respondent's products, including consumer electronic products, by, and between and among dealers and purchasers for resale of those products; has been and may be to substantially lessen competition or to create a monopoly in the manufacture, sale and distribution of radios, phonographs, television receiver sets and tape recorders; and has been and is to the prejudice and injury of the public. Respondent's uses of said methods, acts, practices and course of conduct constitute unfair methods of competition in commerce and 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 respondent named in the captioned proof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge respondent with a violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 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 main office located at 345 Park Avenue, New York, New York, and its principal place of business for consumer electronic products located at 1700 Magnavox Way, Fort Wayne, 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

I. *It is ordered.* That respondent, The Magnavox Company, a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives, and employees, individually or in concert, directly or through any corporate or other device, in connection with the manufacture, distribution, offering for sale or sale of any consumer electronic products, including, but not limited to, radios, phonographs, television receiver sets, tape recorders and parts and components of any of the foregoing (hereinafter referred to in this order as "products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining or enforcing any plan or policy under which contracts, agreements, understandings or arrange-

ments are entered into with dealers in respondent's products (hereinafter referred to in this order as "dealers") which have the purpose or effect of fixing, establishing, maintaining, enforcing or, for a period of two years from the effective date of this order, suggesting the retail prices at which respondent's products (hereinafter referred to in this order as "its products") are to be resold.

B. Fixing, establishing, controlling, maintaining or, for a period of two years from the effective date of this order, suggesting the retail prices at which its dealers may advertise, promote, offer for sale or sell its products.

C. Requiring any dealer to enter into verbal agreements or understandings that such dealer will adhere to established or suggested retail prices for its products as a condition to receiving or retaining its dealer franchise.

D. Refusing to sell its products to any dealer who desires to engage in the retail sale of such products for the reason that such dealer will not enter into its product at respondent's established or suggested retail prices.

E. Requiring dealers to affix to any of its products on display at their stores price tags bearing its established or suggested retail prices.

F. Publishing, disseminating or circulating to any dealer any price list, price book or other document designating any mandatory retail price, or, for a period of two years from the effective date of this order, any suggested retail price at which its products are to be resold by dealers.

G. Designating in its own advertising, or in any advertising or promotional aids or materials supplied or sold to dealers, any mandatory retail price, or, for a period of two years from the effective date of this order, any suggested retail price at which its products are to be resold by dealers.

H. Threatening to withhold or withholding earned cooperative advertising credits from dealers for the reason that they advertise its products at retail prices other than established or suggested retail prices.

I. Requiring that a dealer not state a combination price for its products and other merchandise as a condition for reimbursement under any cooperative advertising program pursuant to which reimbursement is offered.

J. Engaging in any retail sales of its products through its dealers in which it establishes, or, for a period of two years

from the effective date of this order, suggests the retail prices or discounts therefrom and at the same time either (i) fixes the time and/or duration of such sale, or (ii) preselects the products to be offered.

K. Establishing any criteria as to the type of merchandise eligible for or fixing or suggesting the amount of an allowance which dealers may grant on merchandise traded in on the purchase of its products.

L. Prohibiting dealers from issuing trading stamps to purchasers of its products.

M. Establishing or enforcing any maximum limitation on their terms or duration of any repair service warranties which a dealer may grant in selling its products, other than warranties offered by respondent, or warranties which a dealer offers in any manner which represents or implies that the warranties are offered by or backed by respondent.

N. Inspecting sales and business records of any dealer for the purpose of ascertaining the prices at which, or the customers to whom, such dealer sells its products: *Provided, however*, That nothing in this order shall be deemed to prevent respondent from inspecting such records where such inspection is authorized by law, or is for the purpose of assisting respondent to establish its compliance with the provisions of the order issued on December 23, 1964, in Consent Order No. C-869 [66 F.T.C. 1311], or with any other obligation or requirement of any government authority.

O. Securing or attempting to secure any promises or assurances from dealers regarding the prices at which such dealers will sell its products.

P. Requiring, soliciting or encouraging dealers to report the identity of other dealers, and the prices at which such other dealers advertise, offer for sale or sell its products, or the customers to whom such other dealers sell its products.

Q. Paying rewards to dealers who provide evidence of discounting by other dealers from the established or suggested retail prices of its products, or who provide evidence of customers to whom such other dealers sell its products.

R. Levying fines upon dealers who grant discounts from the established or suggested retail prices of its products to purchasers thereof.

S. Terminating business relationships with any dealer because the dealer has sold or is selling or is suspected of selling its

products at other than its established prices or suggested retail prices.

T. Terminating, harassing, threatening, intimidating, coercing or delaying shipments to any dealer because the dealer has sold or is selling its products at other than its established or suggested retail prices or to any other dealers or distributors of consumer electronic products, or taking any other action to prevent the sale of its products by the dealer to other dealers or distributors of consumer electronic products.

U. Convening or participating in meetings of dealers for the purpose of obtaining their compliance with any of the acts or practices prohibited by this order.

V. Securing or attempting to secure agreement of its dealers not to sell its products to disenfranchised or non-franchised dealers.

II. *It is further ordered*, That nothing in this order shall be construed to prohibit respondent, The Magnavox Company, from entering into, establishing, maintaining and enforcing a legitimate fair trade program in those states having fair trade laws: *Provided*, That, for a period of two years from the effective date of this order, the provisions of this paragraph shall not apply to any Standard Metropolitan Statistical Area in the United States (as defined in *Standard Metropolitan Statistical Areas*, Executive Office of the President, Bureau of the Budget, 1967) that includes both a fair trade and a non-fair trade area.

III. *It is further ordered*, That respondent, The Magnavox Company, shall forthwith cease and desist from:

A. Selling or making a contract or agreement for the sale of any of its products, on the condition, agreement or understanding that the purchaser shall not purchase, advertise, display, sell or distribute similar products sold or supplied by any competitor or competitors of the respondent.

B. Selling or making any contract or agreement for the sale of any of its products on the condition, agreement or understanding that the purchaser or purchasers thereof shall purchase or display a full line of any of the products manufactured, sold or distributed by respondent.

C. Selling or making a contract or agreement for the sale of one or more of its products on the condition, agreement or understanding that the purchaser or purchasers thereof must also buy one or more other of its products; *Provided, however*, That nothing contained in this Paragraph III shall be construed to

prohibit respondent from requiring that its dealer purchase, display, and maintain in inventory a representative line of its products.

IV. *It is further ordered*, That the respondent, The Magnavox Company, shall, in good faith, upon application made within thirty (30) days of the notice given pursuant to Paragraph V-C, reinstate any dealer location terminated between January 1, 1966, and the effective date of this order if the terminated location was in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Missouri, Montana, Nebraska, Nevada, Texas, Utah, Vermont and Wyoming, unless respondent can show that the applicant does not or did not at the time of termination have good credit or that the dealer does not have reasonably adequate facilities for selling and servicing respondent's products.

V. *It is further ordered*, That respondent, The Magnavox Company, shall:

A. Forthwith serve a copy of this order by registered mail on each of its dealers, accompanied by a letter in the form annexed hereto as Exhibit A. In the case of any dealer who has a franchised place of business located in any of the following jurisdictions: Alabama, Alaska, California, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia and Wyoming, the copy shall also be accompanied by a letter in the form annexed hereto as Exhibit B. In the case of any dealer located in the fair trade area of any Standard Metropolitan Statistical Area referred to in Paragraph II of this order, the copy shall also be accompanied by a letter in the form annexed hereto as Exhibit C.

B. For a period of three years following the effective date of this order, serve a copy of this order and the appropriate covering letters upon each new dealer franchised by the respondent not later than the date the dealer becomes a franchisee of respondent.

C. Within thirty (30) days after service upon it of this order, serve a copy of this order by registered mail on each dealer located in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Missouri, Montana, Nebraska, Nevada, Texas, Utah, Vermont and Wyoming, and terminated since January 1, 1966, together with a letter advising that such dealer, if qualified pursuant to Paragraph IV, may

apply within thirty (30) days from receipt thereof for reinstatement as one of respondent's dealers.

D. Within ninety (90) days after service upon it of this order, submit to the Commission (1) a list of all dealer locations terminated since January 1, 1966, in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Missouri, Montana, Nebraska, Nevada, Texas, Utah, Vermont and Wyoming; (2) a list of all dealers who have been reinstated pursuant to Paragraph IV above; and (3) a list of all dealers whose applications for reinstatement have been denied and the reason or reasons therefor.

E. For a period of two (2) years following the effective date of this order, submit to the Commission not less frequently than sixty (60) days following the close of each year a report listing the names and addresses of all dealers terminated by respondent (and the reasons therefor) during the period covered by the report where the dealer's terminated place of business was in a state which at the time of termination did not have statutes or rules of law pursuant to the McGuire Act amendment to the Federal Trade Commission Act.

VI. *It is further ordered*, That respondent, The Magnavox Company, shall, on or before February 1, 1971, and effective for a period ending not sooner than December 31, 1972, make changes in the assignments of its sales personnel so that none of its zone or regional managers (or personnel performing similar functions) shall have or exercise sales or administrative responsibility over any dealer locations situated in any of the following jurisdictions: Alabama, Alaska, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, Rhode Island, Texas, Utah, Vermont, and Wyoming, while at the same time having or exercising such authority over dealer locations situated in any state other than one of the foregoing.

VII. *It is further ordered*, That respondent, The Magnavox Company, 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 those provisions in the order set forth herein, which are not required to be reported separately.

VIII. *It is further ordered*, That respondent, The Magnavox Company, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor

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corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

Exhibit A

LETTER TO CURRENT DEALERS

(Official of The Magnavox Company Letterhead)

(date)

Dear :

We have been directed by the Federal Trade Commission to inform our dealers that the Federal Trade Commission has entered a consent order against The Magnavox Company which, among other things:

1. Prohibits us from ever requiring, directly or indirectly, a dealer who sells our products in states which do not have fair trade laws to support any programs or policies which establish the prices at which the dealer sells our consumer electronic products in non-fair trade states;

2. Prohibits us, for a period of two years from [date] from suggesting the prices at which non-fair trade dealers may sell our consumer electronic products in non-fair trade states;

3. Contains certain provisions with respect to our policies covering the range of consumer electronic products and the competitive products which our dealers in both fair trade and non-fair trade states must carry and sell.

If you sell our products in non-fair trade states, as a result of this order, despite any existing contracts, agreements, or understandings, and despite any past or present practices or dealings, you are to determine independently your own merchandising policies with respect to matters such as sales prices, your own promotional devices, and customers for our products without interference by The Magnavox Company, and without jeopardy from such determination to your status as a Magnavox Dealer.

We wish also to make clear that we leave to each individual dealer the choice of whether to grant trade-in allowances in connection with the sale of Magnavox products, as well as the determination of the amount of any such allowance, subject only to the provision of applicable fair trade laws.

For your information, we have enclosed a copy of this Order.

Very truly yours,

Exhibit B

OFFICIAL MAGNAVOX LETTERHEAD

[Letter to Dealers in Jurisdictions Listed Below]

(date)

Dear :

This letter is to clarify any possible question as to your right to offer trading stamps in connection with the sale of Magnavox products.

Current [jurisdiction of addressee] law gives you complete discretion whether or not to use and distribute trading stamps* in connection with the sale of Magnavox products, and no policy of The Magnavox Company is intended to restrict in any way whatsoever the exercise of that discretion.

Very truly yours,

*For dealers in Ohio, add: "as long as the value is not in excess of three percent of the price of the product,".

Complaint

To be sent to dealers in the following jurisdictions:

Alabama, Alaska, California, District of Columbia, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Wyoming.

Exhibit C

OFFICIAL MAGNAVOX LETTERHEAD

[Letter to Dealers in Jurisdictions Listed Below]

(date)

Dear :

We have been directed by the Federal Trade Commission to inform you that, pursuant to paragraph 2 of the enclosed consent order, [city or county] is to be treated as if it were a non-fair trade jurisdiction for a period of two years from [date].

Therefore, during this period we may not fair trade with you or provide you with suggested prices for any of your franchised locations in [city or county].

Very truly yours,

To be sent to dealers in the fair trade areas of the following Standard Metropolitan Statistical Areas, as defined in *Standard Metropolitan Statistical Areas*, Executive Office of the President, Bureau of the Budget (1967):

"Columbus, Georgia-Alabama"

"Fall River, Massachusetts-Rhode Island"

"Omaha, Nebraska-Iowa"

"Providence, Pawtucket, Warwick, Rhode Island-Massachusetts"

"St. Louis, Missouri-Illinois"

"Sioux City, Iowa-Nebraska"

"Texarkana, Texas-Arkansas"

"Washington, D.C.-Maryland-Virginia."

IN THE MATTER OF

ZALE CORPORATION, ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket 8810. Complaint, Mar. 20, 1970 — Decision, June 10, 1971

Order requiring a Dallas, Texas, seller and distributor of jewelry and other merchandise through numerous retail stores to cease violating the Truth in Lending Act by failing to use on its installment contracts the terms "dollars finance charge per \$100 of unpaid balance," "annual percentage