

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

DEFA ELECTRONICS CORP., ET AL.

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

Docket C-2040. Complaint, Sept. 12, 1971—Decision, Sept. 13, 1971

Consent order requiring a New York City seller and distributor of stereophonic high fidelity audio equipment to cease misrepresenting the time period in which mail orders will be filled, imposing unapproved cancellation charges, increasing selling prices after receipt of the order, and shipping unauthorized substitute merchandise; the respondent shall also make full refund of monies if goods are not shipped within 30 days of order.

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 Defa Electronics Corp., a corporation, and Jerry Famolari, 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 Defa Electronics Corp., 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 2207 Broadway, New York, New York.

Respondent Jerry Famolari is an officer of the corporate respondent and he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of stereophonic high fidelity audio equipment direct to purchasers at the above location, as well as by mail order.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have 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 maintained, and at all times have 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 have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in sales 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 what merchandise is maintained in stock, the time period in which orders are shipped, and refunds, in advertisements in magazines, in brochures containing inserted order forms, and through other advertising media.

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

Most items are in stock

Our prompt attention will be given to your order

PAR. 6. By and through the use of the statements and representations quoted in Paragraph 5 herein, respondents have represented, and are now representing, directly or by implication, that:

1. Most merchandise which is offered for sale is maintained in stock and is readily available for shipment.

2. Orders are promptly completed and shipped to respondents' customers.

PAR. 7. In truth and in fact:

1. In many instances ordered items are not in stock and customers wait several months for their orders to be completed and shipped. Even when respondents are aware that advertised items are in a back-order situation, they continue to accept additional orders without informing customers of the anticipated delay in shipment.

2. In many instances respondents have failed to take adequate steps to complete customers' orders within a reasonable time after receipt of the order and consequent delays have lasted several months.

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

PAR. 8. Respondents have failed, and are failing, to provide prompt refunds to customers whose orders have not been promptly completed and shipped and who have requested such refunds.

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

PAR. 9. Respondents have sought to impose an order cancellation charge of 5 percent or 10 percent of the sales price, characterized as a service charge, on merchandise which it has failed to deliver, said charge not having been disclosed in advance.

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

PAR. 10. Respondents have sometimes sought to impose prices in excess of those agreed upon when customers' orders were originally accepted, as a condition to completing and shipping orders.

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

PAR. 11. Respondents have, in some instances, shipped substitute merchandise for ordered goods without obtaining the customers' prior authorization therefor.

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

PAR. 12. In the course and conduct of their mail-order business, as aforesaid, respondents, on numerous occasions have failed to deliver prepaid merchandise or have delivered such merchandise after a long lapse of time, and several demands therefor have been made to respondents and requests for assistance have been made to Better Business Bureaus and to governmental agencies. Said practices have resulted in substantial inconvenience, hardship and irritation to purchasers.

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

PAR. 13. The use by respondents of the aforesaid unfair practices and false, misleading and deceptive statements and representations had 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 said erroneous and mistaken belief.

PAR. 14. 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 practice 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 respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and 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

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 same, and the agreement containing consent order having thereupon been placed on the public 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Defa Electronics Corp., 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 2207 Broadway, New York, New York.

Respondent Jerry Famolari is an officer of the corporation and he formulates, directs and controls the acts and practices of the corporate respondent. His business address is the same as that of the corporate respondent.

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 Defa Electronics Corp., a corporation, and Jerry Famolari, individually and as an officer of said corporation, and respondents' agents, representatives or employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of stereophonic high fidelity audio equipment direct to purchasers or by mail order, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Misrepresenting, directly or by implication, that orders which are accepted will be completed and shipped promptly, or within a reasonable period of time, or within any designated time period in excess of which a substantial number of orders are actually completed and shipped.

II. Imposing any cancellation or other charges in connection with orders received unless approval is obtained from a consumer before the consumer's order is accepted.

III. Increasing selling prices to consumers after receipt of their orders, unless the right to do so is agreed to by the consumer prior to the time when his order is accepted by respondents.

IV. Shipping substitute merchandise without obtaining a prior, expressed, written authorization from the affected consumers.

It is further ordered, That henceforth, from the date upon which respondents receive notification of acceptance of this order by the Commission, respondents make a written offer of a full refund in all instances in which it fails to make a complete shipment to a consumer within 30 days of their receipt of the consumer's order and payment therefor, unless a longer period for delivery has been agreed to by the parties. When a longer period for delivery has been agreed to and complete shipment has not been made within that designated time respondents shall make a written offer of a full refund to the consumer. In either event, when a refund offer is accepted by a consumer respondents shall send the refund to said consumer without delay.

It is further ordered, That respondents maintain files containing all inquiries or complaints relating to acts or practices prohibited by this order, for a period of one year after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That upon receiving notification of acceptance of this order by the Commission respondents will make a written

offer to refund all monies received from those customers whose order or parts of an order are outstanding for a period in excess of two months immediately preceding the date of acceptance of said order. If said offer is accepted respondents shall send the customer the requested refund without relay.

It is further ordered, That respondents corporation notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, 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 out 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.

IN THE MATTER OF

RALPH WILLIAMS FORD, ET AL.

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