

which they have complied with this order.

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IN THE MATTER OF  
INTERNATIONAL TRANSISTOR CORP., ET AL.

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

*Docket C-2101. Complaint, Nov. 17, 1971—Decision, Nov. 17, 1971*

Consent order requiring an importer of transistor radios of Los Angeles, Calif., to cease misrepresenting the number of transistors or other components in its products or the functions of any such component.

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 International Transistor Corp., a corporation and Gene Gillis, individually and as an officer of said corporation, hereinafter referred to as respondents, have engaged in acts and practices contrary to the Commission's Trade Regulation Rule Relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR 414), 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. Respondent International Transistor Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1206 South Maple Avenue, Los Angeles, California.

Respondent Gene Gillis is an individual and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein-after set forth. His 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 importing transistor radios from foreign manufacturers and distributing these radios to wholesale and retail purchasers for resale to the purchasing public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their products to be imported into the United States and, when sold, to be shipped from their place of business in the State of California to purchasers thereof in various other States of the United States, and maintain, and at all times mentioned herein have 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 their business, respondents make representations in advertisements and other promotional materials and on labels attached to the radios concerning the number of transistors contained in the radios imported and distributed by them in the United States in the manner above described.

PAR. 5. In the course and conduct of their business, respondents make representations in advertisements and other promotional materials and on labels attached to their radios concerning the number of "Solid State" devices contained in the radios imported and distributed by them and thereby represent, directly or by implication, that a particular set so described contains that number of transistors.

PAR. 6. In representing the number of transistors or "Solid State" devices contained in their radios, respondents have included in the count, transistors that do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals.

PAR. 7. On May 14, 1968, after due notice and hearing, the Commission promulgated its "Trade Regulation Rule Relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers" (16 CFR 414), effective December 10, 1968. 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 it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

Represent, directly or by implication, that any radio set contains a specified number of transistors when one or more such transistors: (1) are dummy

## Complaint

79 F.T.C.

transistors; (2) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals.

PAR. 8. 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 through Seven 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 the 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 Statement of its Basis and Purpose marked "Appendix A" is attached hereto and made a part of this pleading.

PAR. 9. The aforesaid methods of competition and acts and practices of respondents, as alleged in Paragraph Eight hereof, were and are contrary to the provisions and requirements of the Commission's Trade Regulation Rule relating to Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers (16 CFR 414), and thereby constituted, and now constitute, unfair methods of competition in commerce and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

## APPENDIX A

## FEDERAL TRADE COMMISSION

## Washington

## TRADE REGULATION RULE AND STATEMENT OF ITS BASIS AND PURPOSE

## Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Subpart F, Part 1 of the Commission's Procedures and Rules of Practice, 16 CFR 1.61, et seq. (amended June 13, 1967 as Subpart B, Part 1, 32 F.R. 8444), has conducted a proceeding for the promulgation of a Trade Regulation Rule regarding deception as to transistor

count of radio receiving sets, including transceivers or so-called walkie-talkies. Notice of this proceeding, including a proposed rule, was published in the Federal Register on July 21, 1967 (32 F.R. 10753). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views and arguments and to appear and orally express their views as to the proposed rule and to suggest amendments, revisions and additions thereto.

The Commission has now considered all matters of fact, law, policy and discretion; including the data, views and arguments presented by interested parties in response to the Notice and has determined that the adoption of the Trade Regulation Rule and statement of its basis and purpose set forth herein is in the public interest.

#### STATEMENT OF BASIS AND PURPOSE

##### Basis of the Proceeding

This proceeding was initiated by the Commission after consideration of complaints by industry members and articles on the subject appearing in trade journals and national publications to the effect that many marketers of the lower priced radio receiving sets were including in the claimed transistor count for their sets dummy transistors and transistors wired as diodes.

##### Purpose of the Rule

The purpose of this rule is to inform all members of the industry and other interested or affected parties of the Commission's position with respect to the practices in question and to aid the Commission in the prevention of practices violative of Section 5 of the Federal Trade Commission Act on an equitable and industrywide basis.

##### The Practice Involved

Marketers of radio receiving sets, especially the less expensive imported sets, have represented that their products contain a specified number or count of transistors when in fact one or more of such transistors are either dummy transistors (non-functioning), or perform some function other than the detection, amplification and reception of radio signals. Often included in the computation of transistor count are transistors which are utilized as diodes or which perform auxiliary or other functions none of which serve to detect, amplify and receive radio signals. Also included in the transistor count computation may be transistors used in parallel or cascade applications which do not improve the performance capabilities of a radio in the detection, amplification and reception of radio signals.

##### Deceptive Character of the Practice

With the advent of the radio receiving set, the purchasing public acquired a belief that the greater the number of functioning tubes in a radio the better it performs. Great emphasis in advertising and otherwise was placed on tube count. As early as 1942 the Commission found in a litigated case<sup>1</sup> that a substantial portion of the purchasing public believes that the greater the number of tubes in a receiving set, the greater will be its power of detecting, amplifying and receiving signals. The record of this proceeding shows that transistors are now used in

<sup>1</sup> In re Zenith Radio Corporation, Docket 4174, 35 FTC 579. Petition to review denied 143 F. (2nd) 29.

## Complaint

79 F.T.C.

place of vacuum tubes in many radio receiving sets. Great emphasis has now been placed on transistor count. The Commission is of the view that the purchasing public's belief that the greater the number of tubes in a radio the better and more powerful the radio has shifted to a similar belief with respect to the number of transistors.

On the basis of its accumulated knowledge and experience and the record in this proceeding the Commission concludes that the practice of including in the transistor count computation of a radio, transistors which are dummies or which perform a function other than the detection, amplification and reception of radio signals or which are used in parallel or cascade applications which do not improve the performance capabilities of the radio in the reception, detection and amplification of radio signals, is deceptive and tends to divert business from competitors who do not misrepresent the transistor count of their products. The Commission further concludes that such practice is violative of Section 5 of the Federal Trade Commission Act, and that the public interest in preventing this practice is specific and substantial.

## Data, Views and Arguments Concerning the Rule

Some interested parties argue that the adoption of a rule prohibiting the inclusion in the transistor count of transistors which are not used for detection, amplification and reception of radio signals is too restrictive; that it excludes from such count transistors which perform a multiplicity of other functions not directly related to detection, amplification and reception of signals but which are nevertheless necessary to the performance of the set; and that this will discourage development of additional functions in transistor electronic equipment. Transistors are versatile devices, capable of performing various functions in a radio. Their functions include, but are not limited to, use as diodes and rectifiers, and in audio amplification, automatic frequency control, power supply, voltage regulation and switching from monophonic to stereophonic operations. None of the transistors so utilized, however, perform the functions of detection, amplification and reception of radio signals.

The Commission would not regard it as deceptive for an advertisement stating the actual number of transistors in a radio set (computed without the inclusion of transistors which function as diodes or which perform functions not directly related to detection, amplification and reception of radio signals) to contain a further statement to the effect that the set, in addition, contains a stated number of transistors acting as diodes or performing such other functions. The Commission however regards it as deceptive (and thus improper) to include in the transistor count computation, transistors which are paralleled or cascaded and which perform no function in the detection, amplification and reception of radio signals or dummy transistors which serve no useful purpose.

## THE RULE

The Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale or offering for sale of radio receiving sets (including transceivers), in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to represent directly or by implication, that any such radio sets contain a specified number of transistors when one or more of such transistors: (1) are dummy transistors, (2) do not perform the recognized and customary functions of radio set transistors:

in the detection, amplification and reception of radio signals, or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals. *Provided, however*, that nothing in this rule should be construed to prohibit, in connection with a statement as to the actual transistor count (computed without inclusion of transistors which do not perform the functions of detection, amplification and reception of radio signals), a further statement to the effect that the sets in addition contain one or more transistors acting as diodes or performing auxiliary or other functions when such is the fact (e.g., "6 transistors plus one diode").

#### Effective Date of the Rule

This rule becomes effective on December 10, 1968.

Adopted: May 14, 1968.

By the Commission.

#### 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 their 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 Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent International Transistor Corp., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of California, with its office and principal place of business located at 1206 South Maple Avenue, Los Angeles, California.

Respondent Gene Gillis is president of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

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 International Transistor Corp., a corporation, and Gene Gillis, individually and as an officer of said corporation, and respondents' agents representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale or distribution of radio receiving sets, including transceivers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the terms transistor or "Solid State" or any other word or phrase that any radio set contains a specified number of transistors when one or more such transistors: (1) are dummy transistors; (2) do not perform the recognized and customary functions of radio set transistors in the detection, amplification and reception of radio signals; or (3) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection and amplification of radio signals: *Provided however*, That nothing herein shall be construed to prohibit, in connection with a statement as to the actual transistor count (computed without inclusion of transistors which do not perform the functions of detection, amplification and reception of radio signals), a further statement to the effect that the sets in addition contain one or more transistors acting as diodes or performing auxiliary or other functions when such is the fact.

2. Misrepresenting, in any manner, the number of transistors or other components in respondents' products or the functions of any such component.

*It is further ordered*, That the respondents 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 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 corporation, the creation or dissolution of

### Complaint

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

*It is further ordered,* That the respondents 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.

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