

Complaint

IN THE MATTER OF

TOSHIBA AMERICA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2239. Complaint, July 3, 1972—Decision, July 3, 1972.*

Consent order requiring a New York City importer, distributor, and seller of microwave ovens and its advertising agent, among other things, to cease misrepresenting the Department of Health, Education, and Welfare has issued a final performance standard for microwave oven leakage; misrepresenting the nature and extent to which their products comply with or conform to any governmental, industry or other regulation or standard; misrepresenting respondent's product has been checked or tested for compliance with the proposed radiation emission standard promulgated by the Department of Health, Education, and Welfare; misrepresenting, in any manner, the radiation leakage of any products; and misrepresenting that any private or governmental organization has tested or approved any products.

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 Toshiba America, Inc., a corporation, and Norman, Craig and Kummel, Inc., a corporation, 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 Toshiba America, 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 4106 Delong Street, Flushing, New York.

PAR. 2. Respondent Norman, Craig and Kummel, 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 488 Madison Avenue, New York, New York.

PAR. 3. Respondent Toshiba America, Inc., is now, and for some time last past has been, engaged in the importation into the United States, advertising, offering for sale, sale and distribution of microwave ovens and other products to distributors for ultimate sale to retail outlets and then to the general public.

PAR. 4. Respondent Norman, Craig and Kummel, Inc., is now, and for some time last past has been, an advertising agency of Toshiba

America, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of products of Toshiba America, Inc.

PAR. 5. In the course and conduct of its aforesaid business, respondent Toshiba America, Inc., now causes, and for some time last past has caused, its said products to be imported from Japan into the United States, and when sold, to be shipped from its warehouses to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent Toshiba America, Inc., 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. 6. In the course and conduct of their said businesses, respondents Toshiba America, Inc., and Norman, Craig and Kummel, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of said advertisements, but not all inclusive thereof, is the following advertisement which appeared in the Tuesday, July 14, 1970, edition of "Home Furnishings Daily:"

THE TOSHIBA MICROWAVE OVEN IS THE SPACE AGE COOKING UNIT THAT MEETS 1971 STANDARDS NOW.

Your Toshiba Microwave *customers* will come back because their ovens will not! New industry-wide standards for Microwave ovens have been announced by the Department of Health, Education and Welfare. They won't go into effect until July 1, 1971.

But every Toshiba Microwave oven you sell in 1970 will have been checked by Toshiba to make sure it conforms to the new 1971 standards now. No unit will emit more than 5 milliwatts radiation leakage per square centimeter during its useful life.

And that's not all. Toshiba will send a Microwave technician to inspect any oven already in an owner's home, whenever and wherever asked. He'll make any adjustment needed to meet next year's requirements. And he'll affix a seal assuring that the appliance conforms to 1971 HEW standards.

Toshiba Microwave ovens already include the two independently-operated safety door locks the government will demand next year. These twin fail-safe switches turn the oven off the instant the door is opened. In addition, our oven won't operate unless the "on" switch, the timer and the cooking button have all been

activated. And of course it's U.L. and FCC approved. (Followed by the emblem of the Underwriters' Laboratories Inc.)

PAR. 8. By and through the use of the aforesaid statements and representations, and others similar thereto but not expressly set forth herein, respondents represent, and have represented, directly or by implication, that:

1. Sometime prior to the July 14, 1970, date of the above-quoted advertisement, the United States Department of Health, Education and Welfare had announced a final radiation emission standard for microwave ovens under the "Radiation Control Act" that would take effect on July 1, 1971.

2. Toshiba microwave ovens then currently on the market and those that would be on the market during 1970 and available to general distributors and retailers for resale to the purchasing public met the said 1971 radiation emission standard.

3. Every Toshiba microwave oven sold for ultimate retail sale in 1970 will have been checked by Toshiba to make sure that the said standard has been met.

4. No Toshiba microwave oven available for resale during 1970 to the purchasing public would emit more than 5 milliwatts radiation leakage per square centimeter during its useful life.

5. Toshiba microwave ovens have been tested and approved by Underwriters' Laboratories, Inc., and by the Federal Communications Commission with respect to radiation leakage.

PAR. 9. In truth and in fact:

1. The Department of Health, Education, and Welfare had not issued a final proposed radiation emission standard under the "Radiation Control Act" governing microwave oven leakage; rather a draft standard was at that time open to the final comments of the industry and other affected parties until July 22, 1970.

2. Toshiba microwave ovens then currently on the market and available to general distributors and retailers for resale to the purchasing public did not meet the said 1971 proposed radiation emission standard. Tests revealed that a substantial number of said Toshiba microwave ovens substantially exceeded allowable minimum radiation emission levels with the oven door open and with an object inserted into the oven cavity through the wire mesh screen in the oven door.

3. Every Toshiba microwave oven sold for ultimate retail sale in 1970 had not and would not have been checked by Toshiba to make sure that the said proposed radiation emission standard had been met.

4. Certain Toshiba microwave ovens available for resale to the

purchasing public during 1970 did emit more than 5 milliwatts radiation leakage per square centimeter when tested.

5. Toshiba microwave ovens had not been tested and approved by Underwriters' Laboratories, Inc., or by the Federal Communications Commission with respect to radiation leakage. Toshiba microwave ovens had been tested by Underwriters' Laboratories, Inc., and awarded the U.L. Seal for having met fire and electric shock requirements and nothing more. The FCC assigned the microwave band used for the operation of these ovens but had conducted no qualifying tests for radiation leakage.

Therefore, the advertisements referred to in Paragraph Seven and the statements and representations set forth in Paragraphs Seven and Eight were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Toshiba America, Inc., has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of microwave ovens and other products of the same general kind and nature as those sold by respondent Toshiba America, Inc.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Norman, Craig and Kummel, Inc., has been, and now is, in substantial competition, in Commerce, with other advertising agencies.

PAR. 12. 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 consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said microwave ovens and other products of respondent Toshiba America, Inc., by reason of said erroneous and mistaken belief.

PAR. 13. 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 and deceptive acts and practices in commerce and unfair methods of competition 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 the Federal Trade Commission Act, and respondents having

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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 Toshiba America, 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 4106 Delong Street, Flushing, New York.

Respondent Norman, Craig & Kummel, 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 919 3rd Avenue, New York, New York.

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

I

It is ordered, That respondent Toshiba America, Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of microwave ovens or other products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. The Department of Health, Education and Welfare has issued a final performance standard or standards under the "Radiation Control Act of 1954."

tion Control Act" governing microwave oven leakage which will become effective on a designated date unless such standard or regulation has in fact been officially promulgated and is then officially scheduled to become effective on the represented date; or misrepresenting, in any manner any governmental, industry or other regulation or standard.

2. Every 1970 model Toshiba microwave oven complies with the proposed radiation emission standard promulgated by the Secretary of Health, Education and Welfare pursuant to the "Radiation Control Act;" or misrepresenting, in any manner, the nature or extent to which any products comply with or conform to any governmental, industry or other regulation or standard.

3. Every 1970 model Toshiba microwave oven has been tested or checked by Toshiba for compliance with the proposed radiation emission standard promulgated by the Secretary of Health, Education and Welfare pursuant to the "Radiation Control Act;" or misrepresenting, in any manner, the nature or extent to which any products have been tested to determine compliance with or conformity to any governmental, industry or other regulation or standard.

4. Every 1970 model Toshiba microwave oven available for resale to the purchasing public does not emit more than 5 milliwatts radiation leakage per square centimeter; or misrepresenting, in any manner, the radiation leakage of any products.

5. 1970 model Toshiba microwave ovens have been tested for radiation leakage and have been approved by either Underwriters' Laboratories, Inc., or by the Federal Communications Commission; or misrepresenting, in any manner, that any private or governmental organization has tested or approved any products.

II

It is further ordered, That respondent, Norman, Craig & Kummel, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of microwave ovens or other microwave 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, the issuance and effectiveness of any governmental, industry or other regulation or standard when respondent, Norman, Craig & Kummel, Inc., knew

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or should have known that such representation was false or deceptive;

2. Representing directly or by implication that any such product complies with or conforms to any governmental, industry or other regulation or standard, when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive;

3. Representing directly or by implication the nature or extent to which any such product has been tested to determine compliance with or conformity to any governmental, industry or other regulation or standard when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive;

4. Representing directly or by implication the radiation leakage of any product when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive;

5. Representing directly or by implication that any such product has been tested or approved by any private or governmental program when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive.

III

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating departments, divisions and subsidiaries engaged in the advertising, offering for sale, sale or distribution of consumer products manufactured or imported by Toshiba America, Inc.

It is further ordered, That respondent Toshiba America, Inc., deliver a copy of this order to each of its nonsubsidiary distributors and retailers, with whom Toshiba deals directly, engaged in the advertising, offering for sale, sale or distribution of microwave ovens and other consumer products manufactured or imported by Toshiba America, Inc.

It is further ordered, That each respondent 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 subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That each respondent herein shall within sixty

